



October 31, 2014

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

Dear Ms. Asquith:

On behalf of the National Academy of Elder Law Attorneys (NAELA), and its Guardianship and Conservatorship Steering Committee (Steering Committee), we appreciate the opportunity to comment on Regulatory Notice 14-35 concerning Rule 2231.

NAELA represents more than 4,500 attorneys who are experienced and trained to provide legal advocacy, guidance, and services to enhance the lives of persons with disabilities and people as they age. The Steering Committee consists of members who possess a high level of dedication and expertise on issues related to the legal appointment of decision-makers for incapacitated individuals.

We applaud FINRA's effort to develop a rule to help prevent the financial exploitation of persons with disabilities or who are incapacitated. Unfortunately, the proposed rule would likely do little to protect this vulnerable population in any meaningful way. Nor would it likely address the concerns of the financial organizations that are sending out customer statements. Every situation is unique, and a rule with such general application cannot address the many specific instances that occur every day.

Industry Practices for Customers Who are Disabled or Incapacitated

The Request for Comment asks about industry practices for sending account statements where the customer is disabled or incapacitated. Persons with disabilities or who are incapacitated are unlikely able to send written direction to their financial institution to send duplicate statements. For those residing at a nursing home, they likely do not receive statements personally at this point. It's often the case that statements pile up at their old home where potential exploiters can get access to them.

Financial companies rarely provide information to third parties, like a conservator, unless there is a court order. While withholding this information may make sense under normal circumstances, the right policy becomes substantially more complicated when dealing with the class of individuals at greatest risk for exploitation and financial abuse. While pursuing a court order, financial exploitation can continue causing irreparable harm. Alternatively, an impaired person may give direction to send the statement to the agent under the Power of Attorney who may be the exploiter. It is a complex situation.

Unfortunately, in most states, financial companies who have concerns have no duty to notify agencies, such as Adult Protective Services, of their concerns. In addition, some in the financial industry have resisted calls to become mandatory reporters of suspected abuse and exploitation.

Conclusion

NAELA and its Steering Committee support greater options for customers, but we doubt the Rule will prevent exploitation or provide meaningful change to the serious problem facing all professions when it comes to the exploitation and abuse of the elderly and disabled.

Thank you for your consideration of this issue. If you have any questions or would like to discuss further, please contact David Goldfarb, NAELA's Public Policy Manager (703-942-5711 #232; dgoldfarb@naela.org).

Sincerely,

Patrice A. Icardi
Chairperson
Guardianship and Conservatorship Steering Committee
National Academy of Elder Law Attorneys

Bradley J. Frigon, CELA, CAP
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