



November 30, 2015

SENT VIA EMAIL to [pubcom@finra.org](mailto:pubcom@finra.org)

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

Re: Regulatory Notice 15-37  
Proposed Rule: Financial Exploitation of Seniors and Other Vulnerable Adults

Dear Madam or Sir:

GWFS Equities, Inc. ("GWFS") sincerely appreciates the concerns FINRA is attempting to address in minimizing financial exploitation of seniors and other vulnerable adults and appreciate the opportunity to provide comments.

As a broker/dealer that is primarily involved with the retirement plan business; i.e., 401(a)(k), 403(b) and governmental 457(b) plans, we note the proposed rule seems to be addressed generally to broker/dealers in the retail sector. Typically, the plan sponsor's relationship is with a financial intermediary unaffiliated with GWFS; however, an affiliate of GWFS provides recordkeeping services. We know of many other firms that are similarly situated and ask that FINRA consider providing guidance in this regard; for example, which broker/dealer is responsible for rule compliance?; what if the financial intermediary is a registered investment adviser and not a broker/dealer subject to FINRA rules?

In discussing the proposed rule with all of our business units, the following issues and questions arose that we believe FINRA should consider and address more fully in proposed rule:

- What are the specific criteria for determining whether a customer has impairments rendering them "vulnerable"?
- If a person does not provide a trusted contact person, what would constitute reasonable efforts to obtain this information?
- Generally, broker/dealers do not request nor receive health information. By having this information, additional regulatory requirements; e.g., HIPPA, may need to be implemented within the firm, resulting in additional costs.
- In order to capture, retain and periodically update trusted contact information, systems changes will be required resulting in additional costs to the firm.
- The definition of "qualified person" is very narrow. We suggest a revised definition to include individuals "designated as qualified by the firm".
- Temporary holds are "permitted" but not required, which we believe raises the additional following concerns:
  - Implementing a hold allows for discretion, causing firms to be more susceptible to litigation for acting and/or failing to act;
  - The safe harbor does not provide comprehensive immunity for liability in a civil suit.

Beverly A. Byrne

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**Securities offered through GWFS Equities, Inc. and/or other broker dealers.**

Insurance products offered by Great-West Life & Annuity Insurance Company, Corporate Office: Greenwood Village, CO; or in New York, by Great-West Life & Annuity Insurance Company of New York, Home Office: White Plains, NY.

- The provision of an extension beyond a 30 day hold by court of competent jurisdiction we believe presents issues not addressed in the proposed rule:
  - Full and complete investigation must be completed with time to present material to the legal department and the legal department must have time to submit filings to a court, is 30 days sufficient for all these processes to be completed?
  - Does the court system have in place sufficient resources to act quickly in these situations?
- For individuals in retirement accounts, certain distributions should be permitted even if the account is subject to a temporary hold. For example, required minimum distributions should be permitted; otherwise there are adverse tax consequences to the individual for not receiving an RMD.

GWFS' comments to certain FINRA requests for comment are as follows:

*Q2. Are there other approaches than the proposed rulemaking that FINRA should consider?*

A2. GWFS believes it would be better for FINRA to issue a "best practices" report would be in lieu of a codified rule so that firms could best manage based on what makes sense for their business.

*Q3. Should Rule 4512 require customer consent to contact the trusted contact or is customer notice sufficient? Should the types of information that may be disclosed to the trusted contact under Rule 4512 be modified?*

A3. Either contacting or forwarding a notice to the trusted contact is likely to raise issue with the customer and trusted contact. A requirement to contact the customer would be most transparent; however this would result in extra costs to firms.

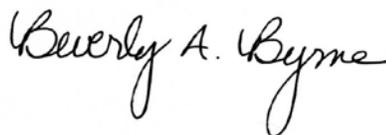
Simply because an individual may be trusted for financial purposes, does not mean that the same individual would be trusted with information concerning the customer's health. Health status is one of the items that may be shared by the proposed rule, but which is the most controversial and should not be included in the types of information to be shared.

*Q12. What direct costs for the firm will result from the proposed rules?*

A12. Firms will incur direct costs for: updating forms, additional mailings, system builds, additional resources to specifically handle these matters including instances where court intervention is appropriate.

Thank you for the opportunity to provide input on this proposed rule. If additional information related to any of our comments or questions are required, please do not hesitate to contact me at 303-737-3817 or [beverly.byrne@greatwest.com](mailto:beverly.byrne@greatwest.com).

Sincerely,



Beverly A. Byrne  
Deputy General Counsel and Chief Compliance Officer