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VIA ELECTRONIC MAIL to pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K. Street, NW
Washington, DC 20006-1506

RE: FINRA Regulatory Notice 15-37: FINRA Requests Comment on Rules Relating to Financial Exploitation of Seniors and Other Vulnerable Adults

Dear Ms. Asquith:

On behalf of the Bond Dealers of America (BDA), I am pleased to submit this letter in response to the Financial Industry Regulatory Authority's (FINRA) solicitation of comments in connection with Regulatory Notice 15-37 (Notice), proposed rules (Proposed Rules) relating to financial exploitation of seniors and other vulnerable adults. BDA is the only DC based group representing the interests of middle-market securities dealers and banks focused on the United States fixed income markets. We welcome this opportunity to state our position.

BDA supports FINRA's efforts to enhance the protection of seniors and other vulnerable adults from financial exploitation. Customer protection is a priority for BDA members and the marketplace generally. We applaud FINRA for the implementation of its Securities Helpline for Seniors and through enhanced policies at our firms, we want to continue to be a partner in improving protections designed to prevent exploitation of this group of investors. To that end, BDA and its member firms are offering comments to the Proposed Rules in an effort to help clarify and strengthen FINRA's efforts to expand the protections beyond those currently in place. BDA's comments are designed to simplify and clarify certain aspects of the Proposed Rule in order to avoid unintended consequences.

BDA Requests Further Clarification and Guidance

BDA is concerned with the lack of clarity regarding when a firm would be required to act on behalf of a senior or other vulnerable adult. While we agree this proposal is a good concept and seeks an outcome we support, the implementation of the Proposed Rules are nearly impossible to institute as currently drafted. The Proposed Rules are subjective; the proposal does not require "qualified person(s)" at a firm to have processes and procedures in place that will support a decision as to whether a person is mentally or physically impaired such that they are unable to

protect his or her own interests or when a 'designated person' is attempting to exploit a "specified adult" investor. The Proposed Rules leave firms open to liability if, after analyzing a senior's mental state, it is found that the firm inaccurately determined, on that particular day, that there was not a problem when, in fact, there was. We are all aware of the day-to-day ups and downs an individual may face and we worry that an inaccurate assessment at one particular point in time leaves our firms without adequate protections. BDA therefore would request that FINRA make some adjustments and also provide guidance to our firms either in the form of Frequently Asked Questions or another similar format. The BDA would be happy to assist in contributing suggestions, comments, and draft questions and answers for inclusion in such a document.

Verification of and Reliance on Information Received

BDA firms will be required to take reasonable steps to collect the name and contact information for a trusted contact person for each new and current account (in line with current account update requirements). It is of concern to our members that they not be held responsible for anything beyond a reasonable attempt as noted in the proposal, to collect and update the required information, at the required time as set out by the parameters of the Proposed Rules, which are based on current regulatory requirements. It is of further concern that dealers could be held responsible for evaluating the mental capabilities of the trusted contact person and the "trusted contact's" intentions, either at the time of the collection of the information, or at any further point in which the firm holds an account for their customer if the trusted person meets the definition of a "specified adult(s)" as proposed. Therefore, we ask FINRA to provide additional guidance regarding exactly what it is they are requiring of member firms under this Proposal. Specifically, we would like for FINRA to address whether there will be documentation requirements as to the "reasonable attempts" taken by firms and if so, we would encourage FINRA to provide as much clarity as possible to our firms.

Information Provided to Trusted Contact

The BDA and its members request further instructions regarding the information that would potentially be given to a trusted contact, specifically to ensure SEC Regulation S-P is not violated. Once again, what can be discussed with a trusted contact is subjective and could potentially put member firms in the position where they unintentionally violate this rule.

Changes in Status for Trusted Contact Person

BDA is also concerned that the mental status of a trusted contact person can change over time. The Proposed Rules do not permit the trusted contact person to transact business in an account. However, BDA can envision issues arising when the legal status of the trusted contact changes in a way that alters their ability to perform the functions assigned to or assigned by the trusted contact. For example,

an account holder may name their son or daughter as the trusted contact person at account opening, or at the time of a routine and required account information update, and then six months after being assigned the role as a trusted contact, the adult child is given power of attorney, thus giving them the ability to exercise control over the account, including the ability to authorize transactions. However, this change in status would then render the son or daughter unable to serve as the trusted contact person. How is the firm to know this change has occurred and what are the firm's responsibilities if they are not aware of this change?

Exclusion for Guardianship, Custodian or Power of Attorney

The BDA also requests that FINRA include additional language in the Proposed Rules specifically excluding accounts where there is a designated Guardianship, Custodian, or Power of Attorney (POA) appointed. These protections should be offered to firms above and beyond any safe harbor since there is greater concern with someone having account transaction authority as compared to a trusted emergency contact that does not have authorization on the accounts. If these accounts must be included in the Proposed Rules, then the associated language should state that when firms have a concern with these individuals, there is a heightened level of protection offered to the firm and/or qualified individual since the account holder themselves would have had to know that this person has transaction capacity for the account, resulting in an enhanced burden to the firm should they need to halt any transaction related activity made by such individual when suspicion arose. Furthermore, it is at the point when a power of attorney is presented to member firms, when member firms are concerned vulnerability may begin to occur. We ask FINRA to include language in the Proposed Rules that grants member firms authority above State requirements to accept instructions from a POA in a given time frame, providing member firms the ability to contact a trusted contact person previously designated on the account, or to provide similar flexibility in an alternate manner.

Qualified Person Should Realize Greater Protections

Qualified persons at a firm who are reasonably related to the account may not want to trigger an account hold because of the potential for mistakenly believing that exploitation has, is, or will occur. As a result, we would request that FINRA provide greater assurances beyond the safe harbor to ensure subjective decisions made by a qualified person cannot be used in a retaliatory manner. Furthermore, we would encourage FINRA provide guidance in instances where the owner of the account disagrees with the decision made by the qualified person. Without risking losing a customer, it is hard to justify questioning the decision of an account holder for his or her own account.

Additionally, firms might be hesitant to name someone to act as a qualified person if they are not already serving in a supervisory role at the firm and especially if they are not already serving in a supervisory role on the business side of the firm.

It would be helpful to our firms if FINRA could provide more clarity as to who they envision being capable of serving as the "qualified person" as related to the term "reasonably related," and to further pair with that guidance, certain protective parameters to ensure additional safe harbor protections against retaliatory action. We also request that FINRA clarify what they envision would be required to establish someone at the broker dealer a "qualified person". Are specific examinations, continuing education or background education required? Will clearing firms be required to have someone review the activity of their introducing firms and discuss potential issues or concerns?

BDA also suggests that FINRA consider additional safeguards for firms to utilize in the case of retaliatory action by customers as it relates to what would otherwise be reportable on the Form U4. Specifically, we would request that FINRA permit a process whereby firms who have acted in good faith with respect to the Proposed Rules do not experience any such complaints as reportable on a Form U4.

Temporary Hold on Disbursement of Funds or Securities

Our members are concerned that the proposed safe harbor does not extend far enough for individual or firm protections. BDA firms seek further clarification and guidance on this issue as it relates to having the proper documentation to act on a discretionary basis and we outlined some concerns we would like to have addressed below. For example, a temporary hold on a disbursement of funds could indemnify against a routine ACH or wire transaction, which in turn, may also be impacted by a whole account hold. We are very concerned that where liquidating transactions are involved, if no action is taken, this could be perceived as being discretionary, putting our firms at risk of litigation. Therefore, our members feel strongly that any action taken by the firm should be taken on a transaction-by-transaction basis.

Furthermore, BDA is concerned with the process for terminating the required 15-business-day hold. As proposed, the only way to terminate the hold early is through a court order. However, the proposal would require a firm that has initiated a hold to immediately engage in an internal review of the facts and circumstances which led to the decision to put a hold on the account. Placing a three-week hold on an account is a very serious business decision. BDA believes there will be circumstances in which an internal review quickly brings to light facts that reveal the hold to be unnecessary. In order to avoid unintended consequences, BDA believes FINRA should consider allowing an alternative avenue for removing a hold if the facts and circumstances brought to light in an internal review demonstrate that the hold was placed unnecessarily. BDA believes this would best protect investors because it allows the hold to be put on the account and then removed rather than requiring a three-week waiting period or a court order.

BDA believes that when a qualified person initiates a hold based on suspicion of exploitation, that the safe harbor should hold the firm and the qualified person

harmless. For example, in a situation where an unsolicited order to liquidate securities or the entirety of an account is communicated to a broker, and that unsolicited order is the act that forms the basis for the qualified person to implement a hold, the firm and the qualified person should be explicitly held harmless from losses due to market movements in the securities that the customer was prohibited from selling due to the hold on the account. Of additional concern is a situation where the firm places a hold on an account where funds were to be used to meet a required obligation of the customer and the hold prevented the individual from meeting that obligation, the firm could be subject to liability. We would ask that FINRA address these concerns in amendments to the Proposed Rules and suggested future guidance language.

Coordination and Harmonization with State and Federal Laws

BDA firms would like for FINRA to coordinate its efforts under the Proposed Rules with existing rules and regulations at the state and federal level. Privacy laws, disability laws and any other overarching laws meant to protect seniors, vulnerable adults and others ideally should not be triggered by any activity undertaken in compliance with FINRA's Proposed Rules. We would caution against FINRA putting any rules in place which might be at odds with any state or federal laws since doing so might cause our firms greater exposure and vulnerabilities beyond those directly related to where FINRA can offer protection. Specific concerns we would identify include whether firms might run afoul of privacy laws since they would be required to contact an immediate family member under section (b)(1)(B)(ii) of Proposed Rule 2165 once a temporary hold on disbursements has been placed.

Again, we would stress the many legal problems identified above, as well as how the emotional impact that a subjective analysis of a senior's mental state could impact the seniors' personal and financial well-being.

Thank you again for the opportunity to submit these comments.

Sincerely,

Michael Nicholas
Chief Executive Officer
Bond Dealers of America