



FINANCIAL
SERVICES
ROUNDTABLE

Via <http://www.sec.gov/rules/proposed/shtml>

November 28, 2016

Mr. Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Proposed Rule Change to Amend Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults) [SR-FINRA-2016-039]

Dear Mr. Fields:

The Financial Services Roundtable (“FSR”)¹ appreciates the opportunity to comment on FINRA’s proposed changes filed with the Securities and Exchange Commission (“Commission”) to amend the current Rule 4512 (Customer Account Information) and adopt new Rule 2165 (Financial Exploitation of Specified Adults) (jointly, the “Proposals”).²

The proposed amendments to Rule 4512 would require FINRA members (“Firms”) to make reasonable efforts to obtain the name of and contact information for a “trusted contact person” for each retail customer’s account. Proposed Rule 2165 would permit (but not require) Firms to place temporary holds on disbursements of funds or securities from the account of a senior or other vulnerable adult (the “Specified Adult”), if there is a reasonable

¹ *As advocates for a strong financial future*TM, FSR represents the largest integrated financial services companies providing banking, insurance, payment, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America’s economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

² SEC. & EXCH. COMM’N, Notice of Filing of a Proposed Rule Change To Amend Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults), 81 Federal Register 78238 (Nov. 7, 2016) (“Proposing Release”), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-11-07/pdf/2016-26797.pdf>.

belief of “financial exploitation” of the Specified Adult customer.³

Although we believe a uniform national standard would be preferable and easier to implement and maintain,⁴ FSR strongly supports the Proposals, which would afford Firms a safe harbor from certain FINRA rules “that might otherwise discourage [them] from exercising discretion to protect [Specified Adult] customers through placing a temporary hold on disbursements of funds or securities” and contacting a trusted contact person.⁵ However, we believe FINRA should extend the implementation period to at least 12 months, and clarify certain provisions that FSR believes will improve the overall effectiveness of the Proposals and reduce operational burdens on Firms.

FSR believes the proposed rule changes would enhance a Firm’s ability to address the potential exploitation of seniors and other vulnerable adults.

FSR views the potential financial exploitation of seniors and other vulnerable adults as a serious concern. FSR has long supported efforts to protect senior investors, as demonstrated, in part, by its many efforts to educate older Americans as they prepare for retirement.⁶ BITS (FSR’s technology policy division)⁷ has been at the forefront of initiatives to protect older Americans and provide fraud-reduction resources to the financial services industry.⁸

³ Proposed Rule Change to Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults), SR-FINRA-2016-039 (October 2016), *available at* http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-039.pdf (text of proposed rules).

⁴ See Proposing Release at 78239 (noting FINRA’s belief that proposed Rule 2165 “would aid in the creation of a uniform national standard for the benefit of [Firms] and their customers”).

⁵ Proposing Release at 78242. FINRA noted that the Supplementary Material to proposed rule 2165 provides an explicit safe harbor from FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2150 (Improper Use of Customers’ Securities of Funds; Prohibitions Against Guarantees and Sharing in Accounts); and 11870 (Customer Account Transfer Contracts) when members exercise discretion to place temporary holds on disbursements in accordance with the rule. *Id.* at 78240.

⁶ A sampling of FSR’s financial education efforts with respect to senior investors can be found at <http://fsroundtable.org/financial-literacy/>.

⁷ BITS specializes and leads on the issues at the intersections of the financial services industry, including emerging technologies, cybersecurity, fraud reduction and third party oversight.

⁸ See BITS AND THE FINANCIAL SERVICES ROUNDTABLE, *Elder Financial Exploitation Prevention*, 2015 (Webinar advocating awareness on issues related to elder financial abuse such as emerging elder fraud scams, industry efforts to combat abuse and provide resources for the financial services community (2015); Roxane Schneider, *FSR Members Thwart Fraud Perpetrators* (BITS and The Financial Services Roundtable), 2014, *available at* <http://fsroundtable.org/bits/world-elder-abuse-awareness-day/>; BITS AND THE FINANCIAL SERVICES ROUNDTABLE, *BITS At-Risk Adult Training Curriculum*, 2013, *available at* <http://www.bits.org/publications/doc/BITS-RoundtableAt-RiskAdultTrainingCurriculumJan2013.pdf>; BITS AND THE FINANCIAL SERVICES ROUNDTABLE, Statement of BITS President Paul Smocer On Behalf Of The Financial Services Roundtable Before The Special Committee On Aging Of The U.S. Senate, *America’s Invisible Epidemic: Preventing Financial Elder Abuse*, Nov. 15, 2012, *available at* <http://www.bits.org/publications/regulation/BITSTestimonySenateAging15Nov12.pdf>; BITS AND THE FINANCIAL SERVICES ROUNDTABLE, *FSR Older Americans Financial Abuse Prevention Working Group*, June 2012), *available at* <http://www.bits.org/publications/doc/RoundtableWEAADBBookletJune2012.pdf>; BITS AND THE FINANCIAL SERVICES ROUNDTABLE, *Protecting the Elderly and Vulnerable from Financial Fraud and Exploitation*, April 2010, *available at*

As FINRA noted, the aging of the U.S. population raises the risks of financial exploitation of seniors and other vulnerable adults, which some studies identify as “the most common form of elder abuse.”⁹ Given that many investors who are seniors or other vulnerable adults often live on fixed incomes, FINRA noted that the impact of financial exploitation can be particularly devastating for them because they lack the ability to offset significant losses over time or through other means.¹⁰

The proposed rule changes are intended to provide Firms with an effective and prompt way to exercise some discretion in dealing with situations in which there is a reasonable basis to believe that financial exploitation of seniors and other vulnerable adults has occurred or will be attempted. As proposed, Firms may (1) place a temporary hold on a disbursement of funds or securities from the Specified Adult customer’s account under FINRA Rule 2165 for up to 15 business days—which could be extended a further 10 business days—unless, in each case, terminated sooner or extended by a governmental authority or court; and (2) notify the customer’s trusted contact person when there is a concern that, among other things, the customer may be the victim of financial exploitation under FINRA Rule 2165.

FSR urges FINRA to make further changes to improve the effectiveness of the proposed rules.

FSR agrees that the proposed rule changes would provide Firms with “more effective tools that will allow them to quickly and effectively address suspected financial exploitation.”¹¹ Although FINRA revised the Proposals to address a number of concerns with the original rule proposals¹² raised by FSR and other industry participants,¹³ FSR believes further revisions to the Proposals are necessary to improve their overall effectiveness and reduce operational burdens on Firms. Accordingly, we urge FINRA to extend the implementation period to at least 12 months, and clarify provisions concerning (a) an extension of a hold on disbursements under Rule 2165 made by a governmental authority or court; (b) coordination with governmental authorities to address suspected financial exploitation; (c) the applicability of the safe harbor for associated persons of the Firm; (d) the obligation to notify the trusted contact person that the Firm has placed a hold on a disbursement under Rule 2165; (e) compliance with Regulation S-P¹⁴ in respect of disclosures made pursuant to the proposed rules; and (f) the obligation to obtain trusted contact information for existing accounts under Rule 4512.

<http://www.bits.org/publications/fraud/BITSProtectingVulnerableAdults0410.pdf>.

⁹ Proposing Release at 78239.

¹⁰ *Id.*

¹¹ *Id.*

¹² Regulatory Notice 13-57, Financial Exploitation of Seniors and Other Vulnerable Adults (Nov. 30, 2015), available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-37.pdf.

¹³ Proposing Release at 78243, Section II.2.B. Self-Regulatory Organization’s Statement on Burden on Competition.

¹⁴ 17 C.F.R. § 248.1 *et seq.*

First, the proposed implementation timeframe should be extended from six months to at least 12 months. This expanded implementation period is essential to ensure that Firms have sufficient time in which to make systems changes, while they are also implementing a number of large-scale regulatory changes (*e.g.*, the new Department of Labor fiduciary regulation). We understand that FINRA would be receptive to this change.

Second, FINRA should clarify in the Supplementary Material the manner in which Firms should coordinate with a state regulator or agency of competent jurisdiction to confirm or validate suspicions regarding suspected financial exploitation. We note that proposed Rule 2165 does not require the Firm to contact any governmental authority. This is of particular concern when the Firm has placed a hold on a disbursement and contacted the relevant governmental authority, but the governmental authority has not responded prior to the expiration of the initial hold or, if applicable, the expiration of the 10-business-day extension. For example, should the Firm release the hold on a disbursement if the governmental authority has not responded prior to the expiration of the initial hold? Would the fact that the governmental authority has not responded be a basis for an extension of the hold?

Third, FINRA should clarify that the proposed safe harbor in FINRA Rule 2165 would apply to any termination or extension of a hold on disbursements made by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, including extensions that exceed 25 business days. While we believe this is the intent of the rule, it would be helpful to eliminate any ambiguity on this point.

Fourth, FINRA should clarify in Supplementary Material .01 (Applicability of the Rule) that the proposed safe harbor in FINRA Rule 2165 also applies to associated persons of the Firm that place, terminate, or extend the hold on disbursements from the customer's account. While the Firm rightly has the protection of the safe harbor, each individual associated person that the Firm authorizes to place, terminate, or extend the hold should have the benefit of the safe harbor in respect of his potential liability. Although the Proposing Release indicates FINRA's intent that associated persons of the Firm would have the benefit of the safe harbor,¹⁵ revision of the text of the proposed rule's Supplementary Material to provide an express safe harbor for associated persons would avoid ambiguity about the availability of the safe harbor.

Fifth, FINRA should clarify in the Supplementary Material to proposed Rules 2165 and 4512(a)(1)(F) that disclosures made to a trusted contact person would be consistent with Regulation S-P. The Proposing Release sets forth FINRA's belief that disclosures pursuant to the proposed rules would be consistent with the exceptions from the notice and opt-out requirements of Regulation S-P.¹⁶ However, given the significance of this interpretative position, we believe it would be appropriate to ensure that the Supplementary Material to both rules incorporates this interpretation.

¹⁵ Proposing Release at 78244.

¹⁶ Proposing Release at note 17.

Sixth, FINRA should clarify in the Supplementary Material that Firms have flexibility as to the requirement to notify the trusted contact following a decision to place a hold on a disbursement from the account. As proposed, the Firm generally must notify “all parties authorized to transact business” on the account and the trusted contact person not later than two business days following the date the Firm first placed a hold on disbursement from the account.¹⁷

In this regard, the Proposing Release notes that “the proposed rule change does not preclude a [Firm] from terminating a temporary hold after communicating with either the customer or trusted contact person.”¹⁸ The Proposing Release further notes FINRA’s belief that “a customer’s objection to a temporary hold or information obtained in exchange with the customer or trusted contact person may be used in determining whether the hold should be placed or lifted.”¹⁹ Thus, where one or more persons authorized to transact business on the account object to the hold or otherwise provide information that may cause the Firm to determine that the hold should be terminated, the rule should not impose a mandatory requirement that the Firm subsequently notify the trusted contact of the hold on disbursement if the Firm, in the exercise of its discretion, believes the hold should be lifted.

Seventh, FINRA should clarify that the obligation to obtain trusted contact information under proposed FINRA Rule 4512 for existing accounts in the course of the Firm’s “routine and customary business” would be satisfied where the Firm updated the account within a 36-month period in accordance with the requirements of rule 17a-3(a)(17)(i)(D) under the Securities Exchange Act of 1934 (“36-month letter”). We note that the trusted contact information could be obtained from the 36-month letter or other updates required by rule 17a-3, such as significant account changes or an address change. We understand that it is customary for Firms to update account information within this 36-month period (unless an update would otherwise be required by applicable law or regulation), and a requirement to update accounts on a more frequent cycle would require systems and operations changes.

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¹⁷ Proposed Rule 2165(b). However, the proposed rule provides that the Firm would not be required to give notice to the trusted contact person if that person is unavailable or the Firm reasonably believes the trusted contact person is engaged in financial exploitation of the Specified Adult customer.

¹⁸ Proposing Release at 78241.

¹⁹ *Id.*

FSR appreciates the opportunity to comment on the Proposals. If it would be helpful to discuss our specific comments or views on any of these issues, please contact Richard Foster at [REDACTED]; or Felicia Smith, Vice President and Senior Counsel for Regulatory Affairs, at [REDACTED].

Sincerely,



Richard Foster
Senior Vice President and Senior Counsel
for Regulatory and Legal Affairs
Financial Services Roundtable

With a copy to:

The Honorable Mary Jo White, Chair

The Honorable Kara Stein

The Honorable Michael Piwowar

Members, Securities and Exchange Commission

James S. Wrona, Vice President and Associate General

Counsel Jeanette Wingler, Assistant General Counsel

Ann-Marie Mason, Director and Counsel

FINRA