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Via E-Mail and First Class Mail

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

Re: Comment on FINRA Regulatory Notice 14-35: Customer Account Statements

Dear Ms. Asquith:

I submit this letter as a comment on FINRA Regulatory Notice 14-35. Malecki Law routinely represents public investors in FINRA's arbitration forum and well understands the incidental impact of FINRA rules, as they play out in the arbitration forum. I have practiced in this area for over 22 years, representing both the industry and investors in arbitration, litigation and regulatory investigations and hearings, as well as being an active member of the *Public Investors Arbitration Bar Association* (PIABA), the *New York County Lawyers Association* (NYCLA) and having been on the *Securities Industry Association* (now SIFMA). I have taught classes at several New York Law Schools, having served as an NASD (now FINRA) and NYSE arbitrator and chairperson and having spoken on several panels and written articles for the *Practicing Law Institute* (PLI), NYCLA and the *Public Investors Arbitration Bar Association* (PIABA).

I write to comment only on the section "Transmission of Customer Account Statements to Other Persons," contained in FINRA Regulatory Notice 14-35.

I support FINRA's efforts to amend the rule to allow customer statements to be forwarded to people other than just holders of a power of attorney on the account. My reasons for supporting the rule come from my concern for aging investors and elder fraud.

As we are all aware and concerned about, the baby-boomer generation is aging and living longer. As a result, we need to worry even more about elder abuse and fraud. Studies show that "Poor Decision Making is a Consequence of Cognitive Decline among Older Person without Alzheimer's Disease or Mild Cognitive Impairment." http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0043647

Elderly Financial Fraud has neurobiological basis, as many seniors are vulnerable to financial exploitation and recommendations of unwise risk-taking. Research has shown that the orbital cortex (OFC) of the brain, where executive functioning capacity is located, can make persons with mild cognitive impairment far less risk averse than they were before. Dr. Robert Roush, director at the Texas Consortium Geriatric Education Center of the Huffington Center on Aging at Baylor College of Medicine said:

> Normal age-related changes in financial decision making can be exacerbated by neurodegenerative conditions ranging from MCI to some forms of Parkinson's disease. This is why people with fiduciary responsibilities to older people need to know that these conditions can place their patients or clients at greater risk of financial exploitation than otherwise might be the case.

The ability for a family member, tax professional, estate lawyer or trusted friend to be able to obtain copies of statements may be important and crucial to quickly identifying and preventing fraud.

My support, though, is limited, as I believe that the rule should go further and require the member to identify the relationship between the person obtaining the copies and the client, in order to clearly delineate the roles of the respective parties.

First, because of the susceptibilities of the elderly, for example, the member would want to know who may be influencing the client, how they influence them, and why. Under the former NYSE Rule 405 (emphasis added),

> Every member organization was required through a principle executive or a person or persons designated under the provisions of <u>Rule 342</u>(b((1) to <u>**(1) Use due diligence to learn the essential facts relative to**</u> every customer, every order, every cash or margin account accepted or carried by such organization and <u>**every person holding power of attorney over any account accepted or carried by such organization.**</u>

Knowing a power of attorney holder to an account and their relationship with the client has always been important, because anyone with power over the account has an ability to exert influence over what investments are in the account. If someone is receiving statements, they may also be informally in that position of influence, for a good or bad reason. Their relationship to the account holder should be the subject of some due diligence, recorded and considered by the firm in supervision of the account so there is no "speculation" by the firm about that relationship, as well as no question of fact later if there ever were arbitration or litigation. Just as the firm should never speculate as to "other assets" a client may hold, they should not speculate as to who is recommending investments and who is accepting that recommendation. Although only suitable investments should be recommended by the investment professional who is ultimately solely responsible for the recommendations he/she makes, the broker and the firm should know if any transactions or account liquidation ideas generated from the customer side are under the influence of a third party, for a good or bad reason.

Your time and attention to this matter is greatly appreciated.

Very truly yours,

Jenice L. Malecki, Esq.