



National Association of Insurance and Financial Advisors

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November 28, 2016

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File Number SR-FINRA-2016-039 (Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; 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 Ladies and Gentlemen:

This letter provides the comments of the National Association of Insurance and Financial Advisors (NAIFA) on the Financial Industry Regulatory Authority's (FINRA) proposed new FINRA Rule 2165 (Financial Exploitation of Specified Adults).

Founded in 1890 as The National Association of Life Underwriters, NAIFA is one of the nation's oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. Approximately two-thirds of all NAIFA members are licensed as registered representatives of broker-dealers and market and service mutual funds and other investment products to their clients.

As both FINRA and the SEC have noted, financial exploitation of vulnerable adults, particularly seniors, is already a significant and growing problem. Proposed FINRA Rule 2165 will enable broker-dealers to place a temporary hold of fifteen (15) days on a client's requested disbursement of funds or securities if the broker-dealer suspects that financial exploitation of the client has occurred, is occurring, or will occur. NAIFA commends FINRA for proposing a new rule to help prevent the financial exploitation of vulnerable adults. While NAIFA generally supports the FINRA proposal ("Proposal"), we recommend that the following revisions be made to proposed Rule 2165 before the rule is given final approval by the SEC:

1. **Safe Harbor contained in Supplementary Material .01.** NAIFA strongly recommends that the SEC amend the proposed rule by moving the legal "safe harbor" provision currently found in Supplementary Material .01 to the body of the rule itself, and by also extending the legal protection contained in that safe harbor to registered representatives of the broker-dealer.

Supplementary Material .01 is an important provision that provides broker-dealers with a legal safe harbor when placing a temporary hold on a vulnerable adult client's disbursement request. Given the importance of this provision in providing broker-dealers and their associated persons with protection from liability when they are trying to protect their clients from financial exploitation, NAIFA believes it is important and appropriate that this provision be included in the main body of the rule itself rather than in the Supplementary Material. A similar shift from the Supplementary Material to the body of the rule was made with respect to the requirement that members establish and maintain written supervisory procedures for compliance with the rule, and NAIFA recommends that a similar transfer to the rule itself is also appropriate for the safe harbor provision.

With respect to the scope of coverage of the safe harbor provision, FINRA notes in its filing with the SEC that this safe harbor provision extends to both members and their associated persons when placing temporary holds on disbursements.¹ However, subsection (c)(2) of the proposed rule specifically references only specific associated persons of the broker-dealer—those who serve in a supervisory, compliance or legal capacity for the member—as being able to place a temporary hold on a client request for a disbursement. While NAIFA strongly agrees that a registered representative should not have the independent authority to place a temporary hold on a client's request for a disbursement, NAIFA is concerned that the language in the safe harbor provision will not be read or interpreted to include a registered representative who reports possible suspicious client account activity as being within the protection of the safe harbor.

In most instances, the broker-dealer (and its supervisory/compliance/legal associated persons) will most likely learn of potential financial exploitation of a vulnerable adult client through a registered representative. As FINRA indicated, registered representatives may be in a position to first notice that a client's financial requests are unusual or suspicious². NAIFA is concerned that without clear and sufficient protection from liability, a registered representative could possibly be subject to liability if that registered representative reports suspected financial exploitation of a client to the broker-dealer. Clarifying that the safe harbor provision includes within its scope registered representatives would ensure that those individuals are protected from liability for disclosure of a client's requested disbursement and would encourage them to report possible financial exploitation to a broker-dealer's appropriate legal, supervisory, or compliance personnel. NAIFA requests that appropriate revisions be made to the safe harbor provision to expressly indicate that registered representatives are within the scope and coverage of this provision.

2. **Determination of Mental/Physical Impairment.** While a member and/or its associated persons may be in a position to observe behaviors that might be indicators of physical or mental impairment, they are not qualified medical professionals and do not have the proper training or experience to make such determinations. To ensure that inappropriate obligations and responsibilities with respect to such a determination are not imposed on a member or its associated persons, NAIFA recommends that the following language be added to the end of

¹ http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-039.pdf (see p.28)

² http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-039.pdf (see pg.14)

Supplementary Material Section .03 of Proposed Rule 2165: "...; provided, however, that any such belief or facts and circumstances observed in the member's business relationship with the natural person shall not create an assumption or implication that the member or its associated persons are qualified to, have the ability to, or are responsible for making a determination about any individual's mental or physical condition or possible mental or physical impairment."

3. **Notification of State Securities Administrator.** State securities regulators have a significant interest in the protection and well-being of their state's residents. In addition, these regulators can play an important role in determining if financial exploitation of a senior or vulnerable adult has occurred or is being attempted. In light of this, the proposed rule should include a provision to the effect that if a member or an associated person identified in subsection (c)(2) of the rule places a temporary hold on a disbursement of funds or securities because of the reasonable belief that financial exploitation of a Specified Adult is occurring/has occurred/will be attempted, the associated person or firm shall then notify the appropriate state securities administrator of the action taken. The safe harbor provision should also be expanded to include protection against liability for actions taken in connection with notifying the appropriate state authorities. Thank you for your consideration of our comments and suggested revisions to proposed Rule 2165. Please contact the undersigned at the information below if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Gary Sanders". The signature is written in black ink and is positioned below the word "Sincerely,".

Gary Sanders
Counsel and Vice President, Government Relations
National Association of Insurance and Financial Advisors
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