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By Electronic Mail (*pubcom@finra.org*)
Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 15-37 (Financial Exploitation of Seniors and Other Vulnerable Adults)

Dear Ms. Asquith:

Lincoln Financial Network ("LFN" or "Lincoln") appreciates the opportunity to submit this comment letter in response to the Financial Industry Regulatory Authority's ("FINRA") rule proposal to amend FINRA Rule 4512 (Customer Account Information) and implement a new rule FINRA Proposed Rule 2165 (Financial Exploitation of Specified Adults). Lincoln Financial Network is the marketing name for Lincoln Financial Advisors Corp. ("LFA") and Lincoln Financial Securities Corp. ("LFS"), two broker-dealers and registered investment advisors affiliated with Lincoln Financial Group ("LFG").[1] Currently, LFN maintains an affiliation with over 8,500 financial advisors, which include registered representatives, investment advisor representatives, insurance brokers and agents. LFN has an open architecture business model, allowing its financial advisors the ability to offer a variety of investment products, including securities (e.g., stocks, bonds, mutual funds, variable annuities), advisory services, and non-securities products (e.g., fixed annuities and life insurance, including insurance sold by insurance companies others than LFG).

I. Regulatory Notice 15-37 Background

FINRA proposes amending Rule 4512 to require firms to make reasonable efforts, at account opening, to obtain the name and contact information for a "trusted contact person" for all non-institutional accounts. The trusted contact person cannot be an individual who is authorized to transact business in the account. The firm would then be able to contact this individual if the firm reasonably believes the accountholder is being exploited.

[1] The affiliated companies of LFG act as issuers of insurance, annuities, retirement plans and individual account products and services. The affiliates include, but are not limited to the Lincoln National Life Insurance Company ("LNL"); Lincoln Life and Annuity Company of New York ("LLANY") and Lincoln Financial Distributors ("LFD"), Lincoln's wholesaling arm, a broker-dealer registered with the SEC and a member of FINRA.

FINRA has also proposed the adoption of Rule 2165, which would enable firms to place temporary holds (up to fifteen days) on disbursements of funds or securities from the accounts of certain customers (e.g., vulnerable adults and account holders over 65 years of age) when there is a reasonable belief of financial exploitation. Proposed Rule 2165 also permits firms to notify a customer's "trusted contact person" about the account hold.

Lincoln is very supportive of FINRA's efforts to protect vulnerable clients. This is an issue of growing concern for the financial industry and Lincoln appreciates how diligently FINRA is working to identify solutions and options for firms and advisors when a vulnerable client is being exploited. The basic principles of protecting vulnerable adults are present in Regulatory Notice 15-37. However, Lincoln encourages FINRA to consider some additional items and make minor changes so that the rule proposal will be more effective and allow member firms to operationalize a process which is consistent with all regulations across the industry.

II. Conflicting Regulatory Framework

The existing regulatory environment for dually registered broker-dealers and investment advisers is complex and robust. LFN's broker-dealers and investment advisers are subject to regulation by FINRA, the SEC and the States. At times, these regulatory regimes conflict or are inconsistent.

In the area of elder abuse, a number of states have more mature regulations and statutes. Lincoln would encourage FINRA to evaluate whether changes can be made to this proposal to allow for more harmonization with state regulations or with the Model Rule recently proposed by the North American Securities Administrators Association (NASAA). As an example, many states have different criteria (e.g., age) to determine whether an individual qualifies as a vulnerable adult. Additionally, states have varying reporting requirements or obligations of financial institutions if fraud or exploitation is expected. Also, the "safe harbor" provisions vary among the states. While uniform rules and regulations are not always attainable, Lincoln would encourage FINRA to engage the SEC, NASAA and any individual state securities regulators to develop a harmonized proposal acceptable all constituents.

III. Proposed amendments to Rule 4512

Lincoln is in favor of the proposed amendment to FINRA Rule 4512 that would require firms to make reasonable efforts at account opening to obtain the name and contact information of a trusted contact person. It is critical for firms to have the ability to consult with someone other than the account holder when suspected financial exploitation or diminished capacity issues arise.

A. <u>Explicit Consent of Customer</u>

Lincoln encourages FINRA to add one additional requirement – affirmative consent – to the proposed amendment. FINRA maintains that there is no breach of a firm's privacy obligations if the firm discusses an accountholder's information with a "trusted contact person." FINRA's

position is centered on two exceptions under Regulation SP: (1) the customer consents or (2) the disclosure is made to comply with the law (e.g., Rule 4512). The first Regulation SP exception (consent) does not fit squarely within the proposed amendments to Rule 4512. Although an account holder can choose to provide the name and contact information of the trusted contact person, the account holder has only implicitly consented to the individual being contacted about certain information.

The second exception also does not appear to be available under the proposed amendments to Rule 4512 because a firm is not mandated to connect with the trusted contact person if the firm suspects financial exploitation. Rather, FINRA appropriately leaves the choice of whether to contact the "trusted contact person" to the discretion of the firm.

To make the proposed amendments to Rule 4512 unequivocally compliant with Regulation SP (and the exceptions therein), FINRA should require firms to obtain the name/contact information of a trusted contact person and seek the accountholder's explicit consent to reach out to the trusted contact when the firm has concerns regarding the accountholder.

B. Expanded Definition of "Trusted Contact Person"

Proposed Rule 4512 defines the "trusted contact person" as someone who is "age 18 or older and *not authorized to transact business on behalf of the account*." (*Emphasis added*). Many firms in the industry have already engaged in proactive measures to encourage accountholders to obtain a POA or provide a "limited trading authorization" to a trusted person so that firms have a contact in the event of financial abuse. Unfortunately, the limitations on who qualifies as a trusted contact person would frustrate many enhanced controls that firms have already employed. Consequently, Lincoln encourages FINRA to modify this definition to include individuals who are authorized to transact business on behalf of the account. For example, an attorney-in-fact under a Power of Attorney (POA) or a trustee under a Trust may be the most appropriate individual to act and provide assistance for fraud prevention. If a firm reasonably suspects that this individual is engaged in the fraudulent activity, a firm can then contact another individual, like an immediate family member.

Lincoln also suggests expanding the individuals who may be contacted under proposed Rule 2165(b)(1)(B)(ii) if a temporary hold is placed on the account. Under this provision, if a Trusted Contact Person of a Specified Adult is unavailable, the member firm can reach out to an immediate family member. There are instances when the accountholder (i.e., the Specified Adult) does not have any immediate family members. In these instances, FINRA should allow firms to exercise discretion in whom to contact. An accountant, attorney, close friend or neighbor may be best suited to assist the firm in preventing fraud. Consequently, expanding the "alternative" contact beyond an immediate family member is advisable.

C. Operational Challenges

FINRA's requirement to attempt to obtain the name of a trusted contact person from the accountholder at the time of account opening is a reasonable approach. However, Lincoln

respectfully requests that these requirements apply only to accounts opened after the effective date of the proposal. Although accounts are updated every thirty-six months, accounts are generally updated through a negative consent process. This type of information requires affirmative response and consent by the accountholder, increasing the operational challenges and costs associated with affirmatively seeking this information from all accountholders.

D. Discussions With Trusted Contact Person

FINRA's Supplementary Material .06(a) to Rule 4512 is very prescriptive regarding the categories of information that can be discussed with the trusted contact person. This provision suggests that information about the account can be disclosed only to confirm specifics regarding the customer's current contact information, health status, identity of the legal guardian, executor, trustee or POA and as permitted in proposed Rule 2165. Under proposed Rule 2165, when a firm notifies the trusted contact person, the notification appears only to relate to the fact that a hold has been placed and the reason for the hold.

Member firms need more discretion on how to interact with the trusted contact person and what can be discussed with the trusted contact person. In reality, a firm may need to engage the trusted contact person to provide assistance on the internal review or to validate some of the firm's suspicions. The firm may need to encourage the trusted contact person to seek guardianship of the specified adult. However, the Rule does not seem to permit information-sharing of this nature or the level of engagement that may be needed with the trusted contact person in certain situations. Lincoln suggests that FINRA make these rules more "principles" based and less "prescriptive" or "rules"-based so that the best interests of the customer can be achieved based on the unique and distinctive set of facts for each customer.

IV. Proposed Rule 2165

Proposed Rule 2165 allows (but does not require) qualified persons of firms to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers.

A. Length of Time

As stated previously, the fifteen (15) day hold period appears to conflict with other regulations or model regulations. Lincoln would encourage FINRA to work collaboratively with NASAA and other state securities to develop a more consistent and harmonized regulatory framework for the relevant hold periods.

B. Fundamentals of the "Hold"

Proposed Rule 2165 is fairly prescriptive on when a hold can be placed and how long the hold can be in place. However, there may be other situations where the current prescriptions are insufficient to prevent an investor from being harmed. For example, there are situations where a vulnerable adult has diminished capacity. In these situations, the vulnerable adult's own actions

may result in self-harm. FINRA should evaluate whether a temporary hold is appropriate in these instances to prevent harm.

Lincoln also envisions that a customer could be harmed even before a disbursement occurs. As an example, certain transactions or sales of investments (e.g., liquidation of an annuity or the redemption of certain mutual funds) can have significant tax consequences to an accountholder. Lincoln encourages FINRA to extend this proposal to trade execution or buy/sell/liquidate orders. If a firm reasonably believes that financial exploitation is occurring, a firm should be able to take any action necessary, including failing to execute a transaction, to prevent a fraud.

Lincoln also requests that FINRA provide additional guidance to firms on actions to be taken after a hold expires. Firms are ill-equipped to seek relief in a court of competent jurisdiction, even if that may be in the best interest of the accountholder. If state or county agencies, who generally investigate financial exploitation of seniors, are unable to timely act before a hold expires, firms may be obligated under the rule to execute a transaction or release funds. Unfortunately, in these situations, the vulnerable adult may still be victimized. As such, FINRA should provide additional guidance as to what course of action a firm should take when a hold expires. Alternatively, if no additional guidance is provided, Lincoln respectfully requests FINRA expand the safe harbor provision to extend to "post-hold" situations.

C. Broaden Safe Harbor Provision

The proposed rule appropriately provides a safe harbor provision for firms and qualified employees when a vulnerable adult's account is frozen to prevent a disbursement of funds. While the current proposal insulates firms from liability when a hold is placed on an account, Lincoln requests that FINRA expand the safe harbor to cover more circumstances, including disclosing account information and ultimately releasing funds once a hold expires. Although implied in the proposed rule, Lincoln encourages FINRA to explicitly state in the final rule that no private right of action is created under this rule for acting or failing to act.

V. Responses to Specific Requests for Comment

Below are Lincoln's responses to FINRA's specific requests for comment.

Question: Should the scope of the proposed rules be expanded to encompass other requirements?

Answer: As explained previously, Lincoln recommends that Rule 2165 be expanded to cover other situations in which a vulnerable adult may be harmed, including activities resulting from diminished capacity and all transactions occurring as a result of financial exploitation.

Question: 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?

Answer: As discussed previously, in order to make the proposed amendments to Rule 4512 unequivocally compliant with Regulation SP (and the exceptions therein), FINRA should require firms to obtain the name/contact information of a trusted contact person and seek the accountholder's explicit consent to reach out to the trusted contact when the firm has concerns regarding the accountholder. In addition, the regulatory requirements should be expanded to allow firms to disclose more information than was outlined in Rule 4512 Supplementary Material .06 (a).

Question: What are firms' current practices when they suspect financial exploitation has occurred, is occurring, has been attempted or will be attempted? Would the proposed rules change firms' current practices?

Answer: There are aspects of these proposed rules that would enhance member firms' current practices. However, as discussed, FINRA should evaluate expanded the definition of "trusted contact person" to ensure that individuals authorized to act on the account can also serve in that capacity.

Question: What are firms' views on any potential legal risks associated with placing or not placing temporary holds on disbursements of funds or securities at present and under the proposal?

Answer: As addressed in section IV, there are potential legal risks. However, in most situations where it is clear that a financial exploitation or fraud is occurring, the financial harm to a customer in not placing a hold on a transaction or disbursement outweighs the risk to a financial institution. That being said, Lincoln encourages FINRA to explicitly state that no private right of action exists under these rules and expand the safe harbor provisions beyond just placing a "hold" on an account disbursement.

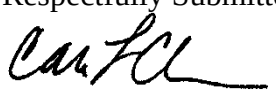
Question: Should FINRA mandate specific procedures for escalating matters related to financial exploitation?

Answer: While some prescriptive regulation is necessary, regulation should not be overly prescriptive or remove discretion from a firm to act in a manner that is in the best interests of the client. Every client situation will be different and firms need the ability to react to each set of unique facts and circumstances. Firms should retain decision-making on how to respond to a situation, including when or how to escalate a matter. As such, FINRA should not prescribe or mandate specific procedures for escalating matters involving financial exploitation.

VIII. Conclusion

Lincoln is supportive of FINRA's objective to more efficiently and effectively protect the investing public, especially its vulnerable members. Lincoln looks forward to a continuing dialogue with FINRA in the hopes that FINRA can provide additional guidance and create a proposal that will enable firms to protect vulnerable adults without undue legal liability. If you have any questions, please do not hesitate to contact me at 484.583.1413 or carrie.chelko@lfg.com.

Respectfully Submitted,



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