

## VIA ELECTRONIC MAIL

October 8, 2019

Ms. Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 19-27 | FINRA Requests Comment on Rules and Issues Relating to Senior Investors**

Dear Ms. Mitchell:

On August 9, 2019, the Financial Industry Regulatory Authority, Inc. (FINRA) published Regulatory Notice 19-27, requesting public comment on rules and issues relating to senior investors (the “Regulatory Notice”).<sup>1</sup> This retrospective includes a review of the effectiveness and efficiency of the current rules and administrative processes that help protect senior investors from financial exploitation and circumstances that put them in financial vulnerability. Specifically, FINRA is requesting comment on Rule 2165, Rule 4512, Rule 3240, Reporting Requirements, Sanctions Guidelines, and the general effectiveness, challenges and economic impact of the current rules and administrative processes. FINRA requests comments that provide additional tools, guidance, or changes to current FINRA rules and administrative processes, as well as comment on any other FINRA rules that address this issue.

The Financial Services Institute<sup>2</sup> (FSI) appreciates the opportunity to comment on the Regulatory Notice. FSI is encouraged by FINRA’s adoption of economic impact assessment and cost-benefit analysis with regard to rulemaking. FSI continues to believe that the utilization of retrospective review is a vital component of increasing the transparency and accountability of SRO rulemaking, and will ensure that rules remain relevant and are appropriately designed to achieve their objectives. As FINRA progresses through the findings and action phases of the review process, FSI looks forward to providing constructive feedback on the rule set that will assist in the retrospective rule review assessment.

### **Background on FSI Members**

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing

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<sup>1</sup> FINRA Regulatory Notice 19-27 (Aug. 9, 2019), <https://www.finra.org/sites/default/files/2019-09/Regulatory-Notice-19-27.pdf>.

<sup>2</sup> The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

registered representatives.<sup>3</sup> These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

### **Comments**

FSI appreciates the opportunity to submit comments on FINRA's retrospective rule review. In preparing our comments, FSI engaged with various member firms to obtain views for FINRA to consider. These members vary in their size, resources, and use of technology. Despite these differences, the members converged on several areas that FINRA may find helpful in assessing the current set of rules relating to senior investors. Correspondingly, FSI provides the following comments:

- **Should FINRA extend the temporary hold period in the rule or create a different mechanism to obtain an extension? If so, for how long? How frequently has your firm placed a temporary hold pursuant to Rule 2165 and what has been the duration of any holds? When a hold was placed, did the firm's internal review find support for the reasonable belief of financial exploitation that prompted placing the hold?** FINRA Rule 2165 permits a firm to place a temporary hold on a specified customer's account for up to 15 business days, and also provides that this period may be extended for up to 10 business days, provided that the firm's internal review of the facts and circumstances supports the firm's reasonable belief that the financial exploitation of the Specified Adult has occurred. The rule also provides that a hold may be extended by a state agency or a court. However, many FSI members believe that at least 20 business days, plus an extension of 10 business days, would allow more time for firms to thoroughly investigate suspected financial exploitation. We suggest FINRA consider providing an additional hold period in the event the firm can demonstrate to FINRA that they have reported the suspected financial exploitation to the appropriate state agency.
- **What has been your experience with implementation of Rules 2165, 3240, 4512 and 4530 related to senior investors, including any ambiguities in the rule or challenges to comply with it?** FINRA Rule 2165 requires a firm, no later than two business days after the date that a firm first placed a temporary hold on the disbursement of funds or

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<sup>3</sup> The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a dually registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser. The use of the term "registered representative" in this letter is a reference to an individual who is registered with FINRA and only associated with a broker-dealer.

securities, to provide oral or written notice of the temporary hold and the reason for the temporary hold to: (1) all parties authorized to transact business on the customer's account; and (2) the Trusted Contact Person(s). FSI members have found it challenging to comply with this notice requirement within the two business days allotted. Specifically, FSI members note that it may take longer than two business days to determine who is exploiting the customer, or whether a party authorized to transact business on the customer's account or a Trusted Contact Person is responsible for the exploitation. For these reasons, FSI members believe that a period longer than two business days would provide a more workable timeframe for providing notice.

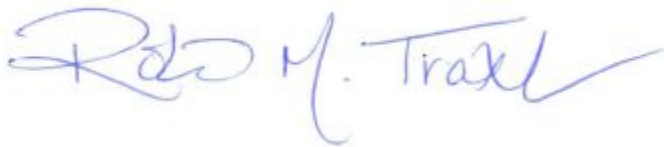
- **Are there other approaches, policies, rules, programs or partnerships not discussed herein that are within FINRA's jurisdiction and mandate that would further benefit senior investors?** FSI members note that investigation and resolution of cases of financial exploitation often takes more than the 25 business days suggested by the temporary hold under the rule. FSI members believe that the rules would benefit from FINRA coordinating with state adult protective services (APS) and similar agencies so that FINRA understands the role its member firms play in cases of financial exploitation. Additionally, FINRA could partner with appropriate agencies or experts to develop resource material for registered representatives and financial advisors to utilize with clients to assist in spotting and documenting potential concerns. For instance, FINRA could create a checklist for registered representatives and financial advisors to utilize while meeting with clients that would indicate the client's visible appearance, mental state, and other factors that are often helpful to observe while assessing whether an individual is vulnerable to or experiencing financial abuse. FSI would be happy to assist FINRA in obtaining input from registered representatives and financial advisors to develop a series of suggested forms or templates to make available to FINRA members to use.

### **Conclusion**

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,



Robin M. Traxler  
Senior Vice President, Policy & Deputy General Counsel