FINANCIAL INFORMATION FORUM
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October 8, 2019

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street NW
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 19-27 – Retrospective Review of FINRA Rules and Issues Relating to Senior Investors

Dear Ms. Mitchell,

The Financial Information Forum ("FIF")[1] appreciates the opportunity to submit comments on the Financial Industry Regulatory Authority's ("FINRA") notice soliciting comments on Regulatory Notice 19-27 - FINRA's retrospective rule review of FINRA Rules and Issues Relating to Senior Investors.[2] As a fundamental matter, FIF strongly supports FINRA's recent acceleration of retrospective rule reviews pursuant to the FINRA360 initiative.[3] FIF strongly agrees with FINRA that after a reasonable period of time, review of all FINRA rules designed to protect individual investors as well as maintain the integrity of the financial markets is *critical* given frequent changes to market structure, technology, and tools/means available to malicious 3rd parties that allow bad actors to more easily exploit investors.

FIF believes that rules promulgated for the purpose of protecting the individual investor, especially senior investors, should be designed in such a manner that individual investors, institutions, broker-dealers, and regulators are afforded adequate tools and resources to meet the rules' intended purpose. Through that lens, FIF, in conjunction with our industry member firms, carefully reviewed the current rules designed to protect senior investors from financial exploitation with the intent of determining whether the current rules sufficiently provide firms with tools to protect seniors from financial loss and whether enhancements to current rules should be considered. In principal, FIF members believe that the rules under review pursuant to Regulatory Notice 19-27 are generally effective in addressing the conduct they are intended to mitigate. However, this letter

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[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.
[2] https://www.finra.org/rules-guidance/notices/19-27
[3] https://www.finra.org/about/finra-360/progress-report/retrospective-rule-review

highlights additional considerations, potential amendments, proposed guidance FIF believes will ultimately increase the effectiveness and efficacy of current rules designed to protect seniors and other investors from financial harm.

Background and Effectiveness of Current Rules

Since the codification of FINRA Rule 2165 (Financial Exploitation of Specified Adults), FINRA Rule 3240 (Borrowing from or Lending to Customers), and FINRA Rule 4512 (Customer Account Information), senior investors have benefited from increased protection against financial exploitation. Specifically, FIF member firms believe that FINRA's emphasis on protecting senior investors through dedicated helplines, educational materials, and the safe harbor provision under FINRA Rule 2165 have been essential in mitigating harm to senior investors who may easier targets of financial exploitation. FIF believes that the aforementioned rules under the scope of FINRA's retrospective review provide broker-dealers with an adequate framework/toolset to protect senior investors from financial exploitation. Therefore, FIF emphasizes that any modifications to the current rules in place following the retrospective review period should not fundamentally change, but rather should enhance the current toolset and resources available to broker-dealers to better protect senior clients from financial exploitation.

Safe Harbor Optionality Pursuant to Rule 2165

FINRA Rule 2165 permits a member firm to place a temporary hold on a disbursement of funds or securities from the account of a "specified adult" customer when the firm reasonably believes that financial exploitation of that adult has occurred, is occurring, has been attempted or will be attempted.[4] FIF believes that FINRA Rule 2165 in its current form provides broker-dealers with a critical resource needed to protect senior investors by providing firms with significant discretion in placing a temporary hold on the disbursement of funds from an investors account if the broker-dealer identifies potentially nefarious activity associated with specified adult's account. Holds on disbursements from senior investor accounts allow broker-dealers to carefully review and perform additional diligence if firms' internal monitoring systems or human observation indicates that the senior investor may have been or is at risk of becoming a victim of exploitative activity.

Investors can be exploited not only nefarious activity at the disbursement level, but also at the transactional level as the result of exploitative activity or diminished capacity. Therefore, FIF believes that the safe harbor provision of Rule 2165 should be expanded to transactional activity in addition to the disbursement level. The expansion of the rule's safe harbor provision to transactional activity will afford broker-dealer the option of suspending transactional activity on a senior investor's brokerage account when the broker-dealer has reasonable belief that the account holder is victim of exploitation by a 3rd party, is impaired (*i.e.* diminished capacity) and/or is otherwise able to protect their own interests.

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[4] *Supra*, note 2.

Similarly, Rule 2165's safe harbor provision ("hold") currently applies only to in cases in which a broker-dealer reasonably believes that the financial exploitation of a "specified adult" has been attempted or is being attempted.[5] While FIF believes that the safe harbor provision is well-designed to protect senior investors from exploitation by a 3rd party, the rule *currently does not* provide broker-dealers with the option of placing a hold on disbursements if the broker-dealer reasonably believes that the senior investor acted with diminished capacity. As specified in Regulatory Notice 19-27, FIF member firms believe that Rule 2165's safe harbor provision should be extended to encompass suspicious activity that the broker-dealer reasonably believes is derived from an impairment, such as diminished capacity.[6] FIF strongly emphasizes that the expansion of Rule 2165's safe harbor provision to instances in which the broker-dealer reasonably believes the senior investor's investment decision was the result of an impairment will provide broker-dealers who have seek to protect their clients' interests with a tangible mechanism to prevent a transaction/disbursement resulting from diminished capacity from being effected.

The expansion of the safe harbor provision of Rule 2165 to 1) transactional activity; and 2) cases in which the broker-dealer reasonably believes that the senior investor acted with diminished capacity will allow broker-dealers greater flexibility to better protect a broader group of senior investors at both the transactional and account level. If the broker-dealer believes that the trading activity occurred despite the senior investor's intent (whether through diminished capacity or exploitation), broker-dealers should be provided the *option* of suspending that activity to prevent greater harm and financial losses that the senior investor and/or their family may have to absorb if the transaction was effected. Notably, preventing potential nefarious activity at the transactional level is especially critical in cases where senior investors may be exposed to tax implications and other financial harm resulting from transactions in annuities or other long-term products.

Length of Temporary Holds

FINRA Rule 2165 allows a member firm to place a temporary hold on a specified customer's account for up to 25 business days. FIF believes that the current timeframe provided to broker-dealers within the rule is insufficient to allow firms to adequately complete the diligence/investigation of the activity that resulted in the firm electing to initiative the Rule's safe harbor provision. Following the identification of potentially malicious or suspicious activity occurring within a senior investor's account, broker-dealers, must undertake significant investigatory activity that may involve the following parties: 1) compliance; 2) operations; 3) legal counsel; 4) outside counsel; 5) regulatory bodies; 6) state and/or local government officials. In some cases, investigatory procedures will require firms to access information that may be outside of their control (i.e. police wellness checks), which may further delay the time by which broker-dealers are able to complete their investigation and determine whether the senior investor was victim of exploitation and/or acted with diminished capacity. FIF members have indicated that in many circumstances, the safe harbor provision's 25 business day limit does not provide broker-dealers sufficient time to fully determine whether the suspicious activity was not the result of senior exploitation or diminished capacity.

[5] *Id.*
[6] *Id.*

Therefore, FIF requests that FINRA consider expanding the current limit of the temporary hold to 60 business days. FIF believes that the extension of the temporary hold is necessary to provide broker-dealers with a reasonable opportunity to adequately complete the investigatory process, which can be heavily reliant on information gathering from outside organizations, including government agencies, hospitals, police departments, and other officials that the broker-dealer does not directly control. In most cases, access to required information from organizations outside of the broker-dealer far significantly exceed the 25-business day limit under current FINRA Rule 2561. FIF believes that additional time to adequately complete the investigatory process will provide firms with requisite flexibility to better protect senior investors from harm/better protect the assets of senior investors.

FINRA Rule 4530 Reporting Requirements

FIF strongly requests the need for FINRA to develop additional "problem codes" pursuant to each of the rules in effect that are intended to protect senior investors from financial exploitation. Dedicated problem codes should be provided to allow firms to "identify" cases in which the registered representative acted in response to the parent broker-dealer's request or *sua sponte* if the registered representative or broker-dealer reasonably believed the senior investor was victim of exploitation or acted with diminished capacity. Therefore, FIF suggests FINRA implement a dedicated problem code pursuant to Rule 2165 to better provide both FINRA and broker-dealers with added transparency into why a hold on a client's account was initiated.

Additional Educational Documentation/Guidance on Trusted Contacts

Upon initial review of FINRA Rule 4512 (Customer Account Information), industry member firms identified a need for FINRA to provide additional educational materials that accurately explain the purpose and role of a trusted contact pursuant to Rule 4512. FIF emphasizes that generally, firms leverage materials provided by regulators in the establishment of policies and procedures and/or internal materials that may be distributed both the broker-dealer's clients and internal staff.

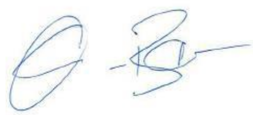
FIF suggests that FINRA leverage industry best practices gathered during firm examinations to develop and publicize additional guidance. FIF believes that additional educational materials/guidance will better support broker-dealers' development of enhanced educational materials that can then be distributed to clients to better inform their senior customers on the importance of identifying a trusted contact when opening an account or updating trusted contact information.

Conclusion

FIF appreciates the opportunity to comment on Regulatory Notice 19-27 – FINRA Requests Comment on Rules and Issues Relating to Senior Investors. While FIF believes the current rules in place provide broker-dealers and RIAs with adequate tools to mitigate potentially exploitative conduct, FIF emphasizes that given the current environment, additional guidance and tools recommended in this letter are required to better protect senior investors from financial exploitation and activity that may have occurred as a result of diminished capacity. Therefore, FIF requests that the comments contained in this letter are strongly considered as FINRA reviews the current rules in place intended to protect senior investors from financial exploitation and activity that may have resulted from a senior's diminished capacity.

FIF welcomes the opportunity to discuss the considerations raised in this letter at FINRA's earliest convenience. Please feel free to contact me directly at 212-652-4485 or chris.bok@fif.com.

Regards,



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