



**Cornell Law**  
LAWYERS IN THE BEST SENSE

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October 7, 2019

**Via Electronic Filing**

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**RE: FINRA Request for Comment on Rules and Issues Relating to Senior Investors  
(Regulatory Notice 19-27)**

Dear Ms. Mitchell:

The Cornell Securities Law Clinic (the “Clinic”) submits this comment in response to the Financial Industry Regulatory Authority’s (“FINRA”) Request for Comment on Rules and Issues Relating to Senior Investors (Regulatory Notice 19-27) (the “Request for Comment”). The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and education as to investment fraud in the largely rural “Southern Tier” region of upstate New York. For more information, please visit: <http://securities.lawschool.cornell.edu>.

For the reasons set forth below, the Clinic opposes extending Rule 2165’s safe harbor practice because of inadequate safeguards as to temporary holds on accounts, and suggests that guidance is necessary to address reporting on Forms U4 and U5 that result from Rule 2165’s temporary hold practice. The Clinic addresses below Questions 1, 2, 3 and 8 in the Request for Comment, pertaining to Rule 2165. Additionally, the Clinic supports amending the Sanctions Guidelines (Question 13).

**I. The Clinic previously opposed adoption of Rule 2165 and opposes extending Rule 2165 to transactions in securities or customers with specified impairments.**

The Clinic previously expressed concern regarding and opposed FINRA’s adoption of Rule 2165 in a comment letter dated November 28, 2016. (Copy attached.) In the comment letter, the Clinic expressed concern about the low standard needed to place a hold and the lack of remedies available to customers. For similar reasons, the Clinic also opposes extending Rule 2165 to transactions in securities or customers with specified impairments.

**Question 1** concerns whether “Rule 2165’s safe harbor [should] be extended to apply to transactions in securities, in addition to disbursements of funds and securities?” While the purpose of Rule 2165 is to protect vulnerable individuals from financial exploitation, the Clinic believes that the standards are too low relative to the potential harm that an individual may suffer from not being able to withdraw funds and securities, particularly because there is a lack of immediate and certain remedial relief. If a hold is incorrectly placed on an account, it is difficult to remedy the opportunities and possibilities lost during the duration of the hold. For these reasons, the clinic opposes extending Rule 2165’s practice to transactions in securities.

The Clinic is concerned about the proposal in **Question 2**. The question suggests extending Rule 2165’s safe harbor to apply when “there is a reasonable belief that the customer has an impairment that renders the individual unable to protect his or her own interests (e.g., a cognitive impairment or diminished capacity).” This language and the given examples do not provide enough guidance on how members are to determine when their customer is suffering from an impairment that is substantial enough to invoke this rule. Additionally, a “reasonable belief” is a soft, discretionary standard that gives members too much power. The scope of this potential proposal is broad, lacks formal instruction, and thus leaves room for abuse.

Rule 2165 currently provides a fifteen-day time period for a hold followed by a post-hold internal review of the facts and circumstances of the situation. As the Clinic does not support Rule 2165 itself, the Clinic does not support extending this time period as proposed in **Question 3**. Extending the time in which an individual is unable to access their accounts heightens the potential harm that can result. The Clinic previously suggested amending Rule 2165 to reduce the time period and curb possible harm to customers and currently reaffirms this suggestion.

## **II. The Clinic agrees Guidance is needed to address when customer complaints regarding Rule 2165 holds should be reported on Forms U4 and U5.**

Regarding **Question 8**, the Clinic supports FINRA’s proposal to issue guidance for reporting requirements for customer complaints regarding Rule 2165’s temporary holds on Forms U4 and U5. Creating formal reporting guidelines could help limit member abuse of placing unnecessary temporary holds on investors’ accounts. A standard and explicit system for reporting holds would benefit and protect senior investors in many ways. The benefits that would result from guidance on this matter is twofold.

First, customers would receive help and be informed on how to report complaints. While the Clinic believes that many senior investors are capable of recognizing abuse, reporting this abuse is more complicated. Guidance on this procedure would equip senior investors with the ability to act and take the first step in remedying an abuse. Second, guidance on how to report complaints will increase transparency in the system and thus reduce the amount of abuse that goes unnoticed. Issuing guidance on reporting could deter abuse of Rule 2165 because more members will be held accountable for their actions.

**III. The Clinic supports amending the Sanctions Guidelines to add as a principal consideration the fact that a victimized customer is a “specified adult.”**

The Clinic agrees, in Response to **Question 13**, that FINRA should amend the Sanctions Guidelines to add as a principal consideration the fact that a victimized customer is a “specified adult.” The language in Question 13 defines “specified adult” as “a person 65 or older or a person 18 or older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.” The Clinic supports the overall goal of this amendment but is concerned about the language used and the timing of such designation.

The language used is unspecific other than as to age and, as the Clinic expressed for Rule 2165, leaves room for abuse. There is not enough guidance provided on how members should determine if their customer falls into the category of a “specified adult.” The Clinic is also concerned about the timing of such designation and suggests that the Sanctions Guidelines should require a customer to be designated as a “specified adult” prior to any issue occurring. This timeline will limit possible abuse of this rule.

Overall, the Clinic supports this amendment to the Sanctions Guidelines. However, the clinic recommends taking extra precautions regarding specified language and timing of designation to ensure customer protection.

**IV. Conclusion**

For the reasons stated above, the Clinic opposes the extension of Rule 2165’s safe harbor practices and suggests that guidance is necessary to address reporting complaints on Forms U4 and U5 that result from Rule 2165’s temporary hold practice. Additionally, the Clinic supports amending the Sanctions Guidelines to add as a principal consideration the fact that a victimized customer is a “specified adult.”

Respectfully Submitted,

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November 28, 2016

**Via Electronic Filing**

Brent J. Fields  
Secretary, Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609

**RE: Notice of Filing of a Proposed Rule Change to Amend Rule 4512  
(Customer Account Information) and Adopt FINRA Rule 2165 (Financial  
Exploitation of Specified Adults) (File No. SR-FINRA-2016-039)**

Dear Mr. Fields:

The Cornell Securities Law Clinic (“Clinic”) submits this comment in response to Financial Industry Regulatory Authority’s (“FINRA”) rule proposal found in File No. SR-FINRA-2016-039, seeking to amend Rule 4512 (Customer Account Information) and adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults). The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and education as to investment fraud in the largely rural “Southern Tier” region of upstate New York. For more information, please visit <http://securities.lawschool.cornell.edu>.

The Clinic believes the amendment to FINRA Rule 4512 for a trusted contact person benefits customers and should be adopted; and the adoption of FINRA Rule 2165 is unwise because of inadequate safeguards as to temporary holds on accounts.

**I. The Clinic generally supports the FINRA Rule 4512 amendment requiring members to make reasonable efforts to obtain a trusted contact person.**

FINRA’s purpose behind the rule changes is to combat financial exploitation of elders because “[financial exploitation] can be particularly devastating for seniors and other vulnerable adults, many of whom are living on fixed incomes without the ability to offset significant losses over time or through other means.”<sup>1</sup> While the amendments are directed towards the protection of vulnerable adults, they apply to all other customers that are not vulnerable adults as well.<sup>2</sup>

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<sup>1</sup> Notice, at p. 3.

<sup>2</sup> See *id.*, at p. 412-13.



The goal of FINRA in creating the amendment was to combat the serious problem of “financial exploitation of seniors and other vulnerable adults.”<sup>3</sup> The Clinic shares such concerns.

The Clinic generally supports the rule amendment for selecting a trusted contact person because the amendment increases protections for customers without any substantial downside for the customer. Such a trusted contact person may facilitate communications and monitoring of vulnerable customers. While the amendment applies to persons who may not be vulnerable, reasonable efforts to obtain this information should not be particularly burdensome on member firms.

## **II. The Clinic opposes the adoption of FINRA Rule 2165 permitting members to place temporary holds on accounts.**

FINRA’s purpose for adopting Rule 2165 is the same as mentioned above: to protect vulnerable individuals from financial exploitation.<sup>6</sup> Specified adults are vulnerable individuals because they are either 65 years old or older or individuals with impairments that the member reasonably believes have a mental or physical impairment that prevents the individual from protecting their own interests.<sup>7</sup>

Rule 2165 allows members to place a hold on vulnerable adults’ accounts that the member has a reasonable belief are being financially exploited. The Clinic believes such a standard is too low relative to the potential harm to a customer from not being able to withdraw funds or securities. Further, the 15 day time period for the hold and the post-hold internal review of the facts and circumstances of the situation do not alleviate the concerns over access to the account. Moreover, there is no explicit remedy available to a customer who disputes such a hold. That is problematic for many reasons, not the least of which is that we can envision circumstances in which a family member makes an accusation of exploitation due to family tensions, thus making a hold on an account a pawn in a larger family drama unrelated to exploitation. Last, but not least, the safe harbor provision all but prevents a person whose account is subject to a hold from having a viable financial remedy after the fact.

Although the Clinic opposes Rule 2165 as drafted, the Clinic believes such a rule would be more appropriate if the standard for members to suspend customer accounts were stricter, the time period more limited, and the post-hold procedures available to the customer more definite. In the absence of more clear standards, Rule 2165 creates an incentive to place a hold on an account as the default response to concerns about a specified adult, a situation which may cause harm to customers.

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<sup>3</sup> Id., at p. 2.

<sup>6</sup> See supra, Section I; ¶1.

<sup>7</sup> Id., at p. 414.

**III. Conclusion**

The Clinic supports FINRA's amendment to Rule 4512, but opposes the adoption of Rule 2165 as drafted.

Respectfully Submitted,



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