Wells Fargo & Company
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October 8, 2019

Via E-mail: ***pubcom@finra.org***

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

RE: Regulatory Notice 19-27: Retrospective Rule Review - FINRA Requests Comment on Rules and Issues Relating to Senior Investors

Dear Ms. Mitchell:

Wells Fargo & Company, together with its affiliates and subsidiaries (collectively, "Wells Fargo"), appreciates the opportunity to comment on the Financial Industry Regulatory Authority's (FINRA) Retrospective Rule Review on Rules and Issues Relating to Senior Investors, set forth in Regulatory Notice 19-27 (the "Notice").[1]

Wells Fargo is a diversified, community-based financial services company with $1.9 trillion in assets and approximately 259,000 team members, which provides banking, investment and mortgage products and services, as well as consumer and commercial finance. Our broker-dealer[2] and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States, helping millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals.

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[1] Regulatory Notice 19-27, Retrospective Rule Review – FINRA Requests Comment on Rules and Issues Relating to Senior Investors (August 2019). https://www.finra.org/rules-guidance/notices/19-27

[2] Wells Fargo Advisors (WFA) is a dually registered broker-dealer and investment advisor that administers approximately $1.6 trillion in client assets. It employs nearly 14,000 full-service financial advisors in branch offices in all 50 states and 3,395 licensed financial specialists in retail bank branches across the United States. WFA is a non-bank affiliate of Wells Fargo & Company.

I. BACKGROUND

In August of 2019, FINRA issued the Notice to assess the effectiveness and efficiency of its rules and administrative processes that help protect senior investors from financial exploitation. FINRA is interested in whether additional tools, guidance or changes to FINRA rules or administrative processes are appropriate to further address suspected financial exploitation and other circumstances of financial vulnerability for senior investors.

II. DISCUSSION

Wells Fargo supports FINRA's review of the effectiveness of its current rules and processes that help protect senior investors and its interest in seeking additional guidance on addressing suspected financial exploitation. We offer the following comments and suggestions to questions raised by FINRA in the Notice:

A. FINRA Should Extend the Safe Harbor in Rule 2165 to Apply to Transactions in Securities

Currently, the safe harbor under FINRA Rule 2165 allows a member to place a temporary hold on a disbursement of funds or securities from the account of a specified adult if the member reasonably believes that financial exploitation of the specified adult has or will occur. In the Notice, FINRA asks if the safe harbor provided by Rule 2165 should be expanded to allow a temporary hold to be placed on a transaction in securities.

Wells Fargo supports extending the application of the Rule 2165 safe harbor to securities transactions, believing such an extension would further assist in protecting the financial vulnerability of senior investors. Senior investors suffer financial exploitation when their account is liquidated under fraudulent circumstances, even if the assets in the account are not subsequently disbursed, as the sale of long-held assets could trigger adverse and unwanted tax consequences. The extension of Rule 2165 to cover transactions would provide additional protection for investors.

FINRA further questions how changes in securities pricing should be addressed if Rule 2165 were expanded to include securities transactions. Wells Fargo believes that changes in security prices during a hold do not need to be addressed by FINRA because the variables and timing involved in such a calculation make it difficult to accurately determine subsequent customer gains and losses due to security price fluctuations during the hold. In general, Wells Fargo believes that the harm and cost of financial exploitation to senior investors outweighs the potential losses that could occur due to market movement.

B. FINRA Should Extend the Safe Harbor in Rule 2165, Irrespective of Whether There Is Evidence the Customer May Be the Victim of Financial Exploitation by a Third Party

Wells Fargo believes the Rule 2165 safe harbor should be extended to apply where there is a reasonable belief that the customer has an impairment that renders the individual unable to protect his or her own interests, irrespective of whether there is evidence the customer may be the victim of financial exploitation by a third party. Many are now asking that financial firms create programs to work with individuals with Alzheimer's, mental challenges or other impairments. A hold could be the beginning of the conversation on how a client can continue to have a financial relationship with a firm that increases protections from financial abuse, while respecting the client's dignity and autonomy.

Due to the aging population of baby-boomer era customers, the number of individuals potentially suffering from impairments that render them unable to protect their own interests is increasing. Accordingly, Wells Fargo recommends that FINRA create a working group to outline possible solutions on how firms can best handle and work with those customers, and Wells Fargo would welcome the opportunity to participate in such an effort.

C. FINRA Should Extend the Temporary Hold Period in the Rule along with Creating Additional Mechanisms to Obtain Further Extensions of the Temporary Hold Period

Wells Fargo believes the temporary hold period should be extended to 60 calendar days. With many state and local agencies underfunded and understaffed, the current temporary hold period of 25 days is too short to allow the agencies sufficient time to conduct necessary review and investigation of financial exploitation claims. An extension of the temporary hold period to 60 calendar days would provide applicable state and local agencies valuable time to better assess and act in response to claims of financial exploitation. In the alternative to the 60 calendar day temporary hold period, Wells Fargo would support extending the period of time of a temporary hold to be consistent with the average length of time it would take Adult Protective Services to investigate a case of financial exploitation. Similarly, permitting firms to extend a temporary hold if they have knowledge of a state agency's ongoing investigation would give them a simple tool to protect their clients from financial exploitation.

Additionally, FINRA should consider amending Rule 2165 to establish a process that allows the firm that initiated the hold to petition FINRA to delay the requested disbursement or transaction beyond 60 calendar days. Although FINRA members are present in all 50 states, the state protections afforded elder clients vary. Permitting firms to ask FINRA to allow them to continue a delay would provide a clear, consistent approach to, and a uniform standard for, seeking this relief, which would improve their ability to protect vulnerable adults fully in situations of potential elder financial abuse.

D. FINRA Should Develop a Rule 2165-Related Problem Code For Reporting

Wells Fargo supports FINRA having a dedicated problem code for use in reporting per Rule 4530, and the issuance of additional guidance on how to handle complaints related to temporary holds and their reporting on Forms U4 and U5.

E. FINRA Should Allow Firms the Ability to Make Routine Maintenance Transactions for Vulnerable Seniors

There is a very fast-growing senior population, a large number of whom live alone. Many of these seniors have no close relatives or family members to assist in transacting business with their brokerage firm should they lose capacity. When a customer loses capacity, firms should place a hold on the account to prevent further activity. The challenge arises where account maintenance trades need to take place and there is no one to authorize such action. FINRA should consider creating a mechanism for firms in those situations, with advance notice to FINRA, to make routine account maintenance transactions.

Otherwise, in a clearly declining stock, a brokerage firm would have to watch the holdings go to zero simply because there is no apparatus for substituted decision making for the person lacking capacity. Another approach might be for FINRA to create a "Vulnerable Adult Account Maintenance Department" where a firm could take instructions from FINRA personnel in these extreme circumstances.

F. FINRA Should Create a Safe Harbor Allowing Firms to Share Information on Senior/Vulnerable Customers

Wells Fargo would like FINRA to explore creating a safe harbor to permit firms to share information with other firms as it relates to senior/vulnerable customers whom the firm believes may be subject to financial abuse. We believe firms would benefit from clear guidance from FINRA about what information can be shared between firms, specifically information one firm has about a vulnerable customer which can be provided to other firms to better protect the vulnerable customer from financial exploitation.

G. FINRA Should Explore Ways to More Easily Allow Firms to Stop an ACAT Where Customer Exploitation may be Occurring

Wells Fargo has experienced difficulty in the process of stopping an ACAT, once started, due to suspicion of customer exploitation, and requests that FINRA explore ways to ease the ability of firms to stop an ACAT where exploitation is present or suspected.

III. CONCLUSION

Wells Fargo appreciates the opportunity to respond to FINRA's review of issues related to senior investors. If you would like to discuss this issue further or need additional information, please contact me at (314) 242-3105 or ron.long@wellsfargoadvisors.com, or Carl Tugberk, Head of Wealth and Investment Management Public Policy for Wells Fargo & Company, at carl.tugberk@wellsfargo.com or (202) 416-2638.

Sincerely,

Ron Long
Head of Elder Client Initiatives Center of Excellence