

October 8, 2019

Via ELECTRONIC Mail (pubcom@finra.org)

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

Re: Regulatory Notice 19-27: Comment on FINRA Rules and Issues Relating to Senior Investors

Dear Ms. Mitchell:

Please accept this submission as MML Investors Services, LLC's ("MMLIS") comment in response to FINRA's Regulatory Notice 19-27: FINRA Requests Comment on Rules and Issues Relating to Senior Investors ("RN 19-27" or the "Notice.")

MMLIS is MassMutual's retail broker-dealer and is headquartered in Springfield, Massachusetts. The firm's approximately 8,500 registered representatives offer a variety of investment products and services to retail clients, including mutual funds and variable products.

Background

RN 19-27 seeks feedback from firms regarding their observations of the recent implementation of two FINRA rules designed to protect senior investors. Specifically, FINRA is conducting a retrospective review of Rule 2165 and the amendment to Rule 4512 – which became effective February 5, 2018 - to see whether the rules have worked as intended and to explore potential expansions and clarifications.

Rule 2165 permits a broker-dealer to place a temporary hold on a specified adult's account if the member reasonably believes that financial exploitation has occurred, is occurring, has been attempted or will be attempted. The rule defines specified adult as "(A) a natural person age 65 and older or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests."¹ The amendment to Rule 4512 requires broker-dealers to make reasonable efforts to obtain the name of and contact information for a trusted contact person either 1) upon the opening of a non-institutional customer's account; or 2) when updating account information for a non-institutional account that existed prior to February 5, 2018.

As a general matter, MMLIS commends and fully supports FINRA on its efforts to protect senior investors. Studies project that the number of people aged 65 and older in the United States will more than double

¹ FINRA Rule 2165.

from 46 million in 2016 to more than 98 million by 2060.² In the next decade between 2020 and 2030, it is estimated that the number of older persons will increase by almost 18 million as the last of the large baby boomers reach age 65.³ As the investing public ages, there are a number of unique issues and scenarios that will arise and necessitate additional tools to protect these individuals from exploitation. To that end, MMLIS would like to offer commentary to a few of FINRA's questions around Rule 2165 and hopes that the firm's experiences will aid FINRA in its efforts to further enhance this rule.

Comment from the Firm

1. *Should Rule 2165's safe harbor be extended to apply to transactions in securities, in addition to disbursements of funds and securities? If so, how should changes in security prices be addressed (e.g., where a hold is terminated: (i) by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction; or (ii) upon a determination that there is not financial exploitation)? Are there other implications of extending the safe harbor to transactions?*

As a broker-dealer that offers variable annuities and mutual funds among its products, the firm has encountered many incidents of financial exploitation involving these products. Exploitation in variable annuities is particularly challenging as the investor can incur significant financial harm through the loss of an income producing benefit, loss of a death protection benefit, unanticipated tax consequences, or large surrender charges when inappropriate transactions are executed.

Currently, there are few regulatory options that enable and empower firms to protect investors from these potentially disastrous consequences. While Rule 2165 grants firms a safe harbor to place a temporary hold on the disbursement, in many instances, the harm is incurred before the disbursement request when a transaction to liquidate is processed. When a variable annuity is liquidated, the customer may incur a surrender charge, as well as lose any beneficial riders. Extending 2165's safe harbor to transactions would allow MMLIS to better protect owners of securities from exploitation by sheltering them from potential market and fee losses when a registered representative is asked to sell a security for a potential disbursement. Furthermore, it should grant representatives the right to suspend a transaction when there is a reasonable belief of diminished capacity to prevent the securities owner from harming his or her retirement funds.

MMLIS recognizes that there are challenges with current rules around pricing and best execution that limit broker-dealers' abilities to pause transactions. However, it is the firm's belief that modification of these rules is a necessity to adequately protect investors from the irreparable harm that can occur through the liquidation of a variable annuity as part of an exploitation scheme. MMLIS encourages FINRA to explore issuing additional guidance around best execution in the exploitation context so that both disbursements and transactions can be subject to 2165.

2. *Should Rule 2165's safe harbor be extended to apply where 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), irrespective of whether there is evidence that the customer may be the victim of financial exploitation by a third party? What burdens would be placed on member firms and their registered persons if the safe harbor were extended in this way?*

² Mark Mather, Linda Jacobson, and Kelvin M. Pollard, *Aging in the United States*, POPULATION REFERENCE BUREAU (December 2015) <https://assets.prb.org/pdf16/aging-us-population-bulletin.pdf> (last visited Oct. 6, 2019).

³ *Id.*

MMLIS believes that FINRA should extend 2165 to apply to cases where there is a reasonable belief a customer has a cognitive impairment or diminished capacity. Cognitive impairment - or diminished capacity - creates a situation where the customer is vulnerable and increases the possibility of exploitation. It also increases the potential for the owner of securities accounts to become insolvent by mishandling his or her retirement funds. MMLIS does not believe that this additional safe harbor would be burdensome to our firm, as it would allow us to protect the assets of our most vulnerable clients.

MMLIS has encountered several situations where concerned family members have approached our registered representatives to notify them that they strongly suspect the account holder of having diminished capacity. Granting MMLIS a safe harbor would provide these family members the time and opportunity to act through a physician or a court without the owner doing irreparable damage to his or her retirement funds.

3. *Should FINRA extend the temporary hold period in the rule or create a different mechanism to obtain an extension? If so, for how long? How frequently has your firm placed a temporary hold pursuant to Rule 2165 and what has been the duration of any holds? When a hold was placed, did the firm's internal review find support for the reasonable belief of financial exploitation that prompted placing the hold?*

Rule 2165 allows firms to place a temporary hold on a disbursement for 25 days unless a court or a state agency grants firms an extension of time on the hold. Unfortunately, the firm has found that in many instances this hold period is not long enough. Many times, the firm has not been able to reach a state regulator who understands and is willing to consider granting an extension to the initial hold period. In these instances, state securities regulators are unclear as to their role in the 2165 process and are wary to grant extensions. Or in the alternative, the state regulator who receives the report has resource constraints and it takes weeks to reach someone who is willing to discuss the matter with the firm.

MMLIS believes that FINRA should either extend the hold period that applies to all cases or create a single organization to grant extensions on holds on a case-by-case basis. The firm often needs more time to allow the state regulator to gain an understanding of the situation to allow an extension and increasing the hold period would enable the regulator to fully explore the issues and options needed to protect the investor. Alternatively, the firm believes that creating a single reporting hub (i.e. through FINRA) that can handle exploitation cases and grant extensions within the current hold period would enable the firm to work with one entity that has a complete understanding of the rules and could further aid the investigative efforts and subsequent actions that could help prevent the investor from continued exploitation.

4. *Has your firm identified any unintended consequences when placing or attempting to place a temporary hold on disbursement of funds or securities from an account under Rule 2165?*

There have been a number of situations where placing a hold on a distribution would have also placed a hold on the customer's income payments or required minimum distribution for the year. In those situations, the firm took steps to ensure that any systematic payments or required minimum distributions were processed accordingly such that the customer was not harmed by the hold.

5. *Is guidance needed to address when complaints related to placing a temporary hold pursuant to Rule 2165 should be reported on Forms U4 and U5? To what extent have registered persons received complaints in situations relating to disbursement holds, and have they been reportable complaints?*

Although MMLIS has not received a specific complaint against a producer due to holds related to 2165, the firm's producers have expressed concerns regarding the potential impact of a complaint relating to a temporary hold. Currently, any complaint by a customer against a producer involving disbursement that was held pursuant to 2165 would be reportable on the producer's CRD. The safe harbor does not provide any protection related to reporting. Additional guidance in these circumstances would be invaluable, as the firm is concerned that the lack of protection for producers in this context could create a chilling effect on the reporting of financial exploitation. MMLIS believes that a complaint related to a firm's decision to place a 2165 hold should not be reportable on a producer's form U4 or U5, but should be a different category of complaint that is captured under the 4530 quarterly statistics.

Conclusion

MMLIS appreciates the opportunity to provide its comment to this retrospective review of Rules 2165 and the amendment to Rule 4512. If you should have any further questions regarding this comment, please do not hesitate to contact me.

Best regards,

A handwritten signature in blue ink that reads "Courtney B. Reid". The signature is written in a cursive, flowing style.

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Cc: Brett Lassoff