



NATIONAL ASSOCIATION OF
INSURANCE AND FINANCIAL ADVISORS

November 30, 2015

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

Via Electronic Mail: pubcom@finra.org

Re: FINRA Regulatory Notice 15-37-- Request for Comments on Rules Relating to
Financial Exploitation of Seniors and Other Vulnerable Adults

Dear Ms. Asquith:

This letter will present the views of the National Association of Insurance and Financial Advisors (“NAIFA”) in response to FINRA’s request for comments on proposed rules pertaining to the financial exploitation of seniors and other vulnerable adults.

Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is one of the nation’s oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA’s mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. Approximately two-thirds of all NAIFA members are licensed as registered representatives of broker-dealers and market and service mutual funds and other investment products to their clients.

The rules proposed by FINRA via Regulatory Notice 15-37 are designed to help broker-dealers, their associated persons and regulators protect seniors and other vulnerable adults from becoming victims of financial exploitation. As recent studies from both industry and consumer organizations have demonstrated, the financial exploitation of seniors is already a significant problem which is likely to worsen given current demographic trends towards an increasingly aging population. In addition, the recent growth of defined contribution retirement plans and corresponding decline of defined benefit types of retirement savings vehicles has resulted in

seniors having greater individual control over often-significant account balances, which can result in increased attention from a broad variety of potential bad actors.

In light of the long-term relationships NAIFA members have with their clients and the detailed knowledge these advisors often have of their clients' investments, accounts and overall financial situation, a person's financial advisor is often on the front line of being able to identify indicators of attempted or ongoing financial exploitation of their clients. However, because of potential liability and privacy concerns financial advisors and their firms often feel constrained in their ability to protect their clients.

To address these issues, several states have recently enacted laws designed to protect seniors from becoming victims of financial fraud. These state laws typically call for financial advisors and their firms to report possible financial exploitation of a senior client to state authorities who can then conduct an appropriate investigation. Some of these state laws also permit a firm to delay a request for disbursement of funds for a specified number of days while the appropriate state agency reviews the disbursement for possible financial exploitation. Importantly, these state laws also provide advisors and firms with immunity from liability for taking steps to protect their client's financial assets by following the provisions of the law. In addition to the above-referenced state activity, the North American Securities Administrators Association is in the process of developing a model statute based in large part on these state laws.

NAIFA has been extensively engaged on this issue for over a year. We have conducted an educational session for our members on the topic of senior financial protection and exploitation, and NAIFA is currently in the process of developing a Senior Financial Protection Model Act for use by NAIFA's affiliated state associations. The NAIFA model would establish a voluntary reporting process under which advisors would report suspected financial exploitation of a senior client to their firm, who would review the possible exploitation and if appropriate inform the relevant state authorities. The NAIFA model, like the laws enacted in some states, would permit a firm to temporarily delay a client's requested transaction or disbursement if the firm suspects that financial exploitation of the client may be occurring, and it would shield advisors and their firms from liability for complying with the provisions of the law and taking steps to protect their senior clients.

NAIFA applauds FINRA for its involvement in this important issue and for its efforts to protect seniors and vulnerable adults from financial exploitation. While we generally support the approach taken in the proposed rules, we do have the following comments regarding the proposals:

1. Safe Harbor/Limitation of Liability. Because of the important protection provided by granting protection from liability for advisors, their supervisors and firms who act in accordance with Proposed Rule 2165 to protect their clients from financial exploitation, the safe harbor from liability that is currently referenced in Supplementary Material Section .01 should instead be included as an express provision in the body of the Proposed Rule. The language used in this section should also specifically reference registered representatives of a broker-dealer and "Qualified Persons" (as defined in the Proposed Rule) as being under the protection of the safe harbor.

2. Determination of Mental/Physical Impairment. While a member, its qualified persons and/or registered representatives may be in a position to observe behaviors that might be indicators of physical or mental impairment, they are not qualified medical professionals and do not have the proper training or experience to make such determinations. To ensure that inappropriate obligations and responsibilities with respect to such a determination are not imposed on a member or its qualified individuals/registered representatives, NAIFA recommends that the following language be added to the end of Supplementary Material Section .04 of Proposed Rule 2165: "...; provided, however, that any such belief or facts and circumstances observed in the member's business relationship with the Specified Adult shall not create an assumption or implication that the member or its qualified individuals/registered representatives are qualified to, have the ability to or are responsible for making a determination about any individual's mental or physical condition or possible mental or physical impairment."
3. Notification of State Securities Administrator. State securities regulators have a significant interest in the protection and well-being of their state's residents. In addition, these regulators can play an important role in determining if financial exploitation of a senior or vulnerable adult has occurred or is being attempted. In light of this, the proposed rule should include a provision to the effect that if a Qualified Person places a temporary hold on a disbursement of funds or securities from an account of a Specified Adult because the Qualified Person reasonably believes that financial exploitation of a Specified Adult is occurring/has occurred/will be attempted, the Qualified Person or firm shall then notify the appropriate state securities administrator of the action taken. The safe harbor contained in the rule should also be expanded to include protection against liability for actions taken in connection with notifying the appropriate state authorities.

Thank you for your consideration of NAIFA's views on this important issue. Please contact the undersigned if you have any questions regarding our comments.

Yours Truly,



Gary A. Sanders
Counsel and Vice President, Government Relations