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November 28, 2016

Via e-mail: rule-comments@sec.gov

Mr. Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

**RE: SR-FINRA-2016-039: Proposed Rule Change to Adopt FINRA Rule 2165
(Financial Exploitation of Specified Adults)**

Dear Mr. Errett:

Wells Fargo Advisors (“WFA”) appreciates the opportunity to provide this letter in response to the Financial Industry Regulatory Authority’s (“FINRA”) proposed rule filing with the Securities and Exchange Commission (the “SEC”), SR-FINRA-2016-039 (the “Current Proposal”), to adopt FINRA Rule 2165 and to amend FINRA Rule 4512. The Current Proposal would permit members to place temporary holds on the disbursements of funds or securities from the accounts of specified customers when there is a reasonable belief of financial exploitation. Also, the Current Proposal would require members to make reasonable efforts to obtain the name and contact information for a trusted contact person for a customer’s account.¹

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.5 trillion in client assets. We employ approximately 15,042 full-service financial advisors in branch offices in all 50 states and 3,900 licensed financial specialists in

¹ FINRA File No. SR-FINRA-2016-039 – Proposed Rule Change to Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults), *available at* <http://www.finra.org/industry/rule-filings/sr-finra-2016-039>

retail bank branches across the country.² WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve their financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

I. EXECUTIVE SUMMARY

WFA supports FINRA's goal of protecting senior investors and other vulnerable adults through both rulemakings such as the Current Proposal and other initiatives such as the FINRA Securities Helpline for Seniors.³ Abuse of elderly and incapacitated adults is a pervasive problem in our society, and with the rapidly aging population, it will most likely continue to be an area of great concern.⁴ Assets lost due to financial exploitation of these individuals have been estimated to be at least \$2.9 billion per year.⁵

WFA understands the magnitude of this problem and has taken a proactive stance in protecting our elderly and our vulnerable adult clients. In June of 2014, WFA formed its Elder Client Initiatives (ECI) team. The mission of this team is to provide our financial advisors with a clearly defined process to address the financial exploitation of these vulnerable individuals. Some of the important work the ECI team has accomplished includes changing WFA's general account disclosure document, which enables the firm to intervene and seek court or administrative assistance when there is suspected financial exploitation, dementia or undue influence. In addition to the account disclosure document, WFA created and implemented the "Emergency Contact Authorization" document that allows WFA, when it suspects possible abuse or dementia, to contact a trusted person as designated by the client. Furthermore, WFA has taken the approach of being a mandatory reporter of potential elder abuse across all 50 states, regardless of state law reporting requirements. Finally, ECI may involve state regulators in some of the abuse cases under the theory that the abuse is happening in connection with the purchase or sale of securities. All of these steps have allowed WFA to better protect our older and vulnerable clients from financial exploitation.

WFA is committed to the prevention of financial exploitation of our most vulnerable clients as outlined in the Current Proposal. However, there are areas within the Current Proposal which could be strengthened to provide the industry with the regulatory support needed to better

² "Wells Fargo Advisors" is the trade name for Wells Fargo Clearing Services, LLC ("WFCS"), a dually-registered broker-dealer and investment adviser, and a separate non-bank affiliate of Wells Fargo. Prior to November 11, 2016, WFCS operated as two separately registered broker-dealers, Wells Fargo Advisors, LLC and First Clearing, LLC. "First Clearing" is the trade name for WFCS's clearing business providing services to unaffiliated introducing broker-dealers. WFCS is affiliated with Wells Fargo Advisor Financial Network ("FiNet"), a broker-dealer also providing advisory and brokerage services. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

³ See [FINRA Securities Helpline for Seniors](#)

⁴ Consumer Financial Protection Bureau, Report and Recommendations: Fighting Elder Financial Exploitation through Community Networks, *available at* http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/082016_cfpb_Networks_Study_Report.pdf

⁵ The MetLife Study of Elder Financial Abuse, Crimes of Occasion, Desperation, and Predation Against America's Elders, *available at* <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf>, p. 2

protect clients from financial exploitation. WFA would like to see the Current Proposal broadened to allow members to place temporary holds on account transactions, not just holds on the disbursement of funds from the account.⁶ We also believe that the safe harbor should be expanded to apply in situations when the firm suspects financial exploitation may be occurring and reaches out to an individual reasonably connected to the account, even though not authorized by the client, because the trusted contact person is unavailable. Additionally, WFA requests that the rule explicitly state that the safe harbor covers the associated person who actually places the temporary hold on behalf of the member firm. Finally, WFA believes that the timeframe for implementation of the Current Proposal should be 12 months from the effective date.

II. CURRENT PROPOSAL

The Current Proposal requires firms to make reasonable efforts to obtain the name and contact information for a trusted contact person for a customer's account.⁷ In addition, firms are permitted to place a temporary hold on the disbursement of funds or securities from a customer's account when there is a reasonable belief of financial exploitation.⁸ If a firm chooses to place a temporary hold, the rule requires the firm to notify the trusted contact person of the hold.⁹

III. DISCUSSION

As stated above, WFA vigorously supports FINRA's initiatives aimed at protecting senior investors and vulnerable adults. We believe the Current Proposal is a beneficial regulation, but we believe that it can be improved to provide stronger protections for our most vulnerable clients. Therefore, WFA recommends the following changes be made to the Current Proposal before receiving SEC approval:

A. The Safe Harbor Should Apply to Temporary Holds Placed on Account Transactions, Not Just Disbursements.

In the Current Proposal, FINRA provides a "safe harbor" from FINRA Rules 2010, 2150 and 11870 when member firms decide to place a temporary hold on disbursements of funds or securities from accounts of "specified adults" – those over age 65 and those who are at least age 18 and are believed to have a "mental or physical impairment that renders the individual unable to protect his or her own interests."¹⁰ The Current Proposal does not apply to members who place holds on account *transactions*, though FINRA stated in its rule filing it may consider extending the safe harbor to cover securities transactions in the future.¹¹

⁶ SR-FINRA-2016-039, Proposed Rule Change to Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults), October 19, 2016, available at http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-039.pdf

⁷ Ibid., at Exhibit 5, Section 4512(a)(1)(F), p. 412

⁸ Ibid., at Exhibit 5, Section 2165(b)(1), p. 415

⁹ Ibid.

¹⁰ Ibid., at Exhibit 5, Section 2165(a)(1), p. 414

¹¹ Ibid., at p. 40

WFA urges FINRA to consider extending the safe harbor under the Current Proposal to protect members who place temporary holds on account transactions, in addition to holds on disbursements. Situations may arise where a client will instruct a firm to sell out of a security prior to taking a disbursement. This may lead to unfavorable tax consequences or market loss that could have been avoided had the member been able to not act on the order. Thus, if members are provided a safe harbor in placing holds on these types of account transactions, the member can intervene at an earlier point in time, preventing both emotional and financial harm to the client.

B. The Safe Harbor Should Apply When a Member Firm Contacts an Individual Reasonably Connected to the Account When The Trusted Contact Person is Not Available.

Under Regulatory Notice 15-37, if the member firm chose, within its discretion, to place a temporary hold on an account in the event the member suspected financial exploitation was occurring, the member would be required to contact the client's "immediate family."¹² In our comment letter to Regulatory Notice 15-37, we requested that definition of "immediate family member" be expanded to include "reasonably associated individual."¹³ The Current Proposal has completely eliminated the reference to "immediate family member," with FINRA citing that privacy concerns may be at issue if contacting an immediate family member were a requirement.¹⁴

While WFA agrees that *requiring* a member to contact an immediate family may be too restrictive and result in privacy issues, WFA ardently believes that expanding the safe harbor to cover instances in which a member uses its discretion to contact a person reasonably believed to be connected with the account owner when the trusted contact person is unavailable (either because the trusted contact person was not identified by client, is the suspected wrongdoer, or cannot be found) would greatly strengthen the Current Proposal, making it an extremely effective tool in protecting our most vulnerable clients.

More often than not, abusers are family members or trusted others.¹⁵ Similarly, in a vast number of the financial exploitation cases WFA has encountered, the abuse was perpetrated by an individual very close to the client, either by proximity, by relation, or due to a fiduciary relationship, etc. – a person who could very likely be named by the client as the trusted contact person under the Current Proposal. In those cases, out of concern not only for the client's financial security but also their physical well-being, we have reached out to individuals we believed to be connected to the account and who could help us protect the client, though we did not have the client's express authorization to do so.

¹² Regulatory Notice 15-37, Financial Exploitation of Seniors and Other Vulnerable Adults, *available at* <http://www.finra.org/industry/notices/15-37>

¹³ WFA Comment Letter to FINRA on Regulatory Notice 15-37, Financial Exploitation of Seniors and Other Vulnerable Adults, November 30, 2015, *available at* http://www.finra.org/sites/default/files/15-37_WellsFargoAdvisors_comment.pdf

¹⁴ *Supra* note 6, at p. 142

¹⁵ See National Adult Protective Services Association, Policy & Advocacy, <http://www.napsa-now.org/policy-advocacy/exploitation/>

One particular case involved a 79-year-old client who was suffering significant mental and physical health issues. From the financial advisor's ("FA") observations, it appeared that two adult men, unrelated to the client, were living with and being financially supported by the client. The FA was concerned and suspected that the client was being taken advantage of financially. The FA followed firm protocol to report suspected elder financial abuse and contacted ECI. ECI contacted Adult Protective Services (APS) and advised the FA to contact the client's sister. Consequently, APS visited the client and made recommendations about the client's living situation. The client's sister travelled to see her brother and was appointed the client's agent under a power of attorney, cutting off the potential of financial exploitation by the men in question.

Another situation in which we contacted a person not authorized by the client involved a 74-year-old widow who called her FA seeking to withdraw a large amount of cash, diverging from her usual pattern of account activity. She told the FA she needed the money to support Kim, a 33-year-old homeless woman who had been living with her for the past year. The client had already purchased a car for Kim and paid for other expenses. The client also indicated she planned to mortgage her home in order to help Kim. The client stated her two sons who live in other states would be upset if they knew about the support she had been giving Kim. The FA contacted the ECI team, who contacted APS, placed a hold on disbursements from the account and advised the FA to contact one of the client's sons. The son was unaware of the situation. The son later told the FA that his mother was suffering from dementia and was unable to care for herself. He also stated that she was financially exploited by Kim and that if the FA "[had] not place[d] the [hold] on the account....it is very likely that [the client] would not be alive today."

These scenarios are representative of the financial exploitation cases firms like WFA encounter on an all-too-regular basis. If the safe harbor could be expanded to protect a member who contacts a person reasonably associated with the account when financial exploitation is suspected, we believe the Current Proposal could more effectively achieve its intended purpose.

C. Explicitly State in Supplementary Materials that the Safe Harbor Applies to Associated Persons Who are Placing the Holds on Behalf of a Member Firm.

The Current Proposal states that "members" will be provided a "safe harbor from FINRA Rules 2010, 2150 and 11870 when members exercise discretion in place temporary holds on disbursements."¹⁶ In the rule filing, FINRA stated the safe harbor covers both "members and their associated persons" when acting under the Current Proposal in placing a temporary hold.¹⁷ However, it is not clearly stated in proposed Rule 2165 or in the Rule's supplemental material that the safe harbor applies to associated persons. WFA requests that the supplemental material to Rule 2165 be updated to explicitly state that the safe harbor also applies to associated persons.

¹⁶ Supra note 6, at Exhibit 5, Section 2165 Supplementary Material, p. 417

¹⁷ Ibid., at p. 28

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D. Twelve-month Implementation Timeframe from Date of Final Rule is Appropriate.

WFA believes in order to comply with the Current Proposal, members need time to make modifications to their operational infrastructure and develop related policies and procedures, as well as time to train employees on all related aspects. We believe that a twelve-month implementation timeframe from the date the Current Proposal becomes final is an appropriate length of time to comply with the Current Proposal.

IV. CONCLUSION

WFA appreciates the opportunity to respond to FINRA's Current Proposal and remains committed to ensuring older and vulnerable adults do not fall victim to financial exploitation. If you would like to discuss this issue further, please feel free to contact me directly at [REDACTED] or [REDACTED].

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy