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VIA EMAIL TO PUBCOM@FINRA.ORG

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

Re: Regulatory Notice 15-37: Comments on Proposed FINRA Rule on Financial Exploitation of Seniors and Vulnerable Adults

Dear Ms. Asquith:

Thank you for the opportunity to comment on Regulatory Notice 15-37, the proposal on Financial Exploitation of Seniors and Vulnerable Adults. The Georgia State University College of Law Investor Advocacy Clinic is committed to protecting the interests of consumer investors. Because the proposal can help protect the assets of vulnerable adults from financial exploitation, we submit this comment in support of the proposal.

While we support the Proposal generally, FINRA's goal of protecting vulnerable adults is enhanced with a few changes. First, the Rule 2165 should require rather than permit Qualified Persons to act on a reasonable belief of exploitation. Second, FINRA should expand the definition of Qualified Person to include registered persons. Third, FINRA should oversee a mandatory training program to educate Qualified Persons and registered persons on recognizing financial exploitation and their obligations under the proposal. Fourth, the Trusted Contact Person should be informed of their status on the account and asked whether they wish to serve in such a capacity. Finally, FINRA should limit the personal information disclosed to family members not listed as the Trusted Contact Person on the account.

I. FINRA SHOULD CHANGE THE LANGUAGE IN PROPOSED RULE 2165(b)(1) FROM "MAY" TO "SHALL" TO INCREASE THE RULE'S EFFECTIVENESS.

Responding to question one in Notice 15-37, the language in Proposed Rule 2165(b)(1) should require rather than permit a Qualified Person to place a temporary hold on a Specified

Adult's account(s) when there is a reasonable belief that financial exploitation is likely to occur. As proposed, proposed Rule 2165 would create a safe harbor for firms who exercise their discretion and halt exploitative transactions. However, the proposal also allows a Qualified Person to use their discretion to ignore a reasonable belief that financial exploitation is likely and do nothing.

We recommend making the obligation mandatory rather than permissible. The proposal as written lacks any enforcement mechanism. In the event that a Qualified Person does not act when there is a reasonable belief that financial exploitation is likely to occur, the Qualified Person should not be afforded a safe harbor. Creating a safe harbor only when a firm acts to prevent financial exploitation offers protection only to the firm and not to the customer. Protection of the customer should be the paramount concern, and the greatest concern is inaction in the face of a reasonable belief of financial exploitation.

Changing the proposal's language from "may" to "shall" will create an enforcement mechanism if a Qualified Person fails to act even when presented with the likelihood that a customer would be a victim of financial exploitation. A Qualified Person that does not comply with this requirement would be subject to investigation and sanction under FINRA Rule 8000. Moreover, a customer adversely impacted by the failure to act could enforce the obligation through an action against the firm. A safe harbor should only exist if it provides protection to the customer in exchange for a limitation on the firm's liability. Thus, a mandatory provision would require firms to act to protect a customer if there is a reasonable belief of exploitation and a firm would be liable for failing to prevent harm in the face of such a belief.

II. THE DEFINITION OF QUALIFIED PERSONS SHOULD INCLUDE REGISTERED PERSONS BECAUSE THEY ARE MOST LIKELY TO FIRST DETECT FINANCIAL EXPLOITATION

In response to question eight of Notice 15-37, we support including registered persons in the definition of Qualified Person to enhance the Proposal's effectiveness. Because registered persons are the front line employees who interact with the customers and have the most knowledge of their accounts and circumstances, they are in the position most likely to detect financial exploitation. In fact, as written, registered persons are the only firm employees required to receive any training on the proposal. Similar proposals aiming to protect vulnerable adults from financial exploitation include front line employees within the definition of qualified employees and this proposal should do the same. For example, the North American Securities Administrators Association, Inc.'s (NASAA) proposed model legislation aimed at preventing exploitation of vulnerable adults includes front line employees in their definition of "qualified employees."¹ By increasing the scope of Qualified Persons to include front line employees like similar proposals have done, FINRA's proposed rule would be more effective.

¹ North American Securities Administrators Association Proposed Model Legislation or Regulation to Protect Vulnerable Adults From Financial Exploitation, Section 2.(7), available at <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2015/09/Request-for-Comments-Model-Seniors-Legislation-Final-2.pdf>.

III. FINRA SHOULD OVERSEE A COMPREHENSIVE TRAINING PROGRAM FOR ALL QUALIFIED PERSONS TO ENHANCE COMPLIANCE AND DETECTION OF EXPLOITATION

While we agree with the proposed 2165.03 to the extent that it recognizes the necessity of training, FINRA should oversee the training and ensure all registered representatives and Qualified Persons are trained. Training is essential to the successful implementation of the Proposal, but leaving it up to the members may create inconsistencies and knowledge gaps from firm to firm. FINRA should use its experiences with its *Securities Helpline for Seniors* and its role in overseeing the continuing education requirements under Rule 1250(a)(1) to develop a training program. Specifically, FINRA should incorporate into its Rule 1250 training a module on recognizing financial exploitation of vulnerable adults as well as the mechanics of the proposed rule. Rule 1250(a)(1) gives FINRA the power to determine the content of the Regulatory Element and requires that each registered person complete the Regulatory Element on the second anniversary of their registration and every three years thereafter. A FINRA created and enforced training program focused on the procedural aspects of the Proposal and detection of financial exploitation will best protect vulnerable adults.

Additionally, all Qualified Persons, not just registered representatives, should receive the proposed training, whether through the Regulatory Element or thorough a separate training. Moreover, because not all registered persons will be required to take the Regulatory Element when the Proposal goes into effect, we recommend offering a web-based training to all Qualified Persons prior to any effective date.

IV. THE TRUSTED CONTACT PERSON SHOULD BE NOTIFIED OF THEIR STATUS WHEN THEY ARE SELECTED TO ENSURE THEIR WILLINGNESS TO ACT AS A RESOURCE IF NEEDED

Firms and registered representatives should take steps to determine whether a Trusted Contact Person is willing and able to serve in that role. The proposed changes to Rule 4512 only require that a Trusted Contact Person's information be obtained. The proposal should go further so that firms have a resource to work with in the event a customer becomes incapacitated or may be exploited. Simply contacting the person designated as the Trusted Contact Person could reveal their willingness to assist before there is a problem, and the firm then can make a reasonable effort to obtain another Trusted Contact Person if the first identified person is unwilling to serve. Such a requirement would also prompt customers to have conversations with their proposed Trusted Contact Person to ensure that the person is willing to serve. This would also open the line of communication between the customer and the Trusted Contact Person about the customer's wishes, aims and goals if they are not able to make decisions on their own behalf. The Trusted Contact Person can serve as an important resource in the event that there is a suspicion of financial exploitation and could offer valuable information and serve as an intermediary to the vulnerable individual. Confirming their willingness to assist, and finding another person in the event that they are unwilling to assist, will facilitate the proposal's aim of stopping financial exploitation and protecting customers.

V. IMMEDIATE FAMILY MEMBERS SHOULD RECEIVE LIMITED INFORMATION IF THEY ARE CONTACTED CONCERNING AN ACCOUNT TO PROTECT CUSTOMER PRIVACY

We agree that, as question three asks, information given to a Trusted Contact Person should be limited. However, question three should be reframed to also address information disclosed to immediate family members if a Trusted Contact Person is unavailable. As proposed, if the Trusted Contact Person is unavailable or the Qualified Person believes that the Trusted Contact Person has engaged, is engaged or will engage in the financial exploitation of the vulnerable adult, then the Qualified Person is to contact an immediate family member. We recommend that anyone who was not designated as a Trusted Contact Person should be contacted only for the purpose of gathering information about the identity of a guardian, executor, trustee or holder of a power of attorney. This would ensure that personal and private information is not disclosed to persons the vulnerable individual did not wish to receive that information.

In keeping with our mission to protect investors, the Investor Advocacy Clinic believes that the proposal will help protect vulnerable adults from financial exploitation. However, we believe that requiring action when a reasonable belief that financial exploitation is likely will enhance the proposal's effectiveness. FINRA should also broaden the definition of Qualified Persons to include registered persons, and notify Trusted Contact Persons when they are first selected to ensure their willingness to act as a resource if needed. Additionally, we believe that a consistent training program and limiting information given to immediate family members will enhance the proposal's preventative measures and protect customer privacy. Thank you again for your consideration and we look forward to any further discussion.



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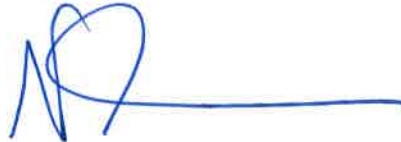
Best regards,



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