



Jigar Gandhi
Counsel

November 28, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Re: Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults)

File Number SR-FINRA-2016-039

Dear Mr. Fields:

On behalf of the American Council of Life Insurers (“ACLI”)¹ and its 280-member life insurance companies, we greatly appreciate the opportunity to provide the Securities and Exchange Commission (“SEC”) our input on the proposed rule change to amend Financial Industry Regulatory Authority (“FINRA”) Rule 4512 and to adopt FINRA Rule 2165. As always, we welcome the opportunity to provide our views on a regulatory proposal of significance to the life insurance industry.

ACLI agrees with the intent of FINRA’s rule filing and believes that protecting senior and vulnerable investors is crucial. ACLI further agrees that while financial exploitation is devastating for any investor, it is especially harmful to senior and vulnerable investors who often rely on fixed incomes.² ACLI members work to provide insurance products, such as life insurance and annuities, to all investors to ensure consistent benefits throughout their lives. However, while ACLI strongly endorses the purpose of the rule filing, we have concerns regarding the reach of the proposal. ACLI also has some concerns, considering recent state level developments, of disparate standards between state requirements and the proposed FINRA requirements.

We welcome the opportunity to continue to work with SEC on this and future regulatory proposals. Our specific concerns are below.

Summary of Proposal

The proposed rule change would amend FINRA Rule 4512 to require FINRA members to make reasonable efforts to obtain the name and contact information for a trusted contact person upon the

¹ American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 280 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 95 percent of industry assets, 92 percent of life insurance premiums, and 97 percent of annuity considerations in the United States. Learn more at www.acli.com.

² See Release No. 34-79215; File No. SR-FINRA-2019-039.

opening of a non-institutional customer's account.³ The proposal defines "reasonable efforts" as simply asking a customer for the name of a trusted contact person and further does not prevent the opening of an account if a name is not provided.⁴ At the time of account opening, a FINRA member would disclose in writing to the customer that the FINRA member may contact the trusted contact and disclose information about the customer's account to address possible financial exploitation.

The proposed rule change would also permit a FINRA member that reasonably believes that financial exploitation may be occurring to place a temporary hold on disbursements of funds or securities from the account of a "specified adult."⁵ By placing a temporary hold, the Supplementary Materials to Rule 2165 would explicitly provide a safe harbor to members from FINRA Rule 2101, 2165, and 11870.⁶ The proposed rule change would not require a hold be placed on a specified adult's account.⁷ The proposed rule change would define a specified adult as "(a) a natural person age 65 and older; or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests."⁸

ACLI's Summary of Positions

- The proposed rule should differentiate between transactions in brokerage accounts and those concerning securities that are not held in brokerage accounts, such as variable annuity contracts and variable life insurance policies.
- There needs to be uniform language between self-regulatory organization rules and state-based rules. This proposal would not explicitly provide that.

ACLI believes that the Proposed Rule Change Does Not Adequately Differentiate between Brokerage Account Transactions and Transactions in Securities Sold by a Broker Dealer, but Not Held in a Brokerage Account

In its proposed rule change, the term "account" is defined as "any account of a member for which a specified adult has the authority to transact business."⁹ We are concerned that this definition is overly broad, creating uncertainty as to whether it includes insurance products, such as annuities, sold by a life insurance company affiliated broker dealer (or life insurance company that is a broker dealer). While many life insurers offer a variety of insurance products, including variable annuities, through broker dealers, those contracts are not held in a brokerage account and are subject to the insurance laws of the state of issuance, which may not permit the hold on disbursements anticipated by the proposed rule. Additionally, many life insurance products are sold by broker dealers that are not affiliated with the life insurance company and thus the life insurance company is not able to collect, store or use information gathered by a broker dealer regarding a trusted contact person.

The ACLI respectfully requests that the proposed definition of "account" be modified to refer to a brokerage account and clarify that transactions in securities, such as variable insurance products, sold by a broker dealer, but not custodied in a brokerage account, are not subject to the rule. Under such an arrangement, as opposed to a brokerage account, the risk of certain violations of securities rules, such as churning is lower, and the insurance policy or annuity contract is subject to state insurance law.

³ See proposed Rule 4512(a)(1)(F).

⁴ See proposed Supplementary Material .06 (b) to Rule 4512.

⁵ See proposed rule 2165 (b)(1)(B)(ii).

⁶ See proposed Supplementary Material .01 to Rule 2165.

⁷ *Id.*

⁸ See proposed Rule 2165 (a)(1).

⁹ See proposed Rule 2165(a)(2).

ACLI Requests Uniform SRO and State Level Requirements and Clarification on Other Requirements

As stated in the filing, “[d]ue 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.”¹⁰ While ACLI encourages the development of uniform requirements, it does not necessarily agree that the promulgation of this proposal will lead to a uniform standard. Further, as stated in the filing, the North American Securities Administrators Association (“NASAA”), has promulgated a model state act to protect vulnerable adults. While ACLI appreciates the steps NASAA and FINRA have taken to bring their approaches in line, we believe there is still work to do.

Life insurers work with distributors who help solicit and distribute insurance products. These distributors are subject to both FINRA and state securities regulator jurisdiction. If a state and FINRA have differing standards, a distributor would be placed in the difficult position of choosing one set of requirements over the other. ACLI acknowledges that as the filing states only a small number of states have enacted statutes, however it would still be difficult for distributors in those states to again choose between a state and SRO requirement. This would also place insurers in a compliance quagmire, navigating with competing requirements when dealing with their distributors. FINRA should work with NASAA and the states to ensure a uniform standard.

In addition, some states allow broker-dealers to hold or “pause” a transaction, not just a disbursement.¹¹ ACLI would request guidance from FINRA on what to do in instances where state law allows for holds on transactions or reallocations where financial exploitation is suspected in variable products.

Finally, ACLI request clarification on where funds from a disbursement should be maintained by a broker-dealer when they are not disbursed to a customer.

Conclusion

In summary, ACLI urges that FINRA work to clarify the requirements under the proposed rule and continue to work with state regulators to ensure uniform and consistent requirements. Thank you for your consideration of these comments, and please contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jigar Gandhi', with a stylized, cursive script.

Jigar Gandhi

¹⁰ See Release No. 34-79215; File No. SR-FINRA-2019-039.

¹¹ See Wash. Rev. Code. §74.34.215.