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November 28, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Via Email: rule-comments@sec.gov

Re: File Number SR–FINRA–2016–039

Dear Mr. Fields:

On behalf of our members, the Insured Retirement Institute (“IRI”) appreciates the opportunity to provide comments to the Securities Exchange Commission (SEC) on the Financial Industry Regulatory Authority (“FINRA”) proposal to amend FINRA Rule 4512 (Customer Account Information) and adopt new FINRA Rule 2165 (Financial Exploitation of Specified Adults) (collectively, the “Proposal”). The Proposal would impose new obligations on FINRA member firms to help detect and prevent financial exploitation of vulnerable adults. IRI and its members agree with and support the overall objectives of the Proposal, and applaud the SEC and FINRA for taking this positive and timely step to address this critical issue. In this letter, we will identify and explain a number of potential unintended consequences, and offer constructive suggestions to address these concerns without impeding the intended goals of the Proposal.

About IRI

IRI is the only national trade association that represents the entire supply chain of the retirement income industry. IRI has more than 500 member companies, including major life insurance companies, broker-dealers, banks, and asset management companies. IRI member companies account for more than 95% of annuity assets in the United States, include the top 10 distributors of annuities ranked by assets under management, and are represented by more than 150,000 financial professionals serving over 22.5 million households in communities across the country.

Much like the SEC and FINRA, IRI has undertaken significant efforts to help protect older Americans and other vulnerable adults from financial exploitation. The population of older Americans is one of the fastest growing cohorts in the United States, with this segment of our nation's population expected to double in size to nearly 84 million Americans by 2050¹. This continued growth highlights the need for greater focus on financial elder abuse, cognitive impairment, and diminished capacity.

Our initiatives are intended to raise awareness of these issues, and to provide a variety of older investor protection resources for consumers, financial advisors, and financial services firms (available at irionline.org/research-and-education/protecting-older-investors), including:

- An interactive map to find local resources to protect older consumers who may be the victim of financial elder abuse.
- Information for consumers to help prevent becoming the victim of financial fraud.
- Tip sheets for financial advisors on spotting signs of diminished capacity and financial elder abuse.
- Regulatory notices, guidance and reports for financial services firms on interacting with older clients.

IRI also has convened Older Investor Summits to explore the issues of diminished capacity and financial elder abuse with key stakeholders, including representatives from the U.S. Department of Health and Human Services Administration for Community Living, the U.S. Securities and Exchange Commission, and U.S. Consumer Financial Protection Board's Office of Older Investors, as well as leading executives from financial services companies, nationally recognized academics and researchers, and other thought leaders. Throughout the event, participants identified a number of best practices and other measures firms and financial professionals can take to protect older clients from financial harm.

With this perspective in mind, we have a number of comments about the Proposal, including concerns about (a) the limitations on the scope of information that members may discuss with Trusted Contact Persons, (b) the limitations on the scope of transactions on which a temporary hold may be placed, (c) the time-frames for notifications to be provided to the Trusted Contact Persons and/or immediate family members, and (d) the requirement to notify all authorized parties on the account and immediate family members.

These concerns are explained in greater detail below. To address these concerns, we respectfully request that the proposed amendments to Rule 4512 and proposed Rule 2165 be revised as follows:²

Proposed Amendments to Rule 4512

- • • Supplementary Material: -----

¹ U.S. Census Bureau, *An Aging Nation: The Older Population in the United States – Population Estimates and Projections* (May 2014), available at <https://www.census.gov/prod/2014pubs/p25-1140.pdf>.

² We have intentionally omitted those portions of the Proposal with respect to which we are not requesting any revisions at this time.

.06 Trusted Contact Person

(a) With respect to paragraph (a)(1)(F) of this Rule, at the time of account opening, a member shall disclose in writing, which may be electronic, to the customer that the member or an associated person of the member is authorized to contact the trusted contact person and disclose **any and all** information about the customer's account to confirm the specifics of the customer's current contact information, health status, ~~and~~ the identity of any legal guardian, executor, trustee or holder of a power of attorney, and as otherwise permitted by Rule 2165, **including information necessary to investigate whether financial exploitation (as defined in Rule 2165) of a Specified Adult (as defined in Rule 2165) has occurred, is occurring, has been attempted, or will be attempted.**

Proposed Rule 2165

2165. Financial Exploitation of Specified Adults

(b) Temporary Hold on Disbursements **and Other Account Transactions**

(1) A Qualified Person may place a temporary hold on a disbursement of funds or securities from, **or any other transaction involving,** the Account of a Specified Adult if:

(A) The Qualified Person reasonably believes that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted; and

(B) The member not later than ~~two-seven~~ business days provides notification of the temporary hold ~~and the reason for the temporary hold~~ to:

(i) ~~all parties~~ **any party** authorized to transact business on the Account; and

(ii) the Trusted Contact Person, unless the Trusted Contact Person is unavailable or the member reasonably believes that the Trusted Contact Person has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult, in which case the member ~~shall~~ **may** attempt to contact an immediate family member of the Specified Adult, if available, unless the member reasonably believes that the immediate family member has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and

(C) The member immediately initiates an internal review of the facts and circumstances that caused the Qualified Person to reasonably believe that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted, **which may include discussing any information relevant to such internal review with the Trusted Contact Person (or an immediate family member of the Specified Adult if the member reasonably believes that the Trusted Contact Person has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult) if and to the extent deemed necessary and appropriate in the member's sole discretion.**

(2) The temporary hold authorized by this Rule will expire not later than ~~15-45~~ business days after the date that the Qualified Person first placed the temporary hold ~~on the disbursement of funds or securities~~, unless sooner terminated by an order of a court of competent jurisdiction or extended either by an order of a court of competent jurisdiction or pursuant to paragraph (b)(3) of

this Rule. **In the event that an action has been initiated to request an extension of a temporary hold from a court of competent jurisdiction and such court has not ruled on such request within the specified period, the temporary hold will, upon notification thereof by the member to FINRA, be deemed automatically extended until such time as the court rules on the request, and unless or until such automatic extension is terminated by FINRA.**

(3) Provided that the member's internal review of the facts and circumstances under paragraph (b)(1)(C) of this Rule supports the Qualified Person's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted, the temporary hold authorized by this Rule may be extended by a Qualified Person for no longer than ~~15~~ **45** business days following the date authorized by paragraph (b)(2) of this Rule, unless sooner terminated by an order of a court of competent jurisdiction.

(c) Record Retention

Members shall retain records related to compliance with this Rule, which shall be readily available to FINRA, upon request. The retained records shall include, but shall not be limited to, records of: (1) request(s) for disbursement **or other transactions** that may constitute financial exploitation of a Specified Adult and the resulting temporary hold; (2) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted, or will be attempted underlying the decision to place a temporary hold **pursuant to paragraph (b)(1) of this Rule on a disbursement**; (3) notification(s) to the relevant parties pursuant to paragraph (b)(1)(B) of this Rule; and (4) the internal review of the facts and circumstances pursuant to paragraph (b)(1)(C) of this Rule.

• • • Supplementary Material: -----

.01 Applicability of Rule. This Rule provides members with a safe harbor when they exercise discretion in placing temporary holds on disbursements of funds or securities from, **or other transactions involving,** the Account of a Specified Adult under the specified circumstances denoted in the Rule. This Rule does not require members to place temporary holds on disbursements of funds or securities from, **or other transactions involving,** the Account of a Specified Adult.

Limitation on Information to be Discussed with Trusted Contact Persons

The ability to speak with a trusted contact person is essential for firms to fully and thoroughly investigate suspected financial exploitation. However, the Proposal appears to limit the scope of discussions with trusted contact persons to merely confirming the potential victim's contact information, health status, and legal representatives, and providing notice of temporary holds on disbursements. IRI and its members believe firms should have the discretion to disclose and discuss any information relevant to the investigation to the trusted contact person. The requested revisions provided above include changes to Supplementary Material .06 to Rule 4512 and paragraph (b)(1)(C) of Rule 2165 to address this concern.

Limitation on Transactions that May Be Delayed

Under the Proposal, a Qualified Person is permitted to delay disbursements if the Qualified Person “reasonably believes that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted”. However, disbursements are just one way in which financial exploitation can occur. Seniors and other vulnerable adults can also potentially be harmed by, for example, investment re-allocations, beneficiary changes, transfers to a joint account, execution of other brokerage instructions and other account activities. As such, we believe the Proposal should be revised to permit firms to delay any financial transaction it reasonably believes will result in financial exploitation. Our requested revisions to paragraphs (b) and (c) of proposed Rule 2165 and Supplementary Material .01 to proposed Rule 2165 would address this concern.

Applicable Time-Frames for Notifications

We believe the time-frames provided in paragraph (b) of proposed Rule 2165 are insufficient and should be extended. Notifications and investigations of suspected abuse cannot and should not have to be rushed merely to satisfy an arbitrary deadline. When a qualified person suspects financial abuse, the employee will have to report such suspicions to the firm’s compliance unit, which will then have to coordinate with the firm’s legal, internal audit, and fraud units, to review and investigate the report before determining whether the transaction should be delayed. It is impractical to expect this notification and investigation process to be effectively completed in two (2) business days and fifteen (15) business days respectively. As a result, some transactions where abuse actually is occurring may not be delayed because the firm’s investigation could not be completed in two days, thereby defeating the purpose of the Proposal.

In addition, some firms may simply decide to use a lower threshold for delaying transactions to maximize the likelihood of preventing financial abuse, thereby significantly increasing the burden on the member to investigate numerous cases in which suspicions ultimately prove to be unfounded. As such, we believe the time frame for notification should be extended to at least seven (7) business days to allow firms adequate time to conduct internal reviews and that internal reviews be extended to minimum of forty-five (45) business days in the instances of sub-sections (2) and (3), as it is not reasonable to assume that a court of competent jurisdiction would be able to take action within fifteen (15) business days.

Moreover, we note that there may be instances in which a court of competent jurisdiction may not have the resources to take action to extend holds within the applicable time-frames. As such, we believe it would be appropriate to permit automatic extensions under such circumstances upon notification to FINRA until such time as a court of competent jurisdiction takes action on an extension request, unless FINRA takes action to deny the automatic extension.

The requested revisions to paragraph (b) of proposed Rule 2165 reflect these suggested changes.

Mandatory Notifications to All Parties and Immediate Family Members

As proposed, Rule 2165 would require that notification of a hold be provided to all parties authorized to transact business on the Account, as well as the Specified Adult’s Trusted Contact Person or an

immediate family member (if the Trusted Contact Person is suspected of involvement in the abusive conduct). We have two concerns with this requirement. First, we note that it is not uncommon for multiple parties to be authorized to transact business on an account, and that requiring notification to all such authorized parties as a condition of imposing a temporary hold could inadvertently interfere with the intent of the Proposal if a member has trouble locating one or more authorized parties. Second, the financial professional who has a relationship with a particular client may have reason to believe the client would not want an immediate family member to be contacted even if his or her Trusted Contact Person is unavailable or suspected of involvement in financial exploitation. We believe it would be appropriate to give discretion to the member to determine whether it would be appropriate to contact an immediate family member under those circumstances, rather than requiring it in all cases, as contemplated the Proposal. Our requested revisions to paragraph (b)(1)(B)(i) and (ii) of proposed Rule 2165 would address these concerns.

Need for Regulatory Coordination

Senior protection is an issue of concern to a wide variety of federal and state regulators. As FINRA moves forward with the Proposal, we strongly encourage FINRA to engage in discussions and coordinate with these other agencies. In particular, IRI and its members believe it is critical that FINRA work with NASAA, the NAIC and state insurance regulators in an effort to develop a cohesive regulatory framework that extends from product manufacturers (e.g., insurance companies) to distribution (e.g., broker-dealers, investment advisers, insurance agencies and producers), and aligns with related issues (e.g., privacy, anti-money laundering). Additionally, we respectfully request that FINRA consult directly with the Department of Labor on the rule. We note there are unanswered questions around the rule's application to members who interact with retirement plan sponsors and participants, especially when the plan sponsor has the fiduciary obligation to approve the distribution and the member is merely acting as an agent for the plan's record-keeper to facilitate transactions. This will ensure that all consumers have the same level of protection regardless of the type of product they buy, avoid imposing potentially conflicting rules on firms that operate in multiple lines of business, and empower firms and advisors to protect their clients against those seeking to take advantage of them during their most vulnerable years.

Thank you again for the opportunity to comment on the Proposal. Please feel free to contact Jason Berkowitz, IRI's Vice President & Counsel for Regulatory Affairs (██████████, ██████████), or Paul Richman, IRI's Vice President Government Affairs (██████████, ██████████), if you have any questions or would like to discuss this matter further.

Sincerely,



Catherine J. Weatherford
President & CEO
Insured Retirement Institute