



November 18, 2015

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

Subject: Rules Relating to Financial Exploitation of Seniors and Other Vulnerable Adults

Dear Ms. Asquith,

On behalf of the National Academy of Elder Law Attorneys (NAELA) and its Guardianship and Conservatorship Section Steering Committee, we appreciate the opportunity to comment on Regulatory Notice 15-37, concerning the amendments to Rule 4512 and the creation of a new Rule 2165.

NAELA is comprised of over 4,500 attorneys with experience and training 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 are encouraged to see FINRA's continuing efforts to prevent and curtail the financial exploitation of persons with disabilities and seniors. While the proposed rules are moving in the right direction, stronger steps need to be taken to make a serious impact against financial exploitation.

4512(a)(1)(F) Customer Account Information

The rule allows an account holder to designate a trusted person to be contacted regarding the account. As the "trusted person" cannot be authorized to transact business on the account, presumably fiduciaries such as trustees and Powers of Attorney cannot be the trusted person. While some of the worst instances of financial exploitation are committed by legal fiduciaries, in many cases, the agent under a Power of Attorney or a trustee may be in the best position to protect the individual. As many financial exploitation victims tend to be more isolated without close and caring family members, account holders may not be in a position to name a trusted person. It is also possible that potential exploiter may seek out the role of a trusted individual to gain access to information about a vulnerable person's assets.

2165 Financial Exploitation of Specified Adults

Specified adult is defined as individuals 65 and older or persons over 18 with a mental or physical impairment that renders the person unable to protect his or her own interests. This characterization is consistent with several elder abuse laws throughout the country.

Section (b) provides for a temporary hold on disbursements and this provision is a very positive step towards protecting individuals from financial exploitation. This provision allows a temporary hold on account for a period of not more than 15 days unless terminated or extended by a court order. This section also requires notice to be provided within two days to all parties authorized to transact business on the account, as well as their trusted contact person unless the member reasonably believes that the trusted contact person has engaged, is engaged, or will engage in the financial exploitation of the account holder. The proposed rule provides a safe harbor for members who act with a reasonable belief that exploitation has occurred or may be attempted. This rule should also be expanded to allow a temporary hold when an individual is showing signs of a significant cognitive decline and is at risk of financial exploitation even if there is no alleged exploiter in the picture.

The safe harbor rule is consistent with the banking laws which enable banks to take protective action when financial exploitation concerns are present. While the temporary hold is a significant improvement, the limitations on reporting may significantly weaken this provision. If the exploiter is an individual with an authority to act on the account, or the trusted contact person, the reporting obligation may actually be more detrimental to the account holder. The reporting should be directed to the local Adult Protective Services agency and law enforcement, as they are in the best position to assist a victim. The proposed rules do not appear to allow the financial institutions to reach out to Adult Protective Services and law enforcement. In several states, banking institutions are mandated elder abuse reporters and they routinely report to Adult Protective Services. Even in states without mandatory reporting, APS agencies work closely with bank personnel to stop financial exploitation. While trusted contact persons may have good intentions, they may not have the financial resources to take the necessary legal actions, such as pursuing a temporary guardianship or conservatorship, to protect the account owner.

While staff training is mentioned for purposes of carrying out the protective procedures laid out in the proposed rule, much broader staff training is necessary to reduce the risk of financial exploitation. Banks, in states such as Illinois, are requiring their employees to undergo training to be aware of red flags and other indicators that an individual is a victim or at risk of financial exploitation. In Illinois, for example, the APS Programs help coordinate these training programs. Staff members who have direct contact with the account holders should be given training to allow them to identify red flags such as drastic changes in the management of an account, changes in an individual's appearance and increased reliance on another individual.

Conclusion

The proposed rules show FINRA's acknowledgment of the serious problem of financial exploitation of seniors and persons with disabilities. The ability to place temporary holds on the accounts is a very positive step. The biggest problem is the notification component. The inability of financial institutions to notify the entities charged with protecting seniors and persons with disabilities from financial exploitation will ultimately greatly limit the effectiveness of this

proposed rule. Finally, it is very important to provide meaningful training which will enable employees of financial institutions to identify cases of potential financial exploitation of seniors or persons with disabilities.

Thank you for consideration of our comments. If you have any questions, please contact David Goldfarb (dgoldfarb@naela.org/ 703-942-5711 #232).

Sincerely,

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