



Investment fraud schemes targeting senior citizens

Issued by AICPA FLS Fraud Task Force

Lead Author: Randal Wolverton, CPA/CFF, CFE

I. Introduction

Readers may recall the AICPA *FVS Eye on Fraud* winter 2017 issue on [Elder Financial Abuse Trends](#), which identifies a variety of scams targeting senior citizens, to include investment fraud schemes. Elder fraud has been defined as “an act targeting older adults in which attempts are made to deceive with promises of goods, services, or financial benefits that do not exist, were never intended to be provided, or were misrepresented.” With this issue, we are highlighting a variety of investment schemes that are aimed at defrauding seniors.

.....
Continued on page 2

Spring 2018, Issue 2

Inside this issue

Case studies	4-5
Tips for clients to avoid and prevent being scammed	7-8



These vast sums have attracted highly sophisticated organized crime groups, unethical or corrupt broker/dealers and investment advisers, and unethical family members and caregivers. Corrupt broker/dealers or investment advisers acting as professionals often use predatory techniques to defraud victims.

II. Incentives to invest

The baby boomer generation illuminates a wide variety of personal financial positions as it enters retirement. Many retirees have accumulated sufficient funds to meet financial pressures, but many have not. With the average life span increasing, many have wondered if they will outlive their money.

More than 25 million Americans age 60 or older are economically insecure. These older adults struggle with rising housing costs, health care bills, inadequate nutrition, lack of access to transportation, diminished savings and loss of jobs. Some of these seniors become targets for high pressure sales techniques and “get-rich-quick” schemes such as sweepstakes and lottery scams; timeshare and re-sales pitches; health care products; business opportunities; work-from-home programs; technological support scams; and fraudulent charitable donations.¹

Seniors have amassed wealth estimated at \$27 trillion through savings and retirement accounts.² The Individual Retirement Account (IRA) is a form of retirement account providing investors with certain tax benefits for retirement savings. Some examples of IRAs include the traditional IRA, Roth IRA, Simplified Employee Pension (SEP) IRA and the Savings Incentive Match Plan (SIMPLE) IRA. All IRA accounts are held for investors by custodians or trustees such as banks and trust companies.³

401(k) plans have grown to become the most common type of employer-sponsored defined contribution plans in the United States. Americans had about \$7.5 trillion in defined contribution plans in the second quarter of 2017.⁴ 401(k) plans offer participants a wide array of investment options including domestic bonds found in mutual funds, collective investment trusts and separate accounts of other pooled investment products.⁵

These vast sums have attracted highly sophisticated organized crime groups, unethical or corrupt broker/dealers and investment advisers, and unethical family members and caregivers.

Corrupt broker/dealers or investment advisers acting as professionals often use predatory techniques to defraud victims. Examples would be inappropriate reverse mortgages or other loans, inappropriate annuity sales such as pressuring seniors to use equity from reverse mortgages or other liquid assets to buy expensive annuities. Examples of other predominant schemes include binary option trading fraud, penny stock fraud, pump and dump schemes, fraudulent platform trading programs, prime bank guarantees, and private placement fraud schemes.⁶

Continued on page 3

¹ [National Council on Aging Economic Security for Seniors Facts](#)

² [The Investment Company Institute, Quarterly Retirement Market Data](#)

³ [SEC Office of Investor Education and Advocacy, Investor Alert: Self-Directed IRAs and the Risk of Fraud](#)

⁴ [Investment Company Institute](#)

⁵ [Ten Important Facts about 401K Plans](#), Investment Company Institute

⁶ [Federal Bureau of Investigation – White Collar Crime](#)

III. Role of the SEC, FINRA and state regulators

The SEC has a three-part mission described as (1) protecting investors; (2) maintaining fair, orderly and efficient markets; and (3) facilitate capital formation. The SEC was established when the Securities Act of 1933 and Securities Act of 1934 were passed to restore investor confidence after the 1929 stock market crash. Thereafter, companies offering securities to the public must be truthful, and companies selling and trading securities must treat all investors fairly and honestly.

FINRA is a not-for-profit organization Congress authorized to protect investors and ensure that brokers and dealers operate fairly and honestly. FINRA is the largest self-regulatory organization in the industry.

The SEC is responsible for ensuring fairness for the individual investor, while FINRA oversees virtually all U.S. stockbrokers and brokerage firms. FINRA oversees about 4,250 brokerage

firms, 162,155 branch offices and 629,525 registered securities representatives. In 2016, FINRA brought 1,434 disciplinary actions, ordered \$27.9 million in restitution, levied \$176.3 million in fines, and referred more than 785 fraud and insider trading cases to the SEC and other agencies for litigation and prosecution.

Each state has its own securities regulator to enforce what are commonly referred to as “Blue Sky” laws. These laws cover many of the same activities the SEC regulates. In addition, state regulators oversee investment advisers who manage less than \$25 million.

Fraud schemes still proliferate despite significant oversight by SEC, FINRA and various state authorities. For example, many scammers have gravitated toward unregistered securities unregistered brokers and dealers offer.⁷

IV. Unregistered securities create fraud risks

Under federal securities laws, a company may not offer or sell securities unless the offering has been registered with the SEC or is offering securities under a Regulation D exemption. Under the federal securities laws any offer or sale of a security must either be registered with the SEC or meet an exemption. Regulation D under the Securities Act provides many exemptions from the registration requirements, allowing some companies to offer

and sell their securities without having the offering with the SEC (SEC.gov/Fast Answers). If the offering is not registered, it often is called a private placement or unregistered offering. In general, unregistered offerings are not subject to many of the laws and regulations that are designed to protect investors. Many companies engage in legitimate unregistered offerings to raise funds from investors.⁸

V. Warning signs of fraud in unregistered securities

An increased risk of fraud exists in unregistered securities. Some of the warning signs that warrant further inquiry before investing include:

- a. Claims of high returns with little or no risk
- b. Securities unregistered investment professionals offer
- c. Aggressive sales tactics
- d. Misleading sales documents
- e. No requirement about the potential investor’s income or net-worth as an “Accredited Investor”
 - 1. Accredited Investor
Defined as having earned income exceeding \$200,000

- ((\$300,000 with a spouse) in each of prior two years, and reasonably expects the same for the current year, or
- Has a net worth more than \$1 million, either alone or together with a spouse (exceeding the value of the person’s primary residence or any loans secured by the residence)
- f. No one else seems to be involved
- g. Sham or virtual offices
- h. Brokers and other “professionals” not in good standing with regulators

Continued on page 4

⁷ U.S. Securities and Exchange Commission – Fast Answers

⁸ Investor Alert: Advertising for Unregistered Securities Offerings, SEC Office of Investor Education and Advocacy

i. Unsolicited investment offers

1. Financial and other information may not be readily available and may not get audited. Custodians do not investigate the accuracy of this financial information

j. Suspicious or unverifiable biographies of managers or promoters.

VI. Self-directed IRAs and fraud risk⁹

A self-directed IRA is an IRA a trustee or custodian holds that permits a broader set of assets than most IRA custodians permit. The IRS does not describe what a self-directed IRA can invest in, only what it cannot. See IRS Sections 408 and 4975.

Self-directed IRAs allow investors to hold alternative investments. Some examples would be real estate, mortgages, tax liens, precious metals and private placement securities. Examples of unauthorized transactions in self-directed IRAs would include borrowing money from self-directed IRAs, selling property or assets into a self-directed IRA, receiving any compensation for managing, using the self-directed IRA to secure a loan, paying personal expenses or using for personal reasons.

Self-directed IRA assets have unique risks, which include lack of disclosure and liquidity, as well the risk of fraud. Fraud promoters may attempt to lure investors to new self-directed IRAs to participate in a scam. Misrepresentations regarding custodial responsibilities are common. Scammers can misrepresent the

responsibilities of IRA custodians to convince investors that the investments are legitimately protected assets. Scammers often explicitly state that custodians investigate and validate the investment in a self-directed IRA. The fact is that custodians are only responsible for holding and administering the assets. They do not evaluate the quality or legitimacy of a self-directed IRA nor do they investigate the accuracy of financial representations.

Scammers may exploit the tax-deferred account characteristics. Self-directed IRAs are tax deferred retirement accounts that carry a financial penalty for prematurely withdrawing money before a certain age. The prospect of an early withdrawal penalty could encourage an investor to become passive with a lesser degree of oversight than a managed account. In addition, alternative investments may lack financial information and may not be audited.

.....
Continued on page 5

Case example No. 1 – SEC charges litigation marketing company with bilking retirees

April 16, 2016 – The SEC charged a Los Angeles-based litigation marketing company and its cofounders with defrauding retirees and other investors who were told their money would be used to help gather plaintiffs for class-action and other lawsuits and they would earn hefty investment returns from settlement proceeds.

The promoters raised \$11.7 million from about 250 investors, but only \$4.3 million was used to locate prospective plaintiffs for lawsuits. The arrangements purportedly enabled investors, who were mostly non-attorneys, to split legal fees with the lawyer who litigated a lawsuit, which is generally prohibited.

In addition to false and misleading statements, the promoters misused \$5.6 million in investor funds for personal purposes.

Case example No. 2 – SEC charges two brothers with running Ponzi scheme targeting seniors

On March 24, 2016, the SEC charged two brothers and a company they founded purportedly to develop and sell real estate, with engaging in a \$2.7 million Ponzi scheme that targeted about 30, largely elderly and unsophisticated investors over a six-year period.

The promoters told investors that they would share in the profits of a Pennsylvania real estate venture that purportedly bought, redeveloped and sold properties. Instead of investing in real estate, hundreds of thousands of dollars of investor funds were used to pay other investors. Other funds were used for personal expenses.

⁹ [Investor Alert: Self-Directed IRAs and the Risk of Fraud](#), SEC Office of Investor Education and Advocacy

VII. Link between diminished capacity and elder financial abuse¹⁰

The fastest-growing segment of the U.S. population consists of those 85 and older. Signs of “healthy aging” should not be confused with dementia or diminished capacity. Possibly the greatest known risk to the aging population is Alzheimer’s disease, and it can be anticipated that dramatic growth in the prevalence of Alzheimer’s as the population of this demographic continues to increase. Studies by the [Alzheimer’s Association](#) show that cognitive impairment, to include Alzheimer’s, reduces capacity to make financial decisions, therefore increasing the risk of financial exploitation and other forms of elder abuse.

Information published by the [Alzheimer’s Association](#): “Dementia is a general term for a decline in mental ability severe enough to interfere with daily life. Memory loss is an example. Alzheimer’s is

a type of dementia that causes problems with memory, thinking, and behavior. Symptoms usually develop slowly and get worse over time, becoming severe enough to interfere with daily tasks.”

According to James Sullivan, CPA/PFS, and Janet Sullivan, Esq., “CPAs should never make a medical diagnosis, but it is important to have a basic knowledge of health challenges older clients may face. Diminished capacity is a complex issue that can have many causes. Dementia is one type of diminished mental capacity.”¹¹

Dementia can be caused by more than 70 diseases and conditions. Alzheimer’s disease is a type of dementia, which can be a permanent, progressive and irreversible condition.

Continued on page 6

Case example No. 3 – The United States Attorney’s office, District of Colorado, announced June 18, 2015, that a Longmont, CO, man was sentenced to 84 months in prison for mail fraud and money laundering.

The subject was ordered to pay \$2,531,032.22 in restitution to the victims.

In this case, a Colorado company, purporting to be a private equity firm offering investment opportunities in bonds, futures trading, and other offerings. The subject repeatedly falsely told financial advisers and investors that he was an “institutional trader” and part of an elite group of people who could “make markets,” and who had access to lucrative opportunities to which ordinary investors did not have access.

According to the SEC, the scheme primarily targeted retired annuity holders by using insurance agents to sell interests in a company controlled by the subject.

The investors were offered a “proprietary value model,” which was based on using the investors’ money to purchase Ginnie Mae bonds. The bonds were never purchased. The scheme raised about \$4.3 million over an 18-month period.

Investors received fabricated account statements that falsely reflected that their money had been invested as promised.

Case example No. 4 – On April 10, 2012, the United States Attorney’s Office, Eastern District of Pennsylvania, announced that the subject of a Ponzi scheme was sentenced to 400 months in prison for defrauding more than 260 investors of more than \$17 million.

The defendant’s company solicited investments in real estate hedge funds, promised fixed returns of between 10 percent and 16 percent annually. However, rather than investing the money as promised, the defendant ran an elaborate Ponzi scheme to steal investors’ money. The SEC alleged that the defendant promised “safe and risk free” returns in purported investments in real estate and commercial mortgage loans. The defendant raised money by targeting, among others, investors in self-directed IRAs. About \$9.2 million of the funds invested in the fraudulent scheme came from self-directed IRAs.

¹⁰ [Protecting Elderly Investors from Financial Exploitation, SEC.gov](#)

¹¹ [CPAs in an Aging Society: When Alzheimer’s Disease Affects a Client, Journal of Accountancy](#)

According to the *Alzheimer's Association 2017 Alzheimer's Disease Facts and Figures*, Alzheimer's is the most common cause of dementia, present in 60 to 80 percent of cases.¹² Alzheimer's consists of three stages: mild or early stage, moderate and severe or late stage.

The Alzheimer's Association provides a list of Alzheimer's warning signs as follows:

1. Memory loss
2. Difficulty performing familiar tasks
3. Problems with language
4. Disorientation to time and place
5. Poor or decreased judgment
6. Problems with abstract thinking
7. Misplacing things
8. Changes in mood or behavior
9. Changes in personality
10. Loss of initiative

VIII. What CPAs can do

The baby boomer generation will exercise far greater control over their retirement assets than preceding generations. The vast assets become tempting targets for unscrupulous family members; unethical care providers; affinity groups; financial service advisers; Ponzi-type investment and pyramid schemes; and other fraud scammers. Many people find it exceedingly difficult, if not impossible, to recover their funds after being victimized. Money can rapidly disappear once distributed to scammers and fraudsters, meaning that prevention is a better course of action.

CPAs are in an exceptional position to protect their clients from elder financial abuse. As a trusted adviser, you have a broad overview of your client's finances. If you suspect any type of elder abuse, report it immediately. [Mandatory reporting requirements](#) vary by state. For example, care managers are mandated reporters and must report any suspected abuse. According to the [Department of the Treasury Financial Crimes Enforcement](#)

Sullivan states that while often unpleasant, a CPA may need to have a discussion with the client when problems are first detected. Even long-term clients may resent your broaching the topic and challenge your qualifications. But you are not making a diagnosis; you are merely discussing the problems you are experiencing in working with the client. You could very well lose the engagement. You may get fired or need to resign because you believe the situation has become untenable. The problems cannot be ignored, and changes to your practice management may be required.

The risk of financial exploitation is compounded by another economic trend, including the shift from defined benefit retirement plans where a financial professional manages the assets in a pension fund to defined contribution plans where each individual investor controls the assets in their 401(k) or other retirement account.

Learn more about diminished capacity and other aging issues by reviewing the FVS Eye on Fraud article on [Elder Financial Abuse Trends](#) as well as the AICPA *Journal of Accountancy* article on [Cognitive Impairment Does Not Necessarily Have to Derail Your Client's Planning](#).

[Network](#), elder abuse, including financial exploitation, generally is reported and investigated at the local level. Adult protective services, district attorney's offices, sheriff's offices and police departments take key roles in these cases.

Along with a growing number of seniors in the United States, comes increasing business opportunities for CPAs to specialize in this segment of the population. Adding services such as bill paying, tax preparation, and long-term-care planning can help a CPA's better serve their senior clients. In many cases, the CPA will lead a multidisciplinary team of professionals. The AICPA has [numerous resources](#) that can assist with elder financial planning and help you determine whether focusing on these services is right for you and your practice. In addition, learn more in the AICPA Forensic and Valuation Services [report](#) on fraud trends and topics.

Continued on page 7

¹² [2017 Alzheimer's Disease Facts and Figures, alz.org](#)

1. Identify red flags of fraud¹³

- a. If it sounds too good to be true, it probably is.
- b. Suggestions of guaranteed returns
- c. Beauty isn't everything. Pretty websites can be deceiving.
- d. Pressure to send money immediately

2. Training

- a. Obtain knowledge of current fraud trends, to include preventative measures.
- b. Recognize possible cognitive impairment.
 - 1. Unexplained withdrawals
 - 2. Drastic shifts in investment style
 - 3. Changes in beneficiaries
 - 4. Changes in power of attorney
 - 5. New family member or "friend" making transactions
- c. Document meetings, conversations with relatives and others, with witnesses.
- d. Determine who has account authorizations.
- e. Contact senior client separately from the suspected abuser.
- f. Escalate the matter to an appropriate supervisor.

(source: SEC/FINRA National Senior Investor Initiative)

IX. Prevention tips for clients¹⁴

- a. Verify information in account statements
- b. Avoid unsolicited offers
- c. Ask questions about licensing and experience, verify answers
 - 1. What experience do you have, especially with people in my circumstances?
 - 2. Where did you go to school? What is your recent employment history?
 - 3. What licenses do you hold? Are you registered with the SEC, a state, or FINRA?
 - 4. Are the firm, clearing firm and any other related companies that will do business with me members of the Securities Investor Protection Corporation (SIPC)?
 - 5. What products and services do you offer?

.....
Continued on page 7

Tips for clients to avoid and prevent being scammed¹⁶

- Sign up for the national "do not call" registry. Call 888.382.1222 from the phone number you want to register. You can also register online at donotcall.gov.
- Don't sign up for any contests, sweepstakes, or "free" offers for anything.
- Shred financial documents and paperwork with personal information before you discard them.
- Close unused credit cards or bank accounts at least once a year.
- Protect your Social Security number. Give it out if only necessary or ask to use another identifier.
- Don't give out personal information over the phone, mail or the internet unless you know who you are dealing with.
- Don't give out passwords for any of your accounts to anyone.
- Don't give out your credit card numbers to any strangers.
- Never click on any link provided in an email if you don't recognize the sender. It may contain a virus that can contaminate your computer.
- Don't be intimidated by an email or caller who suggests dire consequences if you do not immediately provide or verify financial information.
- If you believe the contact is legitimate, go to the company's website by typing in the full site address directly or using a page you have previously bookmarked, instead of a link provided in the email.
- Don't pay in advance for anything.
- Review all offers in writing.
- Be aware of being kept on the phone for a long time.
- Get a phone number and call the person back.
- Be wary of promises of quick profits, offers to share "inside" information, and pressure to invest before you have an opportunity to investigate.
- Be careful of promoters who use aliases. Pseudonyms are common online, and some salespeople will try to hide their identity.

.....
Continued on page 8

¹³ [Protecting Elderly Investors from Financial Exploitation, SEC.gov](#)

¹⁴ [Protect Your Money: Check Out Brokers and Investment Advisers, SEC.gov](#)

6. Can you recommend only a limited number of products or services to me? Why?
 7. How are you paid for your services? What is your usual hourly rate, flat fee or commission?
 8. Have you ever been disciplined by any government regulator for unethical or improper conduct or been sued by a client who was not happy with the work you did?
 9. For registered investment advisers, will you send me a copy of both parts or your form ADV (source: SEC.gov Protect Your Money: Check out Brokers and Investment Advisers)?
- d. Be careful with “guaranteed returns.”
 - e. Ask a professional.
 - f. Research the company before investing, ask questions, and verify answers.
 - g. Never judge a person’s integrity by how they sound.
 - h. Watch out for sales people who prey on your fears.
 - i. Take your time, don’t be rushed.
 - j. Don’t lose sight of your investments.
 - k. Question why you can’t retrieve your principal or cash.
 - l. Never be afraid to complain.

X. How to check brokers, investment advisers.¹⁵

- a. Ask for materials from the [Central Registration Depository](#) (CRD) about your prospective stockbroker.
- b. Ask for materials from the Investment [Advisory Registration Depository](#) (IARD).
- c. Search the [Investment Advisor Public Disclosure](#) (IAPD) website for firms registered with the SEC.
- d. Obtain and read the registration form, called form ADV, a two-part form available through the IAPD.
- e. Information on brokers is available from [FINRA Broker Check](#).
- f. Conduct queries with state regulators,
- g. Review AARP [Financial Adviser Questionnaire](#).
- h. Review [How to Choose the RIGHT Financial Planner](#).

Tips for clients to avoid and prevent being scammed¹⁶

- Be careful of promoters who use aliases. Pseudonyms are common online, and some salespeople will try to hide their identity.
- Words such as “guarantee,” “high return,” “limited offer” or “as safe as a CD” are red flags.
- Watch out for offshore scams and investment opportunities in other countries.
- Be wary if a company is not registered with the SEC or the secretary of state where it is located.
- Be wary if a financial adviser cannot be found through FINRA.
- Don’t assume that people online are who they claim they are.
- Ask the online promoter whether and how much they are being paid to sell the product.
- Do business with people you know.
- Make sure you understand the investment before you invest your money.
- Take your time to make decisions.
- Be sure to talk over all financial decisions with a trusted family member, friend, or financial adviser.
- Report any suspected investment frauds affecting Americans to local, state, or federal regulators.
- Never make a check payable to a financial adviser.
- Never allow statements or confirmations to be sent directly to your financial adviser without receiving copies
- Be wary of recommendations from a sales representative based on “confidential information,” an “upcoming favorable research report” a “prospective merger or acquisition,” or the announcement of a “dynamic new product.”
- Never act on a recommendation from your sales representative that you make a dramatic change in your investment.
- Be wary of pressure to trade the account in a manner that is inconsistent with your investment goals and the risk you want or can afford to take.
- Do not believe any assurances from your sales representative that an error in your account is due solely to a computer or clerical error.

¹⁵ [How to check Our Your Broker or Investment Adviser, NASSA.org](#)

¹⁶ [Senior Fraud Initiative, Tips to Avoid and Prevent Being Scammed](#), Retirement Industry Trust Association (RITA)