

Dear FINRA:

Per Regulatory Notice 15-37, FINRA now would like us to use our judgment to perform social work. The history of FINRA is one of further and further denying firms and representatives from using their judgment in the business they live intimately and know better than FINRA, but now FINRA wants us to exercise our judgment in areas where we do not belong and where we are capable of making situations worse. What happens if our judgment about our client's incompetency is bad? What happens if the trusted contact person we select to disclose privileged information about one of our clients happens to be someone who very definitely should not have that information? What happens if our customer for legitimate reasons does not want that person to have such information? What happens to our relationship with our client after we have assumed his/her incompetence and looked around him/her for authority? What happens if the new trusted contact person really cannot be trusted or is incompetent in other ways? What happens after the protective holds we placed expire and those preying on our customers have waited us out? With responsibility comes liability, and once certain tools are put in place, even a regulatory statement that we can use our discretion will turn into our being held to a much higher standard in court or arbitration.

Firms need to understand that once FINRA gets under the tent, it tends to multiply. This area of its new rules will grow to something unrecognizable from its origins. The paperwork requirements will increase along with the liabilities at each level of a firm. The net result will be headaches for licensed personnel and ultimately the cold shoulder for the elderly. Let me propose a different strategy that would allow firms and licensed practitioners to perform a public service, while not creating new risks for themselves: Set up a government hotline where we can provide basic contact information about a customer and our generic concerns without disclosing financial information. Let qualified people who do this type of thing for a living attempt to make contact with the customer and, if necessary, contact related parties and use their judgment as to how to proceed. Give our industry some reasonable time to delay processing of a questionable customer request under the guidance of this third-party program. Have this third-party agency provide us with some type of document by mail/email/fax that we can put into the customer file to satisfy FINRA's prodigious appetite for disclosure.

We already care about our clients. And we do not need FINRA to help us care more. We do not want our clients to be harmed. Regulators and courts already hold us to ridiculous standards in our dealings with them. We cannot and should not meddle in their private activities other than to assist qualified government agencies, if we smell something funny.

Dan Pisenti