



OFFICE OF THE  
INVESTOR ADVOCATE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

December 28, 2016

**Submitted Electronically**

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

**Re: File No. SR-FINRA-2016-039: 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)**

Dear Mr. Fields:

**I. Introduction**

Pursuant to Section 4(g)(4) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> the Office of the Investor Advocate at the U.S. Securities and Exchange Commission (“Commission” or “SEC”) is responsible for, among other things, analyzing the potential impact on investors of proposed rules of self-regulatory organizations (“SROs”). In furtherance of this objective, we routinely review and examine the impact on investors of significant rulemakings of the Financial Industry Regulatory Authority (“FINRA”). As appropriate, we make recommendations and submit comment letters to help ensure that the interests of investors are fully considered as rules are adopted.

The Office of the Investor Advocate<sup>2</sup> appreciates this opportunity to comment on FINRA’s proposed rule change to: (1) amend FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact

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<sup>1</sup> 15 U.S.C. § 78d(g)(4).

<sup>2</sup> This letter expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for this letter and all analyses, findings, and conclusions contained herein.

information for a trusted contact person for a customer's account; and (2) adopt new FINRA Rule 2165 (Financial Exploitation of Specified Adults).<sup>3</sup>

Our Office has made it a priority to investigate ways to help protect elderly investors from financial exploitation.<sup>4</sup> In particular, we have been looking for ways to give financial service professionals more effective tools to protect vulnerable clients. Broker-dealers, along with other financial professionals and firms, often find themselves on the front lines in combatting elder financial abuse. Many have developed a relationship of trust with their clients, have known them for years, and, as a result, may be among the first to spot signs of financial abuse or diminished capacity.

We commend FINRA for its initiative to address elder financial exploitation, and we view the proposal as a positive step. At the same time, we believe that the proposal should be strengthened further by adding a mandatory reporting requirement for firms that pause disbursements because of suspected financial exploitation. The Commission and FINRA should work together to determine how best to amend the proposal in this respect.

## **II. Analysis of Proposal**

### **A. Proposed Amendment to FINRA Rule 4512 (Customer Account Information)**

FINRA proposes to amend Rule 4512 to require 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 and when the firm updates such information for current customers. We support this proposed amendment, which will standardize a best practice to help combat potential elder financial exploitation. We also recommend that broker-dealers voluntarily adopt a practice of notifying the named trusted contacts of their designation. That way, the firm and its client can resolve any complications that may arise (if, for example, the designated person declines to be a trusted contact) well before an emergency arises. We urge the Commission to approve this proposed amendment expeditiously.

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<sup>3</sup> See Securities Exchange Act Release No. 79,215 (Nov. 1, 2016), 81 Fed. Reg. 78,238 (Nov. 7, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-11-07/pdf/2016-26797.pdf> [hereinafter, FINRA Notice].

<sup>4</sup> See, e.g., SEC, Office of the Inv'r Advocate, Rep. on Objectives for Fiscal Year 2015 (June 30, 2014), <https://www.sec.gov/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2015.pdf> ; SEC, Office of the Inv'r Advocate, Rep. on Activities for Fiscal Year 2015 (Dec. 23, 2015), <https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2015.pdf>.

B. Proposed Rule 2165 (Financial Exploitation of Specified Adults)

FINRA also proposes to adopt a new Rule 2165, which would permit members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers.<sup>5</sup> We agree that financial firms should have the ability to pause disbursements, contrary to the explicit instructions of a customer, upon reasonable suspicion of financial exploitation.

Conspicuously absent from the FINRA proposal, however, is any mandatory reporting requirement for firms that pause disbursements because of suspected financial exploitation. The Commission and FINRA should work together to amend the proposal by adding such a reporting requirement.

In our view, if FINRA is going to expand the authority of firms to combat financial exploitation, it should also set appropriate limits on that authority. If a firm's suspicion of elder financial exploitation is strong enough to warrant a pause on a disbursement, it should trigger an obligation to report that suspicion to state and local authorities, such as the state securities commission and Adult Protective Services ("APS"). Such a reporting requirement strikes an appropriate balance of protecting the elderly from financial exploitation while upholding the rights of investors – including the elderly – to their property. A safe harbor for broker-dealers demands counterbalancing safeguards for investors.

Mandatory reporting to local authorities will engage essential resources to protect the victims of elder exploitation. A rapid response is often essential to protect seniors' money before it is lost forever. Moreover, seniors who fall victim to financial abuse may also be at risk of other forms of elder abuse. Thus, there is an urgent need to marshal resources quickly not only to protect the victim's financial assets, but potentially their health and safety as well.

For this reason, we urge FINRA not only to require mandatory reporting to authorities, but also to require firms to provide account information requested by those authorities to conduct their investigation. Firms that report suspicions of elder exploitation to APS should be required to provide client records requested by APS to conduct its investigation. The North American Securities Administrators Association ("NASAA") Model Act contains a similar requirement, and both the Securities Industry and Financial Markets Association ("SIFMA") and National

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<sup>5</sup> SR-FINRA-2016-039, Proposed Rule Change to Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults), at Exhibit 5, Section 2165(b)(1)(A), p. 415 *available at* [http://www.finra.org/sites/default/files/rule\\_filing\\_file/SR-FINRA-2016-039.pdf](http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-039.pdf). The text of Proposed Rule 2165(b)(1)(A) reads that a member may place a temporary hold on a disbursement of funds or securities from the Account of a Specified Adult if "[t]he member reasonably believes that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted."

Adult Protective Services Association (“NAPSA”) have drawn attention to the issue in their comment letters to FINRA. NAPSA urged FINRA to require, or at a minimum, encourage, firms to share client records with APS.<sup>6</sup> SIFMA commented that the proposed rule “should clearly allow member firms to provide the agencies with all information, documentation, and account histories necessary to promote a full, robust investigation.”<sup>7</sup>

Adopting a mandatory reporting provision would better harmonize the proposed Rule with NASAA’s Model Act.<sup>8</sup> We concur with those commenters who, as summarized in FINRA’s proposing release, “recommended consistency between the FINRA proposal and NASAA model as being in the best interests of both investors and financial institutions.”<sup>9</sup>

Though it contemplates that state authorities could extend the pause on disbursements, proposed Rule 2165 provides no mechanism by which firms should report to state authorities in the first place. Some commenters have asked FINRA to clarify the mechanism of communication.<sup>10</sup> A mandatory reporting requirement, we believe, would be the best way to provide clarity.

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<sup>6</sup> NAPSA, Comment Letter on FINRA Regulatory Notice 15-37, Rules Relating to Financial Exploitation of Seniors and Other Vulnerable Adults (Nov. 24, 2015), [http://www.finra.org/sites/default/files/15-37\\_NAPSA\\_comment.pdf](http://www.finra.org/sites/default/files/15-37_NAPSA_comment.pdf).

<sup>7</sup> SIFMA, Comment Letter on FINRA Regulatory Notice 15-37, Rules Relating to Financial Exploitation of Seniors and Other Vulnerable Adults (Dec. 1, 2015), at 3, [http://www.finra.org/sites/default/files/15-37\\_SIFMA\\_comment.pdf](http://www.finra.org/sites/default/files/15-37_SIFMA_comment.pdf).

<sup>8</sup> NASAA Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation, adopted Jan. 22, 2016, available at <http://serveourseniors.org/wp-content/uploads/2015/11/NASAA-Model-Seniors-Act-adopted-Jan-22-2016.pdf>. The Model Act contains an even stricter reporting requirement, which applies whenever firms have a reasonable suspicion of financial exploitation, whether or not they have placed a pause on disbursements.

<sup>9</sup> See FINRA Notice, *supra* note 3, at 78,256.

<sup>10</sup> See, e.g., Eric Arnold and Clifford Kirsch, Sutherland Asbill & Brennan, LLP, on behalf of the Comm. of Annuity Insurers, Comment Letter on File Number SR-FINRA-2016-039, SEC Notice of Filing of FINRA Proposed Rule Change to Amend FINRA Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults) (Nov. 28, 2016), <https://www.sec.gov/comments/sr-finra-2016-039/finra2016039-4.pdf>; Financial Services Roundtable, Comment Letter on Proposed Rule Change to Amend Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults [SR-FINRA-2016-039]) (Nov. 28, 2016), <https://www.sec.gov/comments/sr-finra-2016-039/finra2016039-14.pdf>.

In explaining its decision to exclude a mandatory reporting requirement, FINRA's proposal merely notes that FINRA "would expect members to comply with all applicable state requirements, including reporting requirements."<sup>11</sup> We find it difficult, however, to reconcile that statement with FINRA's earlier one explaining the Purpose of the proposed rule:

"Due to the small number of state statutes currently in effect and the lack of a federal standard in this area, FINRA believes that the proposed rule change would aid in the creation of a uniform national standard for the benefit of members and their customers."<sup>12</sup>

We urge FINRA and Commission staff to work together to revise the proposal to include a mandatory reporting requirement as an element of a new uniform national standard. Doing so would transform a proposal that is in investors' interests to one that is in investors' best interests.

### **III. Conclusion**

We commend FINRA for its initiative, which, along with NASAA's Model Act, legislation by individual states, and other actions, represents important progress in combatting elder financial exploitation. These actions come at a critical time in our nation's history: elder financial exploitation is already upon us and, in light of demographic and other trends, is only expected to grow worse in coming years.<sup>13</sup>

As a society, it is our responsibility to protect the vulnerable. As regulators, we have a special responsibility to provide tools that will enable firms to do the right thing, but to balance those tools with appropriate safeguards. For that reason, we urge FINRA and the Commission to work together to consider how best to craft a mandatory reporting requirement to state and local authorities and, in addition, a requirement for such firms to provide account-level information as requested by state and local authorities, including APS agencies, to conduct their investigation.

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<sup>11</sup> See FINRA Notice, *supra* note 3, at 78,255.

<sup>12</sup> See FINRA Notice, *supra* note 3, at 78,239.

<sup>13</sup> See Rick Fleming, Investor Advocate, SEC, Speech at The American Retirement Initiative Winter Summit, Protecting Elderly Investors from Financial Exploitation: Questions to Consider (Feb. 5, 2015), <https://www.sec.gov/news/speech/protecting-elderly-investors-from-financial-exploitation.html>.

Should you have any questions, please do not hesitate to contact me or Stephen Deane, my advisor for combatting elder financial exploitation, at (202) 551-3302.

A handwritten signature in black ink, appearing to read "Rick Fleming". The signature is fluid and cursive, with the first name "Rick" being more prominent than the last name "Fleming".

Rick Fleming  
Investor Advocate