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November 28, 2016

VIA ELECTRONIC SUBMISSION

Brent J. Fields
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-FINRA-2016-039: Comments on Proposed FINRA Rule 2165 (Financial Exploitation of Specified Adults)

Dear Mr. Fields:

Thank you for the opportunity to comment on Regulatory Notice 16-039, the proposal on Financial Exploitation of Specified Adults. The Investor Advocacy Clinic ("IAC") at the Georgia State University College of Law provides free legal representation to investors who have suffered losses resulting from broker misconduct but who cannot afford or find private legal representation because of the size of their claim. We advocate for investors who otherwise would not have a voice. Because the proposal can help protect the assets of vulnerable adults from financial exploitation, we submit this comment in support of the proposal.

First and foremost, we greatly appreciate FINRA taking our previous comments into consideration during the comment period on Regulatory Notice 15-37. In particular, we agree with the change removing concerns regarding customer privacy by removing immediate family members from Rule 2165(b)(1)(B). We also agree with expanding the training requirement to include associated persons.

In its current form, we continue to support FINRA's proposal, but still feel FINRA can better achieve its goal with a few changes. First, FINRA should require members to act on a reasonable belief of exploitation. Second, FINRA should oversee a mandatory training program to educate Qualified Persons and registered persons on recognizing financial exploitation and their obligations under the proposal. Third, the Trusted Contact Person should be informed of their status on the account and asked whether they wish to serve in such a capacity. Fourth, the safe harbor provision should not apply when a member fails to act under the circumstances described by Rule 2165. Finally, the safe harbor provision should not protect a member from violations of Rule 2010 and Rule 2150.

I. FINRA SHOULD REQUIRE THE MEMBER TO ACT TO INCREASE THE EFFECTIVENESS OF RULE 2165.

Ideally, the language in Proposed Rule 2165(b)(1) should require rather than permit a member to place a temporary hold on a Specified Adult's account(s) when there is a reasonable belief that financial exploitation is likely to occur. As proposed, proposed Rule 2165 would create a safe harbor for firms who exercise their discretion and halt exploitative transactions. However, the proposal also allows a member to use their discretion to ignore a reasonable belief that financial exploitation is likely and do nothing.

Recognizing the purpose of the safe harbor provision is to provide incentive for members to protect their customers from exploitation, we understand FINRA's reluctance turn the carrot into a stick. Alternatively, instead of requiring the member to place a temporary hold on the customer's account, there should at least be a requirement for the member to inform the Trusted Contact Person(s) of the member's reasonable belief that financial exploitation has occurred. This way, if the member is unable or unwilling to place a temporary hold on the customer's account, the Trusted Contact Person(s) can still act to mitigate the harm. The current proposal only creates a duty to notify the Trusted Contact Person(s) if a temporary hold is placed by the member. Instead, this duty should apply regardless of the member's exercise of discretion.

II. FINRA SHOULD OVERSEE A COMPREHENSIVE TRAINING PROGRAM FOR ALL QUALIFIED PERSONS TO ENHANCE COMPLIANCE AND DETECTION OF EXPLOITATION

While we agree with the proposed 2165.02 to the extent that it recognizes the necessity of training, FINRA should oversee the training and ensure all associated persons are trained. Training is essential to the successful implementation of the Proposal, but leaving it up to the members may create inconsistencies and knowledge gaps from firm to firm. FINRA should use its experiences with its *Securities Helpline for Seniors* and its role in overseeing the continuing education requirements under Rule 1250(a)(1) to develop a training program. Specifically, FINRA should incorporate into its Rule 1250 training a module on recognizing financial exploitation of vulnerable adults as well as the mechanics of the proposed rule. Rule 1250(a)(1) gives FINRA the power to determine the content of the Regulatory Element and requires that each registered person complete the Regulatory Element on the second anniversary of their registration and every three years thereafter. A FINRA created and enforced training program focused on the procedural aspects of the Proposal and detection of financial exploitation will best protect vulnerable adults.

III. THE TRUSTED CONTACT PERSON SHOULD BE NOTIFIED OF THEIR STATUS WHEN THEY ARE SELECTED TO ENSURE THEIR WILLINGNESS TO ACT AS A RESOURCE IF NEEDED

Firms and registered representatives should take steps to determine whether a Trusted Contact Person is willing and able to serve in that role. The proposed changes to Rule 4512 only require that a Trusted Contact Person's information be obtained. The proposal should go further so that firms have a resource to work with in the event a customer becomes incapacitated or may be

exploited. Simply contacting the person designated as the Trusted Contact Person could reveal their willingness to assist before there is a problem, and the firm then can make a reasonable effort to obtain another Trusted Contact Person if the first identified person is unwilling to serve. Such a requirement would also prompt customers to have conversations with their proposed Trusted Contact Person to ensure that the person is willing to serve. This would also open the line of communication between the customer and the Trusted Contact Person about the customer's wishes, aims and goals if they are not able to make decisions on their own behalf. The Trusted Contact Person can serve as an important resource in the event that there is a suspicion of financial exploitation and could offer valuable information and serve as an intermediary to the vulnerable individual. Confirming their willingness to assist, and finding another person in the event that they are unwilling to assist, will facilitate the proposal's aim of stopping financial exploitation and protecting customers.

IV. THE SAFE HARBOR PROVISION SHOULD ONLY APPLY WHEN A MEMBER PLACES A TEMPORARY HOLD PURSUANT TO RULE 2165

The proposed Rule 2165.01 creates a safe harbor when a member "exercise[s] discretion in placing temporary holds" This language is unclear as to whether this safe harbor applies when a member chooses not to place a temporary hold on a customer account. The purpose of the safe harbor provision is to protect members who take actions against the express instructions of Specified Adult(s) who the members have a reasonable belief is a victim of exploitation. These actions, in the absence of a safe harbor provision, may violate FINRA rules, specifically Rule 11870 (which includes a duty to expedite customer transfer requests) and Rule 5310.01 (requiring members to execute marketable customer orders).

In contrast, a member who exercises discretion and chooses not to act is not exposed to any additional liability than the status quo. While choosing to ignore the problem with the exploitation of Specified Adults may not expose the member to additional liability, they should not be granted a safe harbor from duties that they would otherwise have. For example, under the current proposal, if safe harbor were granted to a member who chose not place a temporary hold on a customer account, then they would no longer have a duty to follow Rule 2010, Rule 2150, or Rule 11870 in its management of an active customer account.

Therefore, the language for Rule 2165.01 should be amended as follows:

This Rule provides members with a safe harbor . . . when members ~~exercise discretion in placing~~ place temporary holds on disbursements of funds or securities from the Accounts of Specified Adults under the circumstances denoted in the Rule. . . .

V. THE SAFE HARBOR PROVISION SHOULD NOT PROTECT A MEMBER FROM VIOLATIONS OF RULE 2010 AND RULE 2150

The proposed Rule 2165.01 creates a safe harbor from Rules 2010, 2150, and 11870 when members exercise discretion. By including Rule 2010 and 2150 in the safe harbor provision, this rule would create protections far beyond the scope of what is necessary to encourage members to act.

Rule 2010 states that members “shall observe high standards of commercial honor and just and equitable principles of trade.” This rule is a general rule prohibiting members from engaging in unethical conduct. By suspending this rule when a member exercises discretion with regards to Specified Adults, the member would no longer have a duty to behave in a generally ethical manner surrounding their decision. While specific violations of other FINRA rules may still apply, many potentially unethical actions would become unactionable under this safe harbor provision.

Rule 2150 prohibits the misuse of a customer’s funds. Presumably, this provision is intended to shield members from liability when they place a hold on the customer’s account instead of executing customer orders as instructed. However, suspending this rule would allow members to misuse a customer’s funds in ways other than the temporary hold them.

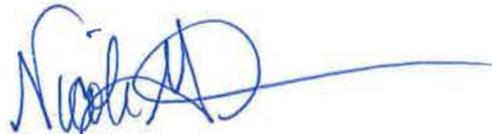
FINRA does not need to include Rules 2010 and 2150 within Rule 2165.01 to achieve the goals intended by the safe harbor provision. Even the securities industry, through SIMFA, in their comments to Regulatory Notice 15-37, suggested the safe harbor should be applicable to Rule 11870 and Rule 5310.01, yet did not believe it was necessary to include Rule 2010 and Rule 2150 in the rules explicitly covered by the safe harbor provision.

In keeping with our mission to protect investors, the Investor Advocacy Clinic believes that the proposal will help protect vulnerable adults from financial exploitation. However, requiring action when a reasonable belief that financial exploitation is likely will enhance the proposal’s effectiveness. FINRA should notify Trusted Contact Persons when they are first selected to ensure their willingness to act as a resource if needed, and also when there is a reasonable belief that exploitation is occurring regardless of whether the member places a hold on the account. Additionally, a consistent training program and limiting information given to immediate family members will enhance the proposal’s preventative measures and protect customer privacy. Thank you again for your consideration and we look forward to any further discussion.

Best regards,



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