Statement of Gerri Walsh
President, FINRA Investor Education Foundation
Senior Vice President, FINRA Investor Education
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Chairman Brown, Ranking Member Toomey and Members of the Committee:

Introduction

On behalf of the Financial Industry Regulatory Authority (FINRA) and the FINRA Investor Education Foundation (FINRA Foundation)[1], I want to thank you for the opportunity to appear today to discuss various risks facing investors and savers in today's securities and crypto markets. The financial and non-financial consequences for victims of fraud can be devastating, and it is critical that we work together to address this ongoing threat. FINRA's mission is to protect investors and promote market integrity, and accordingly FINRA and the FINRA Foundation have dedicated significant resources to combatting fraud. My testimony will focus on FINRA's regulatory work and the research, outreach and educational initiatives that FINRA and the FINRA Foundation have underway to help both novice and advanced investors establish sound financial practices, follow pathways to investing and retirement readiness, and avoid fraud and costly mistakes.

Background

FINRA is a not-for-profit, self-regulatory organization (SRO) responsible for regulating its member broker-dealers (member firms) and their associated persons pursuant to the Securities Exchange Act of 1934 (Exchange Act). FINRA supports the Securities and Exchange Commission (SEC or Commission) in overseeing one subset of the securities industry: nearly 3,400 registered broker-dealers and more than 600,000 registered individuals. FINRA fulfills its mission by, among other things, adopting rules that supplement those of the SEC, examining member firms

[1] The FINRA Foundation, a wholly owned subsidiary of FINRA, is a nonprofit social welfare organization governed by a separate board of directors and funded by FINRA. Its mission is to empower underserved Americans with the knowledge, skills and tools to make sound financial decisions throughout life. The FINRA Foundation funds innovative research and educational projects in support of this mission, and also develops and directly manages targeted programs aimed at segments of the investing public that could benefit from additional resources, such as older investors, military service members and lower-income working Americans and their families. These programs help hundreds of thousands of people each year, including people from diverse cultural and socioeconomic backgrounds.

for compliance with FINRA and SEC rules applicable to broker-dealers, surveilling trading in the securities markets and enforcing member firm compliance where necessary.

FINRA's jurisdiction under the Exchange Act is generally limited to most broker-dealers and their personnel. FINRA does not have jurisdiction over other financial intermediaries or market participants. However, we work collaboratively with our fellow regulators who oversee the activities of those market participants, including the SEC, the Federal Reserve Board, the Commodity Futures Trading Commission, state regulators and other SROs. This collaboration includes, where appropriate, sharing data and information obtained from our extensive market surveillance and investigative activities. For the broker-dealer activity within FINRA's oversight responsibility, we administer comprehensive regulatory programs that complement the SEC's oversight. These include testing and registration, surveillance, risk monitoring, examination and enforcement programs that enable FINRA to identify and remediate conduct that poses risks to investors or undermines confidence in our markets. All FINRA activities are subject to comprehensive SEC examination and oversight.

Regulation

FINRA is committed to adapting its regulatory programs to new broker-dealer business models and technologies and the evolving ways in which investors access the capital markets. FINRA's rulemaking process necessarily involves engaging the public and other stakeholders. All FINRA's rules must be filed with the SEC, published for public comment and (with limited exceptions) approved by the SEC. One part of FINRA's general oversight, and also its public engagement on rulemaking, is public Notices that provide firms with timely information on a variety of issues and solicit comment on proposed rules, rule amendments, retrospective rule reviews and general policy matters. For example, in March 2022, FINRA published Regulatory Notice 22-08 to remind firms of their sales practice obligations for complex products and options and to request comment on effective practices and rule enhancements.[2] In addition, in July 2021, FINRA issued Regulatory Notice 21-25 as part of our ongoing effort to encourage firms engaged in activities relating to digital assets, including digital assets that are not securities, to report those activities to FINRA.[3]

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[2]*See* https://www.finra.org/rules-guidance/notices/22-08. With the increased availability of complex investment products to individual investors, including through self-directed trading platforms, FINRA put out this Notice to remind broker-dealers of their current best interest obligations to clients, and to seek public comment on effective business practices around complex products and the adequacy of the current regulatory framework. This Notice is a request for comment and not a rule proposal. FINRA's concern about the risk of confusion to individual investors is heightened by FINRA Foundation research that has demonstrated that financial literacy in America is not only low but has declined over time, and that crypto investors have lower levels of financial knowledge than non-crypto investors.

[3] *See* https://www.finra.org/rules-guidance/notices/21-25

Surveillance

FINRA directly oversees the trading activities of our member firms in the equities and options markets, and also provides surveillance and other regulatory services to registered securities exchanges. FINRA's surveillance programs assess the handling and execution of customer orders for compliance with best execution obligations and other SEC and FINRA market rules designed to protect customers. FINRA also deploys sophisticated automated surveillance programs to identify trading patterns and activity that may indicate insider trading, market manipulation and other types of fraud or abuse. Further to those ends, FINRA's surveillance teams also conduct regular monitoring of social media platforms related to market events to help uncover potential fraud or manipulation perpetrated using false or misleading claims.

Risk Monitoring and Examinations

FINRA uses a detailed risk assessment program to inform how to monitor each member broker-dealer for potential risks to investors and markets. Informed by these assessments, FINRA examines each member firm regularly to assess its supervisory policies and procedures for compliance with applicable rules. In addition to routine firm examinations, FINRA also conducts "for cause" examinations which are additional investigations and reviews triggered by specific allegations or events, including customer complaints, tips or arbitrations. Annually, FINRA publishes a report that highlights some of its key risk monitoring and examination findings. The 2022 version of the report shows our continued focus on, among other topics, cybercrime, digital assets, social media, the risks associated with app-based platforms, and complex products.[4]

Demonstrating our significant investment in investor protection and combating fraud, FINRA has long-established programs responsible for monitoring fraud and insider trading in U.S. financial markets. FINRA's National Cause and Financial Crimes Detection Program (NCFC) has dedicated staff with a range of specialties and deep expertise in this area. This team helps to identify and mitigate investor harm, assesses threat intelligence both internally and externally, identifying emerging threats and industry trends and positioning FINRA to be proactive in its fight to protect investors and safeguard the markets. There are also investigators in FINRA's Vulnerable Adults and Seniors Team (VAST) specifically focused on protecting seniors and vulnerable adults from financial exploitation. We also have teams focused on the ever-changing nature of cyber threats and Anti-Money Laundering. One program, the Crypto Asset Investigation Group (CAI), is being established to conduct crypto-asset fraud investigations,

[4] *See* https://www.finra.org/rules-guidance/guidance/reports/2022-finras-examination-and-risk-monitoring-program

crypto asset examinations and reviews of member firms, their affiliates and/or associated persons.

FINRA also has a team that focuses on insider trading, market fraud and offering investigations, and is responsible for the timely detection and investigation of potentially fraudulent activity in securities listed on the U.S. equity markets. This fraudulent activity includes issuer fraud, pump and dump stock schemes, boiler room schemes, market manipulation, and account intrusions. Finally, this team takes incoming regulatory intelligence—such as a customer complaint, a disclosure event or the like—and investigates that matter and, if warranted, refers it for formal action.

Focus on High-Risk Firms and Brokers

Given how challenging it can be to identify bad actors, and how important it is to do everything we can to prevent them from harming investors, FINRA has been working to augment its long-standing regulatory programs by better identifying and supervising those firms and individual brokers who may pose the greatest risk of harm to investors—or "high-risk" firms and brokers. Identifying firms as higher risk informs both what we look for at a particular firm, and how frequently we examine that firm. While there are challenges and limitations to these risk assessments, they are valuable tools for targeting our examination resources and protecting investors.

The quantitative data we use for our risk assessments include certain types of information disclosed on BrokerCheck, the online system we maintain to allow investors to look up their broker's employment and disciplinary history.[5] BrokerCheck is an important tool for investors to make informed decisions when deciding whether to use a particular broker—and as such it is another vital element of our program for protecting investors from bad actors. When performing our risk assessments across the entire population of brokers, however, we also use other quantitative and qualitative information that is available to us through our regulatory programs. In addition, we must consider that not all events – including events disclosed on BrokerCheck – pose the same level of risk.

Once a firm is designated as high-risk, FINRA examines that firm more frequently, some annually, with experienced examiners, often accompanied by enforcement attorneys to facilitate follow-up action. This heightened scrutiny by our examination team has caused firms

[5] *See* https://brokercheck.finra.org/

to take steps to address our concerns, such as by making changes or improvements in personnel, operations and the quality of their supervisory controls.

Enforcement

Based on these risk monitoring, examination and surveillance activities, as well as other sources of information, FINRA investigates and takes disciplinary actions against firms and individuals as appropriate. FINRA can impose fines and suspensions, and in cases of serious misconduct, expel firms from FINRA membership and bar individuals from association with a FINRA member firm. Whenever possible, FINRA orders firms and individuals to make restitution to harmed customers. When we encounter potential violations that involve persons beyond FINRA's jurisdiction or that are linked to an existing matter at the SEC or other regulatory authorities, we will refer those matters to those authorities. Recent cases related to today's conversation include:

- In June, FINRA expelled member firm Worden Capital Management LLC for, among other things, making material omissions in connection with the firm's sale of "pre-IPO funds"—funds that invested in private companies planning to go public in the future via an initial public offering. FINRA found that the firm also failed to disclose to investors that it received from the issuer more than $600,000 in secret commissions, in violation of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.
- In May, FINRA brought one of the first actions charging a funding portal with violating the SEC's crowdfunding regulations and FINRA's funding portal rules. Among other things, we charged Wefunder Portal, LLC—one of the leading players in the crowdfunding space—with (1) raising $20 million more than permitted under crowdfunding raise limits across multiple offerings, (2) recommending and soliciting investments without being registered as a broker or dealer in violation of Section 15(a)(1) of the Exchange Act, and (3) making misleading communications on its website. We fined Wefunder $1.4 million and required it to retain an independent consultant to review its systems for complying with the crowdfunding rules.
- In April, FINRA expelled member firm Fusion Analytics Securities, LLC for engaging in securities fraud in connection with its sale of bonds in two private offerings, in violation of Section 10(b) of the Exchange Act and Rule 10b-5. Among other things, FINRA found that Fusion failed to disclose to investors that the SEC had found that the principal of the issuer of the bonds had misled investors and improperly diverted millions of dollars of investor funds in an earlier offering.
- Last June, FINRA fined Robinhood Financial LLC $57 million and ordered the firm to pay approximately $12.6 million in restitution, plus interest, to thousands of harmed customers. The sanctions represented the largest financial penalty ever ordered by

FINRA and reflected the scope and seriousness of the violations. In determining the appropriate sanctions, FINRA considered the widespread and significant harm suffered by customers, including millions of customers who received false or misleading information from the firm, millions of customers affected by the firm's systems outages in March 2020, and thousands of customers the firm approved to trade options even when it was not appropriate to do so based on the customers' limited investment experience and low risk tolerances. A portion of these funds are being deployed to explore innovative ways to reach and educate investors, especially new, self-directed retail investors who conduct transactions through online accounts or using mobile apps.

Consumer and Investor Protection Safety Net

It is important to note that our securities markets are fundamentally sound, and the vast majority of the firms and individuals FINRA oversees are dedicated to serving their clients with integrity and professionalism. But as a regulator focused on investor protection, FINRA is in relentless pursuit of stopping bad actors and tackling fraud. The firms and registered representatives we work with understand all too well that the damage caused by even a few bad actors can hurt not only the investors involved, but also the reputation of the entire industry.

FINRA is not alone in dealing with the challenge of bad actors particularly given its authority over only one part of the financial industry—broker-dealer services. We generally do not regulate firms or individuals when they provide other financial services—such as selling insurance, banking products, commodities, or futures, or handling customer money in other ways. And even in the securities industry, we do not regulate investment advisory services, an important channel through which many retail and other investors access the securities markets. Bad actors are found in all areas of the financial services sector, just as they can be found in other professions and industries. To address this, FINRA works closely with the SEC and other federal regulators, as well as the North American Securities Administrators Association (NASAA), state regulators and law enforcement, sharing information, and referring matters outside our jurisdiction to those who can take action. An ongoing challenge for policymakers and regulators is making sure that our shared regulatory framework does not create incentives or opportunities for bad actors to move from one area to another to avoid detection or to "start over" after they have been caught. This is also important as fraud frequently happens when unlicensed firms or individuals sell unregistered products.[6]

[6] *See* https://www.sec.gov/files/Misconduct%20And%20Fraud%20In%20Unregistered%20Offerings.pdf

Fraud Prevention and Investor Protection

All of FINRA's work to identify and combat fraud, whether committed by a firm or an individual, is mission critical. Because fraud is always taking on new forms, FINRA is working hard to stay ahead of the curve and respond quickly to any given situation. For example, in March 2020, FINRA formed a COVID Fraud Task Force to establish a coordinated response across the organization to potential COVID-related fraud in the broker-dealer industry and in U.S. markets. The task force managed a centralized repository of intelligence gathered from across the organization to help ensure efficiency and maximum coordination. The task force regularly referred matters to the SEC involving public companies asserting fraudulent claims related to the COVID-19 pandemic that contributed to numerous SEC Trading Suspensions. In addition to its focus on market integrity, FINRA also works with law enforcement authorities to help track any potential fraud scenarios that may impact investors related to COVID-19.

Financial fraud comes in many, diverse forms requiring FINRA to maintain a focus on emerging products and other market innovations that may require updated regulations or additional education for investors. While we continue to see and focus on some of the more pervasive investment scams that always require vigilance, we are also looking to identify novel fraudulent schemes that take advantage of new markets and are often more difficult for even the most experienced investors to spot and avoid. A longer discussion about what FINRA is seeing year-to-year can be found in FINRA's annual report on its examinations and risk monitoring programs.[7] The report is intended to help firms inform their compliance programs by covering findings from recent examinations and using those findings to educate firms and investors alike.

To gather information about potentially fraudulent activities, FINRA and other regulators, conduct targeted exams, known as sweeps, which help gather information and carry out investigations. Sweep information is used to focus examinations and pinpoint regulatory responses to emerging issues. The number of firms included in targeted exams varies and the firms that are included are carefully chosen—in some cases only a few firms are included and in others, dozens. Recent sweeps include examining firms' offering of, and services to, Special Purpose Acquisition Companies (SPACs), Social Media Influencers ("Finfluencers"), and Options Account Openings.[8] FINRA also has a centralized unit for the intake and review of regulatory intelligence, providing valuable trend analysis which helps identify the most pressing customer concerns and complaints, which in turn guides our member supervision, market surveillance, and ultimately, enforcement work.

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[7] *See* https://www.finra.org/rules-guidance/guidance/reports/2022-finras-examination-and-risk-monitoring-program

[8] *See* https://www.finra.org/rules-guidance/guidance/targeted-examination-letters

FINRA has a team dedicated exclusively to fraud surveillance. This team is responsible for the timely detection and investigation of potentially fraudulent activity in securities listed on the U.S. equity markets and quoted in the over-the-counter markets. The types of fraudulent activity investigated by Market Fraud Investigations includes issuer fraud, pump and dump stock schemes, boiler room schemes, and other forms of market manipulation.

For example, FINRA and other regulators have recently noticed an increase in a scam typology known colloquially as "pig butchering" outside of the broker-dealer industry. In these scams, victims are lured into making investments, often in cryptocurrency or in microcap investments, through the guise of romance. These scams are typically initiated on social media, dating apps, or through private messaging apps where the scammer forms a friendship or romance with the intended target and convinces the target to invest—for instance, on a crypto platform affiliated in some way with the scammer or in small cap stocks being manipulated in a pump and dump scheme. Ultimately, the individual is victimized when the crypto wallet is stolen by the scammer, or the investments fall in value due to the manipulation.

Over the last couple of years, FINRA has seen other trends in the broker-dealer space related to fraud or higher-risk activity that requires additional scrutiny and often continued investor education. This includes:

1. Firm and Broker Imposter Websites: Imposter websites are a persistent and growing threat that can result in devastating losses. FINRA has a team focused on financial intelligence that has been focused on proactively identifying these imposter websites rather than waiting for complaints to come in. When this project began, FINRA initially identified hundreds of imposter websites and sent referrals to the FBI and worked with various SEC teams investigating the sites. Staff then notified the firms of the existence of the sites that were identified and provided guidance to the firms and brokers on how to address the situation. FINRA is currently undertaking a new effort to identify imposter websites and has already preliminarily identified roughly 500 such sites. In a similar vein, in April of this year, one of our cyber units issued warnings to firms of an ongoing phishing campaign that involves fraudulent emails purporting to be from FINRA.[9]

2. Crypto-related initiatives: While there are extensive rules and regulations around outside business activities (OBA) for registrants, FINRA staff has recently been assessing the risk of brokers that engage in OBA involving crypto-related businesses. This involves

[9] *See* https://www.finra.org/rules-guidance/guidance/cybersecurity-alert-042522; https://www.finra.org/rules-guidance/guidance/cybersecurity-alert-042722.

staff specifically searching for outside business disclosure information reported on Form U4s[10] related to crypto and using advanced analytics to identify potentially higher risk activities for review in exams. As a result of this effort, FINRA staff have made internal referrals regarding questionable outside business activities, resulting in additional follow-up and potential disciplinary action. One recent example involved a broker who appears to have been operating an offshore crypto exchange and selling a private placement away from his firm.

3. Problematic Products: FINRA staff has been focused on an initiative to identify potentially problematic products early in their lifecycle before they become widely distributed to retail investors. For example, staff reviewed trade data for all of the top-selling brokers of one higher-risk firm to assess what products those brokers are selling now. Staff identified a product, an interval fund managed by the owner of a broker-dealer, and brokers of that firm were selling the fund to retail investors. Products like this raise not only fraud concerns but concerns about potential Reg BI violations.

Crypto Assets and Implications for Investors

As discussed above, retail investing in crypto assets can take many forms, such as direct purchasing of a crypto asset (e.g., cryptocurrencies, non-fungible tokens (NFTs) or crypto asset securities) in the hope it will appreciate, investing in the stock of a publicly traded company that facilitates blockchain technology, and buying an exchange-traded product or other fund that has direct or indirect exposure to crypto assets or blockchain technologies.

A FINRA Foundation study conducted in late 2021 in collaboration with NORC at the University of Chicago found that among investors with taxable investment accounts the most common investment vehicle was individual stocks (78%).[11] That said, a full 34% of respondents in this study reported that they owned cryptocurrency investments, which is higher than the percentage owning bonds and ETFs, though lower than the percentage owning mutual funds. Crypto investors were more likely than non-crypto investors to be Black or Hispanic and less likely to be married. They also tended to have higher incomes and were predominantly male (only 34% were women). This same study showed that crypto investors had lower levels of

[10] Representatives of broker-dealers, investment advisers or issuers of securities must be registered with the appropriate jurisdictions and/or self-regulatory organizations (SROs). The Form U4 (Uniform Application for Securities Industry Registration or Transfer) is used to establish that registration.
[11] FINRA Foundation calculation based on data from the study Investors Say They Can Change The World, If They Only Knew How: Six Things To Know About ESG and Retail Investors (November 2021), available at https://www.finrafoundation.org/sites/finrafoundation/files/Consumer-Insights-Money-and-Investing.pdf.

investing knowledge than non-crypto investors. The FINRA Foundation is fielding additional studies to understand investor behavior and the crypto marketplace.

Investors face significant risks when engaging with crypto assets, most of which exist with respect to activities conducted outside of a registered broker-dealer. For example, if the private keys to assets or wallets are lost, mishandled or stolen, an investor could experience an irreversible loss of their digital assets. Vulnerabilities in smart contract code, blockchain network or related protocol may also enable a hacker to empty out investors' funds. In addition, the decentralized nature of some blockchain networks and applications implies uncertain investor protections to the extent that there may be no entity to hold accountable when there is a breakdown in service. Further, if a transfer is made in error, it may not be possible to unwind the transaction and there may be no other avenue for recourse.

FINRA Oversight

FINRA member firms' crypto asset activities are typically limited to effecting transactions in crypto assets that are also securities. To date, transactions in digital assets that are not securities are generally executed and custodied outside of a FINRA member firm, often through an affiliate, but associated persons of the member firm may be involved in communications with customers regarding these digital assets.

FINRA monitors member firms' crypto asset related activities in a variety of different ways, including through ongoing risk monitoring interactions, examinations, review of advertising materials, and consideration of relevant filings. Moreover, FINRA will frequently receive tips and complaints related to financial transactions that are outside of our jurisdiction; FINRA may conduct a preliminary assessment related to these tips and complaints and then refer the fraud or other matter to the appropriate regulatory authority and law enforcement agency.

There has been a significant increase in bad actors exploiting the hype around cryptocurrencies and digital assets by creating schemes that capitalize on new or popular investment products. According to the Better Business Bureau's 2021 Scam Tracker Risk Report, cryptocurrency fraud jumped from the seventh riskiest scam in 2020 to second riskiest in 2021. Similarly, reports to the FTC's Consumer Sentinel Network show that fraud with cryptocurrency as the payment method increased fivefold between 2020 and 2021, from $130M to $680M, and most of the $680M lost was tied to crypto-related investment scams.

Some of those crypto-related frauds include scammers designing fake digital platforms to syphon the contents of investors' crypto wallets. FINRA and other regulators have also observed bad actors running crypto-related Ponzi or pump and dump schemes. Generally, a majority of these schemes are conducted by individuals outside of FINRA's jurisdiction.

In the same way that FINRA's regulatory activity adapts to new investment platforms, strategies and products, FINRA is constantly evolving our efforts to educate retail investors and industry participants—whether through ongoing research, including into investor behavior, or updating our materials to reflect product trends. As assets like cryptocurrencies, NFTs, and crypto asset securities continue to come online and spark investor interest, FINRA has stayed focused on the implications for investor protection and market integrity. Because of that, FINRA has been actively engaged on these issues for several years. For instance, in 2017 FINRA's Office of Financial Innovation issued one of the first reports on this topic by a regulator titled *Distributed Ledger Technology: Implications of Blockchain for the Securities Industry*,[12] addressing how blockchain technology could impact securities transactions and the relevant considerations as they pertained to FINRA rules and SEC requirements.

FINRA also works collaboratively with other U.S. regulators to identify and facilitate addressing relevant issues related to crypto assets. In particular, FINRA is in regular consultation with the SEC on these issues. In addition, FINRA hosts an annual forum involving a multitude of federal and state regulators (including the U.S. Department of the Treasury, Federal Reserve Board, OCC, SEC, CFTC and the New York State Department of Financial Services) in order to share perspectives and regulatory approaches with respect to crypto assets. Moreover, FINRA engages with international regulators in discussions related to crypto assets both bilaterally (including the European Securities and Market Authority, the Investment Industry Regulatory Authority of Canada, the Ontario Securities Commission, and the UK Financial Conduct Authority) and multilaterally (including through the International Organization of Securities Commissions and the Global Financial Innovation Network).

[12] *See* https://www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf

The FINRA Foundation and FINRA's Commitment to Investor Education

FINRA understands how overwhelming it can be for investors to find trustworthy information. This is why FINRA and the FINRA Foundation provide free, unbiased information and tools to help retail investors better understand basic principles of investing and the markets, making them better-informed investors able to avoid scams and other financial pitfalls. These resources include:

- a series of online micro-courses, [13] optimized for mobile technology, that cover essential topics for new investors—from setting investment goals to understanding risk and return;
- a retirement education center on FINRA.org[14] that features comprehensive information on both the accumulation and decumulation phases of retirement, as well as content on different ways to save for retirement; and
- robust resources to help people spot and steer clear of fraudulent pitches, including information about the persuasion tactics con criminals typically use and a Scam Meter[15] to help identify whether an investment pitch might be a scam.

In addition, we offer:

- BrokerCheck, a free tool to verify instantly whether a person or firm is registered, as required by law, to sell securities (stocks, bonds, mutual funds and more), offer investment advice or both[16];
- a Fund Analyzer[17] that allows investors to compare the impact that fees, expenses and discounts can have over time on the account value of mutual funds and exchange-traded funds; and
- Investor Insights articles[18] that explain, in plain language, emerging products, popular strategies, current market trends and other topics of interest to retail investors, both novice and advanced.

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[13] FINRA, *Follow a Course to Smart Investing* (available at https://www.finra.org/investors/learn-to-invest/smart-investing-courses).
[14] *See* https://www.finra.org/investors/learn-to-invest/types-investments/retirement.
[15] *See* https://tools.finra.org/scam_meter/.
[16] Investors who search using Brokercheck will also find information from the Investment Adviser Public Disclosure (IAPD) website established by the SEC and state securities regulators
[17] *See* https://tools.finra.org/fund_analyzer/.
[18] *See* https://www.finra.org/investors/insights.

Recent publications have tackled such topics as fake online hiring scams,[19] market volatility,[20] understanding a range of complex products, ways to keep financial accounts cyber safe, and how to spot and avoid broker and brokerage firm imposter scams. As part of our continuous process of reevaluating and refreshing investor educational materials, FINRA plans in the coming months to update and enhance existing web content for retail investors on digital assets and cryptocurrencies.[21] Our current offerings for retail include primers on virtual currencies, blockchain, distributed ledger technology and initial coin offerings and warnings concerning risks and the potential for fraud in this space.

In addition, the FINRA Foundation has inspired innovation and collaboration in the fields of financial fraud research, prevention, detection and response through its Investor Protection Campaign (IPC). Since inception in 2008, the IPC has:

- fostered strong relationships with federal, national, state and local organizations and coalitions to encourage collaboration in the fight against financial exploitation and fraud;
- educated nearly 200,000 Americans about financial fraud;
- counseled over 3.2 million diverse and vulnerable investors through FINRA Foundation-supported fraud fighter call centers;
- trained in excess of 15,750 law enforcement professionals and victim advocates from over 7,800 unique agencies to detect, prevent, and respond to financial fraud; and
- enabled, conducted and disseminated dozens of research projects to advance the field's understanding of financial fraud in America.[22]

Tackling an issue as complex as financial fraud requires a multi-faceted, collaborative and sustained approach. The FINRA Foundation remains committed to facilitating research and fostering inclusive partnerships to protect consumers from and assist those impacted by financial exploitation and fraud.

Research: Critical Investments

To make our work and these tools as effective and targeted as possible, the FINRA Foundation undertakes and sponsors research to better understand investor behavior, attitudes,

[19] *See* https://www.finra.org/investors/insights/fake-online-hiring-scams, which highlights how con criminals impersonate entities such as FINRA as part of their fraudulent schemes.
[20] *See* https://www.finra.org/investors/insights/tips-turbulent-market.
[21] *See* https://www.finra.org/investors/insights/virtual-currencies.
[22] *See* https://www.finrafoundation.org/knowledge-we-gain-share/understanding-and-combating-financial-fraud

knowledge and preferences. The FINRA Foundation prioritizes research because the knowledge we gain and share is critical to improving how the FINRA Foundation and others equip all Americans to avoid scams. The appendix of this testimony references and discusses a sampling of recent Foundation-sponsored research that address important questions posed by this Committee. For example, we focus heavily on better understanding factors and differentiators related to fraud susceptibility—for both younger and older investors—as well as the prevalence and types of financial fraud committed in the United States. One of our goals with this research is to identify ways to reduce financial fraud and help victims. The appendix also discusses the National Financial Capability Study (NFCS), a large-scale, multiyear project conducted every three years to monitor and better understand financial capability in America.[23] It measures key indicators of financial capability and evaluates how these indicators vary with underlying demographic, behavioral, attitudinal and financial knowledge characteristics. We also engage in research that examines the profiles and behaviors of newer investors over the last few years. These and other categories of retail investor research are a major priority for FINRA and the Foundation, and the knowledge we gain and share can help practitioners and policymakers address financial knowledge and capability gaps.

Helping Older and Vulnerable Investors Access Trusted Advice and Avoid Costly Mistakes

A major part of FINRA's mission is to protect and educate all U.S. investors—from younger people in Generation Z to members of the Greatest Generation, and from self-directed investors to those who work with an investment professional. In particular, FINRA views the protection of older investors, meaning those who are retired or approaching retirement, and vulnerable adults as a top priority, both through our education efforts and our regulatory work.

FINRA Securities Helpline for Seniors

In 2015, FINRA launched the toll-free FINRA Securities Helpline for Seniors® to provide older investors with a supportive place to get assistance from knowledgeable FINRA staff related to concerns they have with their brokerage accounts and investments. Callers to the Senior Helpline (844-57-HELPS or 844-574-3577) report a wide range of issues, including concerns about alleged fraud and sales practice issues like unauthorized trading. In some cases, FINRA has been able to provide the senior investors or their families with enough information and understanding of brokerage operations that they can help themselves. In other instances, FINRA has directly worked with firms or helped seniors work with the firm to be made whole.

[23] FINRA Investor Education Foundation, Gauging the State of Financial Capability in the U.S., *See* https://finrafoundation.org/knowledge-we-gain-share/nfcs.

A 2020 report on the FINRA Securities Helpline for Seniors highlights the contributions of the Helpline in its first five years and lays out effective practices for firms' senior investor protection programs.[24] The Senior Helpline works with investigators from a specialized internal investigative team, FINRA's Vulnerable Adults and Seniors Team (VAST). This team investigates and, where appropriate, bring disciplinary actions in senior-specific financial exploitation and sales practice cases. FINRA routinely and quickly bars registered representatives who prey upon seniors and recovers restitution for harmed customers.[25] In addition, FINRA provides resources to seniors and other investors to understand and avoid risk identified through regulatory actions, including *FINRA Unscripted* podcasts on excessive trading and fraud, two areas that commonly affect seniors.[26]

Adult Protective Services

FINRA also partners with the National Adult Protective Services Association and Adult Protective Services offices across the U.S. to enhance coordination and provide education on the financial services industry, fraud trends and the role that FINRA Rule 2165 provides to Adult Protective Services offices in working with firms to address potential financial exploitation. When appropriate, FINRA files reports with state or local APS agencies and make referrals to state, federal and international authorities.

The FINRA Foundation complements FINRA's senior protection and education initiatives by employing national, state and grassroots partnerships to develop and distribute fraud-

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[24] FINRA, *Protecting Senior Investor, 2015−2020* (April 30, 2020), available at https://www.finra.org/rules-guidance/key-topics/senior-investors/protecting-senior-investors-2015-2020.

[25] *See*, *e.g.*, *Aegis Capital Corp.*, AWC No. 2016051704305 (Nov. 8, 2021) (member firm ordered to pay approximately $1.7 million in restitution to hundreds of customers, including seniors, for supervisory failures involving unsuitable and excessive trading); *NYLIFE Securities LLC*, AWC No. 2017056197102 (Oct. 25, 2021) (member firm ordered to pay over $63,000 in restitution to ten customers, including seniors, for supervisory failures involving unsuitable mutual fund and cross-product switching); *Eric Shea Hollifield*, AWC No. 2021072558701 (Oct. 7, 2021) (broker barred for refusing to provide information in connection with investigation into his alleged conversion of an elderly customer's funds); *Jeffrey Dampf*, AWC No. 2021072405501 (Oct. 1, 2021) (broker barred for refusing to testify and provide documents and information in connection with investigation into his alleged misappropriation of funds from elderly individuals); *Jeffrey Scott Anderson*, AWC No. 2020067888701 (Aug. 2, 2021) (broker barred for converting $26,579.72 from elderly customer by convincing customer to write checks to him personally to purchase investments); *Coastal Equities, Inc.*, AWC No. 2017052325702 (Nov. 9, 2020) (member firm ordered to pay over $270,000 in restitution to four senior customers for failing to supervise a registered representative who excessively traded their accounts; representative was barred in a separate action); *Roger Allan Duval*, AWC No. 2019062789901 (Sept. 18, 2020) (broker barred for converting $130,000 by using three elderly customers' login credentials to write himself checks).

[26] *See* FINRA, *FINRA Unscripted—Excessive Trading: When A Lot Becomes Too Much* (Sept. 29, 2020), available at https://www.finra.org/media-center/finra-unscripted/kelly-excessive-trading; FINRA, *FINRA Unscripted—At, By or Through: Fraud in the Broker-Dealer Industry* (April 20, 2021), available at https://www.finra.org/media-center/finra-unscripted/fraud-broker-dealer-industry.

prevention resources, conduct outreach, and train consumers, law enforcement professionals and victim advocates.

Rules for Broker-Dealers

FINRA's Securities Helpline for Seniors has highlighted issues relating to financial exploitation of senior and vulnerable investors, including the need for member firms to quickly and effectively address suspected financial exploitation of seniors and other specified adults.[27] In response, FINRA implemented new rules in February 2018 to provide member firms with ways to respond to situations in which they have a reasonable basis to believe that financial exploitation has occurred, is occurring, has been attempted or will be attempted.[28] Member firms can better protect their customers from financial exploitation if they have the ability to contact a customer's designated trusted contact person and, when appropriate, place a temporary hold on a disbursement of funds or securities from a customer's account. The rules include:

- FINRA Rule 4512 (Customer Account Information) requires member firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer's account or when updating account information for a non-institutional account. The trusted contact person is intended to be a resource for the member firm in administering the customer's account, protecting assets and responding to possible financial exploitation.

- FINRA Rule 2165 (Financial Exploitation of Specified Adults) permits a member firm that reasonably believes that financial exploitation has occurred, is occurring, has been attempted or will be attempted to place a temporary hold on the disbursement of funds or securities from the account of a "specified adult" customer. Specified adults include a natural person age 65 and older or a natural person age 18 and older who the member firm reasonably believes has a mental or physical impairment that renders individuals unable to protect their own interests.

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[27] Similarly, the FINRA Foundation has explored how third-party interventions can help thwart financial fraud. For example, a FINRA Foundation study from 2017 found that certain institution-based protections can protect potential fraud victims (many of whom exhibit low levels of financial knowledge) against monetary losses due to fraud. These structural protections are attempts by an organization, company or agency to intervene to stop a scam, for example a bank teller or an employee of a wire-transfer company halting a suspicious transaction. *See* DeLiema, M., Fletcher, E., Kieffer, C. N., Mottola, G. R., Pessenha, R., Trumpower, M. (2017). Exposed to scams: What separates victims from non-victims? FINRA Investor Education Foundation, BBB Institute for Marketplace Trust, Stanford Center for Longevity. https://www.finrafoundation.org/sites/finrafoundation/files/exposed-to-scams-what-separates-victims-from-non-victims_0_0.pdf

[28] *See Regulatory Notice 17-11, SEC Approves Rules Relating to Financial Exploitation of Seniors* (March 2017), available at https://www.finra.org/rules-guidance/notices/17-11.

In August 2019, FINRA launched a retrospective review to assess the effectiveness and efficiency of its rules and administrative processes that help protect senior investors from financial exploitation. The review indicated that FINRA's steps to protect seniors have provided helpful and effective tools in the fight against financial exploitation, but it also suggested some additional tools, guidance and rule changes. Based on feedback received during the review, FINRA amended its Rule 2165 (Financial Exploitation of Specified Adults) to extend the hold period and to allow temporary holds on securities transactions (in addition to disbursements) to further address suspected financial exploitation of senior investors.[29]

Training for Securities Firms and Professionals on Detecting and Preventing Exploitation

FINRA also supports training for those within the securities industry to advance understanding of issues related to financial exploitation, cognitive aging and financial decision-making. The federal Senior Safe Act[30], enacted in 2018, is an important law that assists in the protection of older Americans who are saving and investing in the nation's financial markets. Specifically, the law ensures that covered financial institutions, including investment advisers, broker-dealers and transfer agents, and their eligible employees can report on potential exploitation of seniors to a covered agency without potential barriers that could stem from liability for that action. In furtherance of the intent of this law, together with the North American Securities Administrators Association (NASAA) and SEC staff, FINRA provides a resource that securities firms may use to train associated persons about how to detect, prevent and report financial exploitation of senior and vulnerable adult investors.[31] The resource helps firms implement the federal requirements of the Senior Safe Act and state requirements relating to senior investor protection—and addresses other rules and laws relating to the protection of seniors and vulnerable adults.

In addition, FINRA offers virtual programming on related topics, such as a March 2021 session on communication between APS and professional reporters of financial exploitation.[32] FINRA

[29] *See Regulatory Notice 22-05*, *FINRA Adopts Amendments to Rule 2165* (March 17, 2022), available at https://www.finra.org/rules-guidance/notices/22-05.

[30] *Economic Growth, Regulatory Relief, and Consumer Protection Act*, Section 303, Public Law 115-174.

[31] FINRA, *Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors* (June 2021) available at https://www.finra.org/rules-guidance/key-topics/senior-investors/elder-abuse-prevention-training.

[32] *See* FINRA Virtual Conference Panel, *Communication Between Adult Protective Services (APS) and Professional Reporters of Financial Exploitation* (March 3, 2021) (available at Communication Between Adult Protective Services (APS) and Professional Reporters of Financial Exploitation). FINRA separately presented a virtual conference panel on the impact of social isolation on older adults. *See* FINRA Virtual Conference Panel, *Social Distancing and the Impact on Older Investors* (June 15, 2020) available at https://www.finra.org/events-training/virtual-conference-panels/social-distancing-impact-older-investors.

also oversees the securities industry continuing education program which includes administration of mandatory training for over 600,000 registered persons and recently introduced a new learning unit on financial exploitation of aging and vulnerable populations. Finally, FINRA maintains a catalog of e-learning courses for firms to use in furtherance of their training programs, and a number of these courses address diminished capacity, vulnerable populations and exploitation of senior investors.

Opportunities for Intervention in Financial Fraud

The FINRA Foundation, in collaboration with AARP, developed a model for understanding the drivers of financial fraud victimization, particularly with respect to chronic or repeat victims though the model does apply to scam attempts more broadly.[33] This model provides a lens through which to identify key intervention strategies that could disrupt the cycle at one or more points along the path of victimization. The model defines four domains, each of which provides unique opportunities for intervention or disruption of the fraud attempt. These include: 1) one or more situational factors, such financial insecurity, bereavement, or loneliness; 2) motivation, such as a desire for a financial gain or to feel loved or needed; 3) a trigger in the form of the fraud attempt; 4) and an ability to engage with the scammer and access funds. Within each domain are specific interventions that may be effective in thwarting the fraud attempt. For instance, a financial institution's ability to pause a transaction when fraud or exploitation is suspected directly impacts the ability of the fraud target to send money to a scammer. Fraud prevention education can impact the motivation of the individual to engage. And improved call blocking or call screen technology, such as enhancements to the FCC's new STIR/SHAKEN rules, have the potential to disrupt the attempt at the point of the trigger.[34] Whether the Senior Safe Act or the STIR/SHAKEN rules, targeted legislative and regulatory actions can make a big difference in preventing fraud and protecting investors.

Resources for Investors

In the Appendix to the testimony, we provide links to a wide variety of tools and resources that are designed to inform and protect investors. If any of these resources would be of a particular value to you or your constituents, we are happy to work with you and regulators in your state

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[33] *Addressing the Challenge of Chronic Fraud Victimization*, FINRA Foundation and AARP (March 2021), https://www.finrafoundation.org/sites/finrafoundation/files/addressing-the-challenge-of-chronic-fraud-victimization.pdf

[34] As of June 30, 2021, FCC rules require providers to implement STIR/SHAKEN, a series of protocols that digitally validate the handoff of phone calls passing through a complex web of networks. These protocols allow the phone company of the consumer receiving the call to verify that a call is in fact from the number displayed on Caller ID. While robocalls and spam calls remain a problem and efforts are still underway to combat the issue, technology enhancements such as STIR/SHAKEN hold promise in disrupting fraudulent attempts.

to disseminate this information and the investor protection message. For example, FINRA frequently works with Senators and Members of the House on investor protection educational forums tailored to individuals, states and districts. Another example is when FINRA, NASAA and staff of the SEC's Office of Investor Education and Advocacy launched a campaign in September 2021 urging investors to provide their financial firms with a trusted contact. The campaign features a new webpage, infographic, and video, providing details on how a trusted contact can help investors when the firm cannot reach them—whether because of travel, a natural disaster, a health issue or when the firm is concerned about potential fraud.[35]

Conclusion

Thank you for the opportunity to provide this testimony. FINRA is dedicated to investor protection and market integrity and will do all it can within its authority to combat fraud. Because fraud can be so widespread, coordination is critical at the federal and state levels. This is especially important given most fraud occurs at the hands of unlicensed people providing unregistered investment opportunities. As noted throughout this testimony, efforts to bolster and maintain financial knowledge in all Americans could prove beneficial with regard to a number of outcomes, including decision-making, scam susceptibility and psychological wellbeing. FINRA and the FINRA Foundation will continue to dedicate significant resources to fighting fraud—whether through our regulatory work or by expanding the knowledge and confidence of Americans wishing to build a more secure financial future through saving and investing. Thank you again for your attention to this important topic.

[35] *See* www.finra.org/trustedcontact.

<u>Appendix</u>: FINRA and FINRA Foundation Resources for Investors and Savers

Understanding and Combating Financial Fraud
https://www.finrafoundation.org/knowledge-we-gain-share/understanding-and-combating-financial-fraud

- *Blame and Shame in the Context of Financial Fraud* (2022). Authored by researchers from the FINRA Foundation and AARP.

- *Exposed to Scams: Can Challenging Consumer Beliefs Protect Them from Fraud?* (2021). Authored by researchers from the FINRA Foundation, University of Minnesota, BBB Institute for Marketplace Trust, and the Federal Trade Commission.
  Note: This is a follow-up report to the 2019 *Exposed to Scams: What Separates Victims from Non-Victims? (*See below)

- *Can Educational Interventions Reduce Susceptibility to Financial Fraud?* (2021). Authored by researchers at the FINRA Foundation and the University of Southern California's Center for Economic and Social Research.

- *Addressing the Challenge of Chronic Fraud Victimization.* (2021). Authored by researchers from the FINRA Foundation and AARP.

- *Exposed to Scams: What Separates Victims from Non-Victims*? (2019). Authored by researchers from the FINRA Foundation, BBB Institute for Marketplace Trust, the Stanford Center on Longevity, and the Federal Trade Commission.

<u>Investor Tools</u>
(available at https://www.finra.org/investors/tools-and-calculators)

- ***FINRA BrokerCheck*** (confirm whether investment professionals and firms are licensed)
- ***Investment Professional Designations*** (research what it takes to earn and maintain an investment designation—and what the designation's acronym stands for)
- ***Retirement Calculator*** (help make sure you have enough to see you through retirement)
- ***401(k) and IRA Required Minimum Distribution Calculator*** (determine your Required Minimum Distribution (RMD) from a traditional 401(k) or IRA)
- ***401(k) 'Save the Max' Calculator*** (determine if you are on track to 'save the max' in your 401(k) by maximizing your contributions each pay period under allowed IRS limits)
- ***Risk Meter*** (see whether you share traits that make investors vulnerable to fraud)
- ***Scam Meter*** (this tool will help you tell if an investment opportunity might be a scam)
- ***Con 'Em If You Can*** (this game from the FINRA Foundation and Commonwealth teaches players about the types of persuasion tactics used to perpetrate financial fraud, so they are better able to defend against these tactics)

FINRA and External Resources Related to Digital Assets
(available at finra.org/investors)

FINRA Investor Alert:

- Don't Fall for Cryptocurrency-Related Stock Scams
  https://www.finra.org/investors/alerts/dont-fall-cryptocurrency-related-stock-scams
- Bitcoin: More Than a Bit Risky
  https://www.finra.org/investors/alerts/bitcoin-more-bit-risky
- Getting a Handle on Virtual Currencies
  https://www.finra.org/investors/highlights/getting-a-handle-on-virtual-currencies
- Here's How to Avoid Crypto Stock Scams
  https://www.finra.org/investors/highlights/how-avoid-crypto-stock-scams
- Bitcoin Basics—9 Things You Should Know About the Virtual Currency
  https://www.finra.org/investors/bitcoin-basics-9-things-you-should-know-about-digital-currency
- Demystifying Cryptocurrency (podcast)
  https://betterbusiness.blubrry.com/category/bbb_bistro/

Securities and Exchange Commission (SEC) Investor Alerts

- Thinking About Buying the Latest New Cryptocurrency or Token?
  https://www.investor.gov/additional-resources/specialized-resources/directors-take/cryptocurrency
- Statement on Cryptocurrencies and Initial Coin Offerings
  https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11
- Bitcoin and Other Virtual Currency-Related Investments
  http://investor.gov/news-alerts/investor-alerts/investor-alert-bitcoin-other-virtual-currency-related-investments#.U2p4GjnD-71
- Ponzi Schemes Using Virtual Currencies
  http://www.sec.gov/investor/alerts/ia_virtualcurrencies.pdf

Commodity Futures Trading Commission (CFTC) Resources

- CFTC Webpage on Virtual Currencies
  http://www.cftc.gov/bitcoin/index.htm

Consumer Financial Protection Bureau (CFPB) Resources

- Risks to Consumers Posed by Virtual Currencies
  http://files.consumerfinance.gov/f/201408_cfpb_consumer-advisory_virtual-currencies.pdf
- CFPB Warns Consumers About Bitcoin
  https://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-consumers-about-bitcoin/

FINRA and External Resources Related to Digital Assets (continued)
(available at finra.org/investors)

National Futures Association (NFA) Resources

- NFA Investor Advisory—Futures on Virtual Currencies Including Bitcoin
  https://www.nfa.futures.org/investors/investor-advisory.html

Federal Trade Commission (FTC) Resources

- Know the Risks Before You Invest in Cryptocurrencies
  https://www.consumer.ftc.gov/blog/2018/02/know-risks-you-invest-cryptocurrencies

North American Securities Administrators Association (NASAA) Resources

- NASAA Reminds Investors to Approach Cryptocurrencies, Initial Coin Offerings and Other Cryptocurrency-Related Investment Products with Caution
  http://www.nasaa.org/44073/nasaa-reminds-investors-approach-cryptocurrencies-initial-coin-offerings-cryptocurrency-related-investment-products-caution/
- Informed Investor Advisory: Cryptocurrencies
  http://www.nasaa.org/44848/informed-investor-advisory-cryptocurrencies/

FINRA Investor Insights

- *Establishing a Trusted Contact*
  https://www.finra.org/investors/learn-to-invest/brokerage-accounts/establish-trusted-contact

- *Three Resources for Senior Investors*
  https://www.finra.org/investors/insights/three-resources-for-senior-investors

- *Steps to Plan for Diminished Financial Capacity and Illness*
  https://www.finra.org/investors/insights/diminished-financial-capacity

- *When a Brokerage Account Holder Dies—What Comes Next?*
  https://www.finra.org/investors/insights/when-brokerage-account-holder-dies

- *Talking Money with Mom: Gender, Generation and Financial Knowledge*
  https://www.finra.org/investors/insights/gender-generation-and-financial-knowledge

- *Protecting Seniors from Financial Exploitation*
  https://www.finra.org/investors/insights/senior-financial-exploitation

- *Planning Ahead—Have You Chosen Your Beneficiaries?*
  https://www.finra.org/investors/insights/choosing-beneficiaries

- *4 Financial Resources for Senior investors*
  https://www.finra.org/investors/insights/resources-senior-investors

- *Managing Money Through Grief: 10 Tips for Widows and Widowers*
  https://www.finra.org/investors/insights/managing-money-through-grief-10-tips-widows-and-widowers

- *Emotions Increase Susceptibility to Fraud in Older Adults*
  https://www.finra.org/investors/insights/emotions-increase-susceptibility-fraud-older-adults

- *When a Loved One Passes, What Happens to Their Accounts?*
  https://www.finra.org/investors/insights/when-loved-one-passes-what-happens-their-accounts

- *5 Things to Know About Preparing a Will*
  https://www.finra.org/investors/insights/5-things-know-about-preparing-will

- *Lock Down Your Financial Emergency Kit*
  https://www.finra.org/investors/insights/lock-down-your-financial-emergency-kit

FINRA Investor Alerts

- *It Pays to Pay Attention to Your Brokerage Account Statements* (2016) https://www.finra.org/investors/alerts/pay-attention-brokerage-account-statements

- *It Can Be Hard to Recover from "Recovery" Scams* (2016) https://www.finra.org/investors/alerts/it-can-be-hard-recover-recovery-scams

- *Boiler Room Alert: If You Get a Call Like This, Don't Bite—and Don't Buy* (2015) https://www.finra.org/investors/alerts/boiler-room-alert-if-you-get-call-dont-bite-and-dont-buy

- *Tools of the Fraud Trade: Phones and Emotions* (2015) https://www.finra.org/investors/alerts/phones-and-emotions

- *Promissory Notes Can Be Less Than Promised* (2014) https://www.finra.org/investors/alerts/promissory-notes-can-be-less-promised

- *Plan for Transition: What You Should Know About the Transfer of Brokerage Account Assets on Death* (2009) https://www.finra.org/investors/alerts/plan-transition-what-you-should-know-about-transfer-brokerage-account-assets-death (updated in 2015)

- *Seniors Beware: What You Should Know About Life Settlements* (2009) https://www.finra.org/investors/alerts/seniors-beware-what-you-should-know-about-life-settlements

Overview of FINRA's Efforts to Protect Senior Investors

- Senior Investor Rule and Guidance: Key Topics: https://www.finra.org/rules-guidance/key-topics/senior-investors
- FAQ Regarding FINRA Rules Relating to Financial Exploitation of Seniors: https://www.finra.org/rules-guidance/guidance/faqs/frequently-asked-questions-regarding-finra-rules-relating-financial-exploitation-seniors
- FINRA Securities Helpline for Seniors: https://www.finra.org/investors/have-problem/helpline-seniors

FINRA Rules Relating to Seniors
(available at www.finra.org)

- Rule 4512 – Customer Account Information
- Rule 3241 – Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer
- Rule 2165 – Financial Exploitation of Specified Adults

FINRA Regulatory Notices
(available at www.finra.org)

- Regulatory Notice 07-43 – Firm Obligations re: Senior Investors
- Regulatory Notice 09-42 – FINRA Reminds Firms of Their Obligations with Variable Life Settlement Activities
- Regulatory Notice 11-52 – FINRA Reminds Firms of Their Obligations Regarding the Supervision of Registered Persons Using Senior Designations
- Regulatory Notice 16-12 – FINRA Provides Guidance on Firm Responsibilities for Sales of Pension Income Stream Products
- Regulatory Notice 17-11 – SEC Approves Rules Relating to Financial Exploitation of Seniors
- Regulatory Notice 19-27– Retrospective Review: FINRA Requests Comment on Rules and Issues Relating to Senior Investors
- Regulatory Notice 19-36 – FINRA Requests Comment on a Proposed Rule to Limit a Registered Person from Being Named a Customer's Beneficiary of Holding a Position of Trust for or on Behalf of Customer
- Regulatory Notice 20-34 – Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report
- Regulatory Notice 20-38 – FINRA Adopts Rule to Limit a Registered Person from Being Named a Customer's Beneficiary or Holding a Position of Trust for or on Behalf of a Customer

Selected FINRA Foundation Research

Financial Capability

https://finrafoundation.org/knowledge-we-gain-share/understanding-financial-capability-americans

- *Financial Capability in the United States: Highlights from the FINRA Foundation National Financial Capability Study.* (2022). Authored by researchers at the FINRA Foundation, George Washington University and FGS Global.
  https://finrafoundation.org/knowledge-we-gain-share/nfcs
  Note: Previous National Financial Capability reports can also be found on this page.

- *Bridging the Divide: A Closer Look at Changes in the Racial and Ethnic Composition of Investor Households*. (2021). Authored by researchers at the FINRA Foundation.

- *Financial Anxiety and Stress Among U.S. Adults: New Evidence from a National Survey and Focus Groups*. (2021). Authored by researchers at the FINRA Foundation and George Washington University's Global Financial Literacy Excellence Center.

- *Bouncing Back? The Financial Resilience of Americans.* (2021). Authored by researchers at the FINRA Foundation and Fairleigh Dickinson University.

- *Nontraditional Workers Face Multiple Barriers to Saving for Retirement*. (2021). Partially funded by the FINRA Foundation and authored by researchers at the Pew Charitable Trusts.
  https://www.pewtrusts.org/-media/assets/2021/11/nontraditionalworkersbarrierstosaving_v3.pdf

- *The Stability and Predictive Power of Financial Literacy: Evidence from Longitudinal Data*. (2020). Authored by researchers at the FINRA Foundation, University of California's Center for Economic and Social Research, and George Washington University's Global Financial Literacy Excellence Center.

- *The Extra Costs of Living with a Disability in the United States*. (2021). FINRA Foundation-funded research authored by researchers at Stonybrook University, The University of Tennessee, Burton Blatt Institute, and the Government College University Lahore.
  https://journals.sagepub.com/doi/abs/10.1177/10442073211043521

- *Financial Capability of Adults with Disabilities.* (2017). FINRA Foundation-funded research authored by researchers at the National Disability Institute.
  https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/01/ndi-finra-report-2017.pdf

Aging and Financial Decision Making
https://www.finrafoundation.org/knowledge-we-gain-share/aging-and-financial-decision-making

- *Who's at Risk? Financial Fragility May Put Older Adults at Risk for Scams*. (2022). Authored by researchers at the FINRA Foundation and Rush University Medical Center.

- *What You Don't Know CAN Hurt You: Misjudging Memory Skills Can Adversely Impact Financial Decision Making in Old Age*. (2022). Authored by researchers at the FINRA Foundation and Rush University Medical Center.

- *Race and Scam Susceptibility: Key Risk Factors for Older African Americans.* (2021). Authored by researchers from the FINRA Foundation and Rush University Medical Center.

- *The Relation of Loneliness and Cognition with Financial and Healthcare Decision Making in Older Persons.* (2021). Authored by researchers from the FINRA Foundation, Rush University Medical Center and Indiana University School of Medicine.

- *Does Overconfidence Increase Financial Risk Taking in Older Age?* (2020). Authored by researchers at the FINRA Foundation, Duke University, and Rush University Medical Center.

- *Confidence in Financial Literacy and Cognitive Health in Older Persons.* (2020). Authored by researchers at the FINRA Foundation and Rush University Medical Center.

- *The Adverse Impacts of Declining Financial Literacy in Old Age.* (2020). Authored by researchers at the FINRA Foundation and Rush University Medical Center.

Training for the Securities Industry

- Joint work related to the *Senior SAFE Act Training* (by FINRA, SEC Staff and NASAA), https://www.finra.org/rules-guidance/key-topics/senior-investors/elder-abuse-prevention-training
    - Training: Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors - (June 2021): https://www.finra.org/rules-guidance/key-topics/senior-investors/elder-abuse-prevention-training
    - Senior Safe Act Fact Sheet (May 19, 2019): https://www.finra.org/sites/default/files/2019-05/senior_safe_act_factsheet.pdf

- Communication Between Adult Protective Services (APS) and Professional Reporters of Financial Exploitation (March 2021): https://www.finra.org/events-training/virtual-conference-panels/communication-between-adult-protective-services-aps-and-professional

- Social Distancing and the Impact on Older Investors (June 2020): https://www.finra.org/events-training/virtual-conference-panels/social-distancing-impact-older-investors

Training Collaborations Aimed at Consumers

- ***Trusted Contact Campaign***:
  - Press Release: FINRA, NASAA and SEC OIEA Urge Investors to Establish a Trusted Contact to Increase Investor Protection, https://www.finra.org/media-center/newsreleases/2021/finra-nasaa-and-sec-oiea-urge-investors-establish-trusted-contact
  - Campaign Resources (including video and factsheet), www.finra.org/trustedcontact

Other Training Materials

- ***Taking Action: An Advocate's Guide to Assisting Victims of Financial Fraud* (2018)*:***
  - A resource from the FINRA Foundation and the National Center for Victims of Crime providing a roadmap for consumer advocates to assist victims in the wake of a financial crime: www.finrafoundation.org/takingaction

FINRA Conferences

- Communication Between Adult Protective Services (APS) and Professional Reporters of Financial Exploitation (2021) https://www.finra.org/events-training/virtual-conference-panels/communication-between-adult-protective-services-aps-and-professional

- Social Distancing and the Impact on Older Investors (2020) https://www.finra.org/events-training/virtual-conference-panels/social-distancing-impact-older-investors

- Financial Crimes, Trends and Responses – In the Midst of the Pandemic (2020) https://www.finra.org/events-training/virtual-conference-panels/financial-crimes-trends-and-responses-midst-pandemic

<u>Continuing Education Program Courses</u>
(available at https://www.finra.org/registration-exams-ce/continuing-education)

- ***Financial Exploitation of Senior and Vulnerable Adults – NEW EL-ELC261 | 1.0 CE Credit*** This course is designed to help registered representatives understand their responsibilities in protecting senior and vulnerable adult clients from financial exploitation. Scenarios demonstrate the importance of recognizing and escalating respective red flags and highlight specific rules and regulations that can help registered representatives fulfill their responsibilities to safeguard their clients from financial abuse.

- ***Senior Investor Issues: Diminished Decisional Capacity EL-ELC158 | 1.0 CE*** **Credit** This course consolidates the insights and research of leading academic, medical and legal professionals, psychologists and organizations on the topic of diminished decisional capacity. It provides information that registered representatives may find useful for identifying, working with and responding to senior investors or other customers with potential diminished—or diminishing—decisional capacity.

- ***Senior Investor Issues: Financial Exploitation EL-ELC247 | 0.5 CE Credits*** This course reminds registered representatives that fulfilling their regulatory obligations can help to protect senior investors from financial exploitation. Participants are presented with scenarios to help them learn how to detect situations or "red flags" that might indicate a senior client is being financially exploited.

Additional Research: State of Financial Capability in the United States

The FINRA Foundation commissioned the first national study of the financial capability of American adults, the National Financial Capability Study (NFCS), in 2009. The NFCS is a large-scale, multiyear project conducted every three years to monitor and better understand financial capability in America.[36] It measures key indicators of financial capability and evaluates how these indicators vary with underlying demographic, behavioral, attitudinal and financial literacy characteristics. In July 2022, we released the fifth wave, based on data from a comprehensive survey of more than 27,000 U.S. adults fielded in 2021.[37] Given its robust nature, the NFCS provides an excellent means of assessing the current state of financial literacy in America, how it has changed over time and which groups are at risk due to low levels of financial literacy.[38]

In general, financial literacy in America is low and has declined over time. In 2009, 42% of American adults demonstrated high levels of financial literacy, as measured by a widely used, five-question financial literacy quiz.[39] That figure dropped to 34% in 2018 and to 32% in 2021. While the full reasons for the decline are not known and likely manifold, the drop is driven, in large part, by younger Americans. It is also driven to a significant degree by a higher number of respondents selecting "Don't Know" instead of guessing the answer to a question. Despite increasingly low levels of financial literacy, 71% of Americans believe they have a high level of financial knowledge, suggesting widespread overconfidence.[40] As in previous years, the 2021 study underscores the importance of financial knowledge in financial capability. Individuals with high financial literacy are more likely to demonstrate positive financial behaviors such as saving and planning for retirement, and less likely to engage in negative behaviors such as expensive borrowing methods.

Importantly, financial knowledge varies across demographic groups, with women and people of color generally having lower levels of financial knowledge, including investment-related

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[36] FINRA Investor Education Foundation, Gauging the State of Financial Capability in the U.S., https://finrafoundation.org/knowledge-we-gain-share/nfcs.
[37] *See* Financial Capability in the United Sated: Highlights from the FINRA Foundation National Financial Capability Study (July 2022), available at https://www.finrafoundation.org/sites/finrafoundation/files/NFCS-Report-Fifth-Edition-July-2022.pdf.
[38] To facilitate deeper exploration of the data, the FINRA Foundation developed interactive data visualizations that allow users to see how survey responses vary by different demographic factors and by year. *See* https://cdn.finra.org/nfcs/2021/index.html.
[39] FINRA Investor Education Foundation's National Financial Capability Study. (n.d.). *Big 5 Financial Literacy Quiz.* https://www.USFinancialCapability.org
[40] Lin, J., Bumcrot, C., Ulicny, T., Mottola, G., Ganem, R., Walsh, G., Ganem, R., and Lusardi, A. (2019). *The State of U.S. Financial Capability: The 2018 National Financial Capability Study.* FINRA Foundation. https://www.usfinancialcapability.org/downloads/NFCS_2018_Report_Natl_Findings.pdf

concepts, than their male and white counterparts. Many Americans with disabilities also have low levels of financial knowledge and little confidence in their financial knowledge. For Americans of color with disabilities, financial knowledge is especially low.[41]

Low levels of financial knowledge pose a particular risk to people with disabilities. A seminal FINRA Foundation-funded study by the National Disability Institute, Stony Brook University School of Social Welfare and the University of Tennessee College of Social Work found that the cost of living for Americans with disabilities is 29% higher than for those without disabilities. The findings suggest that Americans with disabilities, perhaps even more than Americans without a disability, need to have the tools and knowledge to make effective and informed financial decisions.[42]

Beyond demographics, there are other groups whose low financial literacy levels could be impacting their financial situation and even retirement prospects. For example, a recent study by Pew Charitable Trusts that was partially funded by the FINRA Foundation found that nearly one in 10 gig economy workers report that not understanding how to save for retirement was the primary reason they were not interested in saving in a hypothetical retirement plan.[43]

A wealth of data suggests that financial knowledge is tied to a host of financial outcomes, with some findings indicating a causal link. Research by the FINRA Foundation, the Global Financial Literacy Education Center at George Washington University and the University of Southern California found that adults with higher levels of financial knowledge were more likely to plan for retirement, report being able to meet an unexpected $2,000 expense and experience financial satisfaction six years later.[44] Beyond financial outcomes, financial knowledge is correlated with cognitive health. A study by the FINRA Foundation and Rush University Medical

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[41] Goodman, N., O'Day, B., & Morris, M. (2017). Financial Capability of Adults with Disabilities. National Disability Institute and FINRA Investor Education Foundation. https://www.finrafoundation.org/sites/finrafoundation/files/NDI-Final-Report-Financial-Capability-of-Adults-with-Disabilities_0_0_0_0_0_0_0_0_0_0_0_0.pdf

[42] Goodman, N., Morris, M., Morris, Z., McGarity, S. (2020) The Extra Costs of Living with a Disability in the U.S. — Resetting the Policy Table. https://www.nationaldisabilityinstitute.org/reports/extra-costs-living-with-disability/.

[43] Scott, J., & Shelton, A. (2021). *Nontraditional Workers Face Multiple Barriers to Saving for Retirement.* Pew Charitable Trusts Brief https://www.pewtrusts.org/-/media/assets/2021/11/nontraditionalworkersbarrierstosaving_v3.pdf

[44] Angrisani, M., Burke, J., Lusardi, A., Mottola, G. *The stability and predictive power of financial literacy: Evidence from longitudinal data.* FINRA Investor Education Foundation. https://www.finrafoundation.org/sites/finrafoundation/files/stability-and-predictive-power-financial-literacy-evidence-longitudinal-data.pdf

Center found that older adults who exhibit low levels of financial knowledge have an increased risk of Alzheimer's Disease and cognitive decline.[45]

Additional Research: Fraud and Fraud Susceptibility

For more than a decade, the FINRA Foundation and its partners have been at the forefront of research to better understand fraud susceptibility. We highlight a number of studies below.

- Who's at Risk? Financial Fragility May Put Older Adults at Risk for Scams
  Research by FINRA Foundation and Rush University found that financially fragile older adults (that is, those unable to absorb a $2,000 economic shock) are more susceptible to scams than those who are not financially fragile, even after controlling for key demographic factors. Lower levels of financial knowledge and cognition are also found to be associated with scam susceptibility. The findings suggest that targeted efforts to reduce financial fragility and bolster financial knowledge and cognitive health may be important to prevent financial exploitation among the older adult population.

- Blame and Shame in the Context of Financial Fraud
  The FINRA Investor Education Foundation and the AARP Fraud Watch Network engaged in research to document "victim-blaming" practices aimed at financial fraud victims. Our report reveals how these practices exacerbate victims' deep sense of shame, shift the focus away from perpetrators, and affect the prioritization of financial crimes in the U.S. This work provides the catalyst for shifting how our society talks about victims of financial fraud and responds to this growing crime.

- Exposed to Scams: Can Challenging Consumers' Beliefs Protect Them from Fraud?
  Through the analyses of in-depth interviews with 17 people who recounted their experiences with fraud attempts, the FINRA Foundation collaborated with the BBB Institute for Marketplace Trust, University of Minnesota and Federal Trade Commission to explore how differences in default ways of thinking—or mental frames—may make some people vulnerable to losing money to scams.

- Can Educational Interventions Reduce Susceptibility to Financial Fraud?
  The FINRA Foundation in collaboration with University of Southern California's Center for Economic and Social Research (CESR) experimentally examined the effectiveness of

[45] Yu, L., Mottola, G., Bennett, D. A., & Boyle, P. A. (2021). Adverse impacts of declining financial and health literacy in old age. *The American Journal of Geriatric Psychiatry*. *29*(11), 1129-1139. https://doi.org/10.1016/j.jagp.2021.02.042

short, online educational interventions in reducing susceptibility to fraud. Our findings suggested that these interventions increase both consumers' ability to recognize fraudulent investment opportunities and their knowledge about investment fraud without diminishing respondent interest in legitimate investment products. While initial effects decayed over time, they persisted for at least three months with support from a secondary intervention.

- Addressing the Challenge of Chronic Fraud Victimization
  The FINRA Foundation and the AARP Fraud Watch Network engaged with Heart+Mind Strategies to examine the problem of chronic fraud victimization and how the Fogg Behavior Model can help illuminate and address the factors that contribute to victimization. Using this model, in conjunction with detailed interviews with victims and families of victims, we identified points of intervention that could serve to disrupt the cycle of chronic victimization.

- Exposed To Scams: What Separates Victims from Non-Victims?
  To better understand the fraud victimization process and craft better interventions to reduce fraud, the FINRA Foundation collaborated with the BBB Institute for Marketplace Trust, Stanford Center on Longevity and Federal Trade Commission to explore the cognitive, behavioral and attitudinal differences between victims and non-victims.

Additional Research: Financial Decision-Making and Aging

Financial knowledge is important throughout an individual's lifespan but plays a critical role in older adulthood. Aging is tied to physical and cognitive decline, which can lead to impaired financial decision-making skills. Aging Americans enter retirement and must make complex financial and healthcare decisions, which are inextricably linked in the United States. Thus, many older Americans are particularly vulnerable to poor decision-making and financial fraud and exploitation. These concerns are especially relevant in the United States, as it is an increasingly aging nation. By 2040, about one in five Americans will be age 65 or older, up from about one in eight in 2000. In absolute terms, there will be 80 million Americans 65 and older by 2040.

The FINRA Foundation is collaborating with neuroscientists and researchers at Rush University Medical Center to gain insights into the role of aging and cognition on financial and health decision-making and scam susceptibility. Several findings indicate that financial and health literacy generally decline with age.[46] The rate of decline is also important. Older adults who experience faster declines in financial and health literacy are more likely to make poor decisions, have higher susceptibility to scams and financial fraud, and experience lower levels of psychological wellbeing.[47]

Factors beyond financial knowledge can affect decision-making in older age. One study by researchers at the FINRA Foundation and Rush University Medical Center found misjudging one's cognitive skills contributes to poor financial decision-making in older adulthood.[48] Another study found that loneliness, when paired with low cognition, is associated with poor financial and health decision-making in older adults.[49]

Impaired decision-making can result in financial fraud victimization. For older adults, understanding and preventing fraud is particularly important, as they typically lack sufficient time to recover from the toll of financial fraud. The FINRA Foundation recently collaborated with Rush University Medical Center on a study of older Black adults and found that lower levels of semantic memory (which refers to general knowledge about the world) and financial and health literacy may pose an important risk for losing money in scams—a finding that is true for older adults generally.[50] Given the interplay between financial literacy, cognitive ability and financial fraud, maintaining and improving financial knowledge as we age is an important protection.

Additional Research: Understanding Investor Behavior

During 2020, as the COVID-19 virus spread worldwide, retail investors in the U.S. and around the world flocked to the markets using taxable investment accounts. To examine the diversity, investing goals, behaviors, information sources and knowledge of these new investment account openers, the FINRA Foundation and NORC at the University of Chicago collaborated on

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[46] Yu, L., Mottola, G., Bennett, D. A., & Boyle, P. A. (2021). Adverse impacts of declining financial and health literacy in old age. *The American Journal of Geriatric Psychiatry*. 29*(11), 1129-1139. https://doi.org/10.1016/j.jagp.2021.02.042* https://doi.org/10.1016/j.jagp.2021.02.042

[47] *Ibid*.

[48] Yu, L., Mottola, G., Wilson, R. S., Valdes, O., Bennett, D. A., & Boyle, P. A. (2021). Metamemory and financial decision making in older adults without dementia. *Neuropsychology*. https://psycnet.apa.org/doi/10.1037/neu0000773

[49] Stewart, C. C., Yu, L., Glover, C. M., Mottola, G., Bennett, D. A., Wilson, R. S., & Boyle, P. A. (2020). Loneliness interacts with cognition in relation to healthcare and financial decision making among community-dwelling older adults. *The Gerontologist*, *60*(8), 1476-1484. https://doi.org/10.1093/geront/gnaa078

[50] Yu, L., Mottola, G., Barnes, L. L., Han, S. D., Wilson, R. S., Bennett, D. A., & Boyle, P. A. (2021). Correlates of susceptibility to scams in community-dwelling older black adults. *Gerontology*, 1-11. https://doi.org/10.1159/000515326

a study titled ***Investing 2020: New Accounts and the People Who Opened Them***.[51] The study looked at investors with taxable investment accounts (though most also had retirement accounts) and found that market dips that made stocks cheaper to buy and the ability to invest with small amounts of money were among the top reasons younger and inexperienced investors reported entering the stock market. For respondents who opened new accounts in 2020, investing for retirement was the most frequently cited reason for opening the account, despite the study's focus on taxable investing.

Researchers further found that new investors were younger (with the majority under age 45), had lower incomes and were more likely to be racially or ethnically diverse compared with seasoned investors. While all investors reported relying on a variety of information sources when making financial decisions, new investors more frequently relied on the advice of friends and family. Taken together, these findings can help stakeholders target educational initiatives and inform policy aimed at protecting both new and seasoned investors.

The FINRA Foundation is currently working with NORC at the University of Chicago to resurvey the new investors we surveyed in 2020. This new study will assess whether the investors who entered the markets in 2020 are still investing and whether their investing behaviors, attitudes toward investing and investing knowledge have changed. We will simultaneously explore the behaviors, attitudes and knowledge of even newer investors—that is, those who started investing in the wake of the GameStop/meme stock investing turmoil in early 2021, including new investors who are investing only in cryptocurrencies. When the research findings from this study are available, we would be pleased to share them with the Committee.

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[51] *See* https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf. This work built on prior research that explored the impact of pandemic-related market volatility on retail investor participation in the U.S. stock market and stock market expectations. *See, e.g.,* The Impact of Pandemic-Related Volatility on Stock Market Expectations and Participation *and* The Impact of Pandemic-Related Volatility on Stock Market Expectations and Participation, available at https://finrafoundation.org/knowledge-we-gain-share/consumer-insights-money-investing.