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November 30, 2015

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 15-37, October 2015  
Due: November 30, 2015

Dear Ms. Asquith:

AARP<sup>1</sup> appreciates the opportunity to comment on the proposed rules in FINRA Notice 15-37. The Notice includes a change to Rule 4512, regarding obtaining and maintaining information on a trusted contact for the account. The proposed Rule 2165 authorizes a broker, through a “qualified person,” to place a temporary hold on transactions that involve disbursements from the client’s account if the qualified person has a reasonable belief that the client is being financially exploited and the broker provides notification about the temporary hold as required under the rule.<sup>2</sup>

Elder financial exploitation is a serious and growing problem. By allowing a broker to temporarily hold a transaction under this rule, the broker will have time to involve the client’s trusted contact person, family member, or the authorities who may be able to prevent the permanent loss of the person’s assets. As outlined below, AARP supports the changes to Rule 4512 and the concept of the transaction hold and safe harbor as described under proposed Rule 2165. However, we do suggest several ways to improve proposed Rule 2165 and strengthen its consumer protections.

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<sup>1</sup> AARP is a nonprofit, nonpartisan organization, with a membership of nearly 38 million that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

<sup>2</sup> As used in this letter, the term “broker” refers to a FINRA member firm.

### **Proposed Changes to Rule 4512 – Trusted Contact Person**

FINRA has proposed changing Rule 4512 to require firms to make a reasonable effort to obtain contact information for a “trusted contact person” as part of the account information. A trusted contact person is a third-party who is not authorized to transact business on the account. Firms can use this information to protect their clients. For example, if a firm later suspects its client has diminished financial capacity or is being financially exploited, the firm may contact the trusted contact person to help protect the client.

Under the proposed rule, a broker is required to disclose in writing to the customer that the broker or a person associated with the broker is authorized to contact the trusted contact person and disclose information about the account to confirm specifics about the customer’s current contact information, health status, and the identity of any legal guardian, executor, trustee or holder of a power of attorney. The firm would also be required to disclose that it could contact the trusted contact person as permitted under proposed Rule 2165.

### **Proposed Rule 2165 – Authorization to Hold a Transaction**

Placing a temporary hold on a transaction is an important, immediate step for stopping suspected fraud or financial exploitation before monetary loss occurs. It is easier to keep the money in the account than it is to recover money after it leaves the account. In many cases, authorities never recover money after it leaves the account.

### **The Standard of Care Should Be Strengthened**

The proposed regulation has important protections to prevent brokers from abusing the authorization to hold a transaction. Brokers must have a reasonable belief that financial exploitation is involved in the transaction and must initiate an internal review of the suspected financial exploitation. Brokers must also establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the rule. Firm supervision procedures are critical to holding the firm accountable under the rule. Brokers must make records about holds available to FINRA upon request. FINRA should consider following the leads of Missouri and the North American Securities Administrators Association (NASAA) and adding a layer of consumer protection by requiring the broker and qualified individual to act with “reasonable care.” Requiring reasonable care in determining that financial exploitation appears to be occurring, to be likely to occur or has occurred would regulate how the broker and qualified individual treat their client during the period of the hold.

### **The Appropriate Scope of the Rule Should Be Expanded**

Rule 2165 applies to accounts for which a “Specified Adult” has the authority to transact business. The rule, however, does not apply if the specified adult is a beneficiary or beneficial owner. Laws in the states of Washington and Missouri, as well as NASAA’s proposed model law allow firms to hold transactions on accounts where beneficial ownership is used on behalf of an older person or someone who is vulnerable because of impairment. People whose accounts are managed for them are more vulnerable to financial exploitation because they are not capable of overseeing their own financial affairs. The proposed rule should also cover accounts in which the Specified Adult is a beneficiary or beneficial owner.

## **FINRA's Hold Mechanism Should Be More Flexible and Should Require Notification of State Agencies**

FINRA has proposed an initial hold period of up to 15 business days, unless shortened or lengthened by a court. After the initial hold, the proposed rule allows a broker to extend the hold for an additional 15 business days. The laws in the states of Washington, Delaware, and Missouri, as well as NASAA's draft model law all have 10-day initial hold periods for transactions involving securities. FINRA should authorize an initial temporary hold of no more than 10 days.

Proposed Rule 2165 does not require notice to any government agency. The laws in the states of Washington, Delaware, and Missouri, as well as NASAA's draft model law require notice to a government agency after placing the initial hold and require either permission from a court or oversight by adult protective services, law enforcement, or a regulatory agency. FINRA should require that the broker prepare a careful detailed justification for the hold and notify the appropriate adult protective services agency, other state agency, or law enforcement when the broker places a temporary hold. The broker should also provide a notice to FINRA. If a second hold period is requested, the broker should again notify parties, prepare a justification for why the hold is needed, and list what steps have been taken so far.

Undoubtedly, legislators from other states will introduce legislation in 2016. Many will use either the NASAA model or one of the other state laws as a basis from which to draft. FINRA's rule should be sufficiently flexible to be consistent with what the states require and to accommodate compliance with multiple state laws.

## **Required Training Is Important**

FINRA's proposed rule includes a requirement that brokers relying on the rule's safe harbor develop and document specific training policies or programs reasonably designed to ensure that their registered persons comply with the rule's requirements. It is important to have a training regimen that prepares people who will work within the rule to be aware of the rule's requirements and the broker's compliance policies and procedures. AARP supports required training for registered persons relating to this rule and covering elder exploitation and fraud generally.

AARP appreciates the opportunity to provide our input on rules designed to protect older people and other vulnerable adults from financial exploitation. We urge you to make changes to proposed Rule 2165 as outlined above.

Please contact Mary Wallace of our Government Affairs staff at (202) 434-3954 or [mwallace@aarp.org](mailto:mwallace@aarp.org) if you have questions or need additional information.

Sincerely,



David Certner  
Legislative Counsel and Legislative Policy Director  
Government Affairs