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November 28, 2016

By Electronic Mail (rule-comments@sec.gov)

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

Re: File No. SR-FINRA-2016-039: 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 Mr. Fields:

Thank you for this opportunity to submit comments on the proposed amendments to Financial Industry Regulatory Authority (“FINRA”) Rule 4512 and new Proposed Rule 2165 (the “Proposed Rules”) on behalf of Janney Montgomery Scott LLC (“Janney”). Janney traces its roots in Philadelphia to 1832 and is one of the oldest full service financial services firms in the country with 102 offices and over 740 financial advisors. Janney shares the mission FINRA and the SEC have undertaken to protect our seniors and believe the Proposes Rules are well conceived to help member firms achieve that goal. However, while the Securities Industry and Financial Markets Association (“SIFMA”) will be submitting a comment letter, with which Janney is in agreement, we would like to draw the attention of FINRA and the SEC specifically to two potential improvements.

I. Expand the Safe Harbor Under Proposed Rule 2165 to Include Customer Complaint Reporting Under FINRA Rule 4530 and Form U4/U5

Janney understands that FINRA has previously responded to this recommendation, which was made in numerous comments to the original FINRA proposal, stating as follows in SR-FINRA-2016-039;

“The proposed safe harbor from FINRA rules would not extend to complaints about an associated person that are reportable on Form U4. An associated person may respond to any such complaints on Form U4, including with an explanation of actions taken pursuant to proposed Rule 2165. The proposed safe harbor from FINRA rules also would not extend to reporting required pursuant to FINRA Rule 4530 (Reporting Requirements), although FINRA would consider whether a member or associated person had acted consistent with the proposed rule when FINRA assesses reported information about a hold on a disbursement.”



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Janney urges FINRA and the SEC to reconsider this position. One of the reasons Rule 2165 is needed is seniors may not voluntarily withdraw a disbursement request when acting under the influence of a bad actor, even after receiving evidence for a firm's concern. Many will complain when their instructions are not executed. Recall also that the temporary freeze contemplated by the Proposed Rule is *permissive* in nature and there is no mandate to place a hold even where there may be evidence of abuse. As currently constructed, firms may be incented to protect the records of their Financial Advisors, which are increasingly available via FINRA's Broker Check, through the expedient of simply declining to place otherwise permitted holds to avoid complaints raised by the very seniors the Proposed Rule intents to protect.

We acknowledge FINRA has offered a remedy to this concern by having members provide "an explanation of actions taken", presumably to appear in proximity to the original complaint on Broker Check. This is insufficient. Even if the explanation were found and read, this path necessitates a member of the public weigh the facts presented on an uninformed basis in a format that, by design, emphasizes allegations. Member firms may find themselves in the position of weighing goals not otherwise in natural opposition; either protect seniors' assets, or their agents' records.

The current position also provides fraudsters a tool they will utilize directly to further their ends. Those who prey on our seniors have a sophisticated understanding of both industry rules and the policies and procedures of the firms they specialize in circumventing. They will use the threat of reportable sales practice complaints as leverage to compel firms not to place holds if the Proposed Rule continues to permit that tension to exist.

To address this concern, Janney recommends one of the following remedies:

- 1) The Safe Harbor contemplated under Proposed Rule 2165 be expanded to include 4530 and U4/U5 complaint reporting obligations derived from allegations reasonably related to the good faith imposition of a temporary hold by a member, or;
- 2) The definition of Sales Practice Violation established in the Form U4/U5 instructions be revised to exclude allegations reasonably related to the good faith imposition of a temporary hold by a member, or;
- 3) The Form U4/U5 Frequently Asked Questions document be amended to include an explanatory statement that the existing definition of Sales Practice Violation does not encompass allegations reasonably related to the good faith imposition of a temporary hold by a member.

II. Expand the Scope of Proposed Rule 2165 to Permit Member Firms to Freeze Transactions in Addition to Distributions



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Janney understands FINRA has addressed this proposal in SR-FINRA-2016-39 stating;

"The proposed rule change would not apply to transactions in securities. While the proposed rule change does not apply to transactions, FINRA may consider extending the safe harbor to transactions in securities in future rulemaking."

Janney urges that both FINRA and the SEC reconsider this position and permit member firms to freeze both disbursements *and* related transactions if they reasonably believe a financial exploitation has occurred, is occurring or may be attempted. As drafted, the current proposal fails to address the anticipatable scenario where a fraudster compels a senior to request a distribution, which members can freeze, to be funded with the proceeds of a transaction, which members cannot freeze. Notably, there is precedent for expanding the scope of the contemplated safe-harbor in this way as a number of individual States have already promulgated rules to that purpose. FINRA should help harmonize this developing conflict of laws without waiting for uncertain future rulemaking.

Recall that fraudsters will not be concerned with the irreparable harm this disconnect between transactions and disbursements may create. A brief list of foreseeable issues includes; tax consequences, annuity features that cannot be reinstated, unsuitable purchases or sales, changes in beneficiary, changes in account title, transaction costs and lost market opportunity. As none of these account changes represent a "disbursement", all would be outside the scope of the safe-harbor as currently constructed.

Again, Janney is broadly supportive of the Proposed Rules and appreciates the opportunity to offer these comments. If you have any related questions I invite you to contact me directly.

Best Regards,

A handwritten signature in blue ink that reads "Alan Smith".

W. Alan Smith
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