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Member FINRA/SIPC

November 30, 2015

Via E-mail: pubcom@finra.org

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

RE: Regulatory Notice 15-37: Financial Exploitation of Seniors and Other Vulnerable Adults – FINRA Requests Comment on Rules Relating to Financial Exploitation of Seniors and Other Vulnerable Adults

Dear Ms. Asquith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Proposal on the Financial Exploitation of Seniors and Other Vulnerable Adults, set forth in Regulatory Notice 15-37 (the “Proposal”).¹ WFA applauds this plan to help strengthen efforts to curb the abuse of seniors.

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. We employ approximately 14,988 full-service financial advisors in branch offices in all 50 states and 3,838 licensed financial specialists in retail bank branches across the country.² Wells Fargo is committed to providing individuals and their families with the advice and guidance they need to plan for a long and healthy retirement.

¹ Regulatory Notice 15-37: Financial Exploitation of Seniors and Other Vulnerable Adults – FINRA Requests Comment on Rules Relating to Financial Exploitation of Seniors and Other Vulnerable Adults (October 2015).

² WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network LLC (“WFAFN”) and First Clearing LLC, which provides clearing services to 78 correspondent

I. OUR EFFORTS TO PROTECT SENIORS

WFA has long recognized the challenges facing our elder and vulnerable adult clients,³ particularly in the area of financial abuse. To help address this concern, we created the Elder Client Initiatives team in 2014, which specializes in providing internal support and the reporting of elder financial abuse issues for WFA. In addition, we made a number of improvements to better protect our clients through other efforts such as creating the *Emergency Contact Authorization* form, which provides clients with the option of adding an emergency contact person to their account; updating language in our general account agreement disclosure advising clients that we may put a hold on the disbursement of funds when we have concerns about “financial exploitation, dementia or undue influence;” and, updating our *Guide to Financial Protection for Older Investors* available to clients and prospects on our public website. We also provide annual training to our associates on elder financial abuse. In sum, WFA has been consistently engaged in addressing these issues and as a result, we’ve been recognized as an industry leader. Our desire is to continue to work in partnership with FINRA and others to protect our aging community. We offer the following supportive comments and suggestions with the aim of further strengthening the Proposal.

II. SUPPORT OF THE PROPOSAL

The Proposal allows member firms to hold the disbursement of funds, for up to 15 business days, from a retail account when financial exploitation of a senior or other vulnerable adult is suspected. To assist firms in investigating the suspected abuse, FINRA Rule 4512 has been expanded to provide for the collection of contact information for a “Trusted Contact Person.” The “Trusted Contact Person” will likely be identified during the account opening process and will be a point of contact for member firms to discuss the client’s situation or well-being when abuse is suspected. We are supportive of this approach and believe it creates a general framework that offers an appropriate amount of protection and guidance for firms while allowing the flexibility necessary to investigate and combat exploitation.

III. SUGGESTIONS FOR IMPROVING THE PROPOSAL

A. The Defined Age Of A Senior Should Be Lowered.

The Proposal helps protect seniors and other vulnerable adults. “Senior” is defined under the Proposal as a person age sixty-five or older. The Elder Justice Act,⁴ the Older Americans Act,⁵ along with states recently passing senior protection laws, like Missouri⁶ and Washington,⁷ have

clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

³ Throughout this letter, the terms “elder” and “senior” are also intended to include the concept of “vulnerable adult.”

⁴ 42 U.S.C. §1397j(5).

⁵ 42 U.S.C. §3002(40).

⁶ Missouri SB 244, 2015.

defined a senior as being a person age sixty or older. Additionally, the North American Securities Administrators Association (“NASAA”) recently put forth a proposed model act defining “eligible adults” to mean “a person sixty years of age or older.”⁸ We believe that aligning the definition in the Proposal with the definition used by the federal government, various states and NASAA will eliminate conflicting regulatory definitions and lessen confusion for member firms.

B. The Safe Harbor Should Be Expanded.

One of the Proposal’s primary benefits to member firms is that it provides a safe harbor to investigate and report financial abuse. However, the concept of a safe harbor is not set forth explicitly in the proposed rule language. Instead, it is mentioned solely in the supplementary material.⁹ Adding the safe harbor into the rule would strengthen member firms’ ability to use Rule 2165 because they will be able to rely on the assurance of explicit rule language rather than mere guidance.

Another way to further develop the concept of a safe harbor is to expand the definition of a “Qualified Person.” A “Qualified Person” is defined as an “associated person of a member who serves in a supervisory, compliance or legal capacity that is reasonably related to the Account.”¹⁰ Key members of the firm who have a direct relationship with the client, such as a financial advisor or a branch assistant, do not appear to be afforded the Proposal’s protections, which may limit their ability to contact the “Trusted Contact Person.” Often, these people are in the best position to identify the suspected abuse and provide valuable information during an investigation. In addition, operational personnel may play a part in putting a hold on a disbursement of funds but they also appear to fall outside of the definition. We would recommend removing the phrase “who serves in a supervisory, compliance or legal capacity that is reasonably related to the Account of the Specified Adult” so that “associated person of a member” is all that remains of the “Qualified Person” definition.

C. The Definition Of Immediate Family Member Should Be Expanded.

We are supportive of the Proposal’s provision that allows for an “immediate family member” to be contacted in the event the “Trusted Contact Person” is unavailable or suspected of abuse. This concept provides member firms greater flexibility in addressing the problem of suspected financial exploitation. The definition of “immediate family member” is different for every client and FINRA should recognize this wide variance in its definition, opting to be more inclusive rather than exclusive. Unfortunately, in our experience, it is often an immediate family member whom the client trusts that seeks to take advantage of that trust for their own financial gain. The reality of intra-family elder abuse necessitates a broader definition of “immediate family members” to enable firms to avoid these bad actors.

⁷ Washington State, Ch. 133, Laws of 2010.

⁸ NASAA, Notice of Request for Comments Regarding NASAA’s Proposed Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation, §2(3).

⁹ Proposal, 15.

¹⁰ Proposal, 13.

One option is to expand upon the definition from “immediate family member” to a “reasonably associated individual.” We have experienced situations where clients do not have any immediate family members to contact or there is a known professional, such as an attorney or accountant, who may be a more appropriate person to contact. In order to address this issue, we suggest allowing firms to contact any individual reasonably associated with the client, and known to the firm, to discuss the suspected financial exploitation activity. This practical expansion of permissible contacts should prove useful to member firms and impactful in preventing financial exploitation.

D. A Reference To Immediate Family Members (However Defined¹¹) Should Be Added To Rule 4512 To Align With Rule 2165.

The supplementary materials to Rule 4512 make it clear that member firms shall disclose in writing to the customer that the member firm or an associated person of the member is authorized to contact the “Trusted Contact Person” and disclose information about the customer’s account to confirm a variety of information.¹² We agree that providing written notice at the time of account opening is appropriate. However, one minor drafting anomaly in the Proposal is that Rule 2165 allows members to contact an “immediate family member” when the “Trusted Contact Person” is suspected of abuse. However, “immediate family member” is not referenced in Rule 4512. The omitted reference to an “immediate family member” in Rule 4512 may imply that such notice is not required. We recommend making clear that the notice at account opening covers the “Trusted Contact Person” and potentially, the “immediate family member” as well.

E. The Timing Of Notice Of A Hold Should Be Modified To A Reasonable Standard.

Rule 2165 requires members to provide notice to all parties and the “Trusted Contact Person” of a hold on the disbursement of funds within two business days.¹³ We believe under certain circumstances, the notification within two business days may not be achievable, thus causing the relief afforded under the Proposal to be unavailable to member firms that are unable to meet the deadline. We believe modifying the Proposal to require notice to the customer and the “Trusted Contact Person” “promptly” or “as is reasonable under the circumstances” would be a more appropriate standard.

IV. IMPLEMENTATION

FINRA has sought comment on the potential costs and benefits of the Proposal.¹⁴ Based on our initial estimates, incorporating the “Trusted Contact Person” information into the account opening process and making the necessary system updates will cost WFA approximately \$1.25

¹¹ WFA believes the definition of “immediate family members” should be expanded as described in section C above but has used the proposed definition for purposes of noting the omission from Rule 4512.

¹² Proposal, 12.

¹³ Proposal, 14.

¹⁴ Proposal, 8.

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million. This is a sizeable investment but the strengthening of our ability to help protect clients from abuse makes it worthwhile.

Implementing the Proposal would include, among other things, updates to training and processes. We believe that one year would be an appropriate amount of time to allow for implementation, once a rule is made final.

V. CONCLUSION

WFA appreciates the opportunity to express its support for FINRA's Proposal and commends FINRA for its efforts to protect America's seniors. Should you have any questions, please feel free to contact me directly at (314) 242-3193 or robert.j.mccarthy@wellsfargoadvisors.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McCarthy". The signature is written in a cursive style and is contained within a rectangular box.

Robert J. McCarthy
Director of Regulatory Policy