LPL Financial

David P. Bergers
General Counsel

75 State Street
Boston, MA 02109
617.423.3644 office

November 28, 2016

Submitted Electronically to rule-comments@sec.gov

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-FINRA-2016-039, Proposed Rule Change to Amend Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults)

Dear Mr. Fields:

LPL Financial LLC ("LPL") appreciates the opportunity to comment on the proposal ("Proposal") by the Financial Industry Regulatory Authority ("FINRA") to amend Rule 4512 (Customer Account Information) and adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults).[1] LPL is fully supportive of FINRA's proposal and its efforts to protect senior and other vulnerable adult investors. We also appreciate FINRA's collaboration with the North American Securities Administrators Association (NASAA) to ensure that FINRA's proposal complements NASAA's Model Act to Protect Vulnerable Adults from Financial Exploitation.[2] As reflected in our comments below, we recommend that:

- FINRA clarify that the safe harbor for temporary disbursement holds continues when a court or state regulator or agency extends a hold past the 25 day period;

[1] *See* 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), Securities Exchange Act Release No. 79215 (Nov. 1, 2016), 81 FR 78238 (Nov. 7, 2016) (SR-FINRA-2016-039), available at http://www.finra.org/industry/rule-filings/sr-finra-2016-039 (last visited Nov. 20, 2016).

[2] NASAA Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation, adopted January 22, 2016, available at http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/NASAA-Model-Seniors-Act-adopted-Jan-22-2016.pdf (last visited Nov. 28, 2016).

- the requirement to notify all authorized parties on an account of a temporary disbursement hold not apply to anyone the firm reasonably believes is committing the financial exploitation; and

- FINRA allow at least 12 months for implementation of the proposal.

I. Overview of LPL

LPL is a leader in the retail financial advice market and, as of September 30, 2016, served about $502 billion in advisory and brokerage assets. LPL is the nation's largest independent broker-dealer, a top custodian for registered investment advisors, and a leading independent consultant to retirement plans. We provide proprietary technology solutions, comprehensive clearing and compliance services, practice management programs and training, and independent research to more than 14,000 independent financial advisors and over 700 financial institutions. As of September 30, 2016, our financial advisors provided financial advice to investors with assets in approximately 4.7 million client accounts, and serviced an estimated 45,000 retirement plans with an estimated $129 billion in retirement plan assets. LPL also supports approximately 4,200 financial advisors licensed and affiliated with insurance companies with customized clearing, advisory platforms, and technology solutions. LPL and its affiliates have more than 3,200 employees with primary offices in Boston, Charlotte, and San Diego.

LPL helps independent financial advisors establish their own successful businesses through which they can offer independent financial guidance and advice to investors. Our independent financial advisors build long-term relationships with their clients across the U.S. by guiding them through the complexities of investment decisions, retirement solutions, financial planning, and wealth management. In addition, LPL supports financial advisors and program managers at community and regional banks and credit unions by enabling them to offer investors a wide array of investment, advisory, and insurance products.

II. Comments and Recommendations

A. Support of the Proposal

Financial exploitation of seniors and other vulnerable adults ("specified adults") is a significant problem that continues to grow. Financial advisors and firms work closely with investors and their investments, and therefore may observe signs of potential fraud, exploitation, and abuse. This proposal will help protect specified adults from financial exploitation. It will also provide firms with added tools for responding to situations that we reasonably believe involve financial exploitation of specified adults.

The proposal's requirements relating to investors' trusted contact persons will have significant benefits for investors. While firms can already seek such information from investors, making this a requirement may facilitate these sometimes difficult conversations with investors. When a firm is concerned that a client has diminished capacity or is being financially exploited, having the authority to discuss such concerns with a client's trusted contact can help a firm assist the client. Further, when a firm is addressing a situation involving potential financial exploitation of a specified adult, a safe harbor for temporarily holding disbursements of the specified adult's assets may be beneficial. These tools will assist firms in thwarting financial exploitation.

B. Application of the Safe Harbor Beyond 25 Days When Temporary Holds Are Extended by State Authorities and Courts

We believe that a key element of FINRA's proposal is to provide firms with a safe harbor when they temporarily hold disbursements of funds for up to 25 business days due to concerns about financial exploitation of specified adults. The proposal states that a state regulator or agency or a court can extend a temporary disbursement hold beyond the 25 business day period.[3] LPL seeks clarification as to whether the safe harbor would apply in such situations. We believe this approach is both appropriate and consistent with the spirit of the proposal. For example, when a state regulator extends a temporary hold to allow adequate time for investigation, continuing the safe harbor is reasonable in light of the shared interest of both the state and the firm in stopping financial exploitation.

C. Requirement to Notify All Authorized Parties Should Not Apply to Persons Reasonably Believed to Be Committing the Financial Exploitation

Proposed Rule 2165(b)(1)(B)(i) would require firms to notify all parties authorized to transact business on an account of a temporary hold of a disbursement and the reason for the hold. We recommend that this requirement not apply to any person the firm reasonably believes is engaging in the financial exploitation. Requiring that such a person be informed of the hold and the reasons for it could exacerbate an already difficult situation. This approach aligns with the exception for notification of a "trusted contact person" if the firm reasonably believes such person is engaging in the financial exploitation.[4]

D. Implementation

If the Securities and Exchange Commission approves this proposal, firms will need to make changes to their technology, systems and forms, as well as amend and update their policies, procedures and training. Accordingly, we believe that an implementation period of at least 12 months would be appropriate.

* * * * *

---

[3] *See* Proposal, 81 FR at 78249 and proposed Rule 2165.01.

[4] *See* Proposed Rule 2165(b)(1)(B)(ii).

We would be pleased to provide additional information regarding this topic. If you have any questions regarding this letter, please do not hesitate to contact me or Sarah Gill, Senior Vice President and Head of Regulatory Policy, Legal and Government Relations, at [redacted].

Sincerely,

David P. Bergers