



November 2, 2021

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2021-016 (Proposed Rule Change to Amend Rule 2165  
(Financial Exploitation of Specified Adults))**

Dear Ms. Countryman:

This letter responds to comments received by the Securities and Exchange Commission ("SEC" or "Commission") to the above-referenced rule filing (the "Proposal") to amend Rule 2165 to permit member firms to: (1) extend a temporary hold on a disbursement of funds or securities or a transaction in securities for an additional 30-business days if the member firm has reported the matter to a state regulator or agency or a court of competent jurisdiction; and (2) place a temporary hold on a securities transactions where there is a reasonable belief of financial exploitation.

The Commission published the Proposal for public comment in the Federal Register on June 28, 2021,<sup>1</sup> and received five comments in response to the Proposal.<sup>2</sup>

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<sup>1</sup> See Securities Exchange Act Release No. 92225 (June 22, 2021), 86 FR 34084 (June 28, 2021) (Notice of Filing of File No. SR-FINRA-2021-016).

<sup>2</sup> See letters from Eric Arnold and Clifford Kirsch of Eversheds Sutherland on behalf of the Committee of Annuity Insurers to Vanessa Countryman, Secretary, SEC (July 19, 2021) (CAI); William Benson, National Policy Adviser, and Kendra Kuehn, National Policy Adviser, National Adult Protective Services Association to Vanessa Countryman, Secretary, SEC (July 29, 2021) (NAPSA); Lisa Bleier and Marin Gibson, Securities Industry and Financial Markets Association, to SEC (July 28, 2021) (SIFMA); Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, Securities Arbitration Clinic at St. John's University School of Law to Vanessa Countryman, Secretary, SEC (July 19, 2021) (St. John's); and Ron Long, Head of Aging Client Services, Wells Fargo & Co. to Vanessa Countryman, Secretary, SEC (July 15, 2021) (Wells Fargo).

On August 23, 2021, FINRA responded to the comments received by the Commission.<sup>3</sup>

The Commission then published a notice and order to solicit comments and to institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>4</sup> The Commission received one comment letter addressing the Proposal in response to the publication of the Order Instituting Proceedings.<sup>5</sup> The following are FINRA's responses, by topic, to the commenter's material concerns.

#### Transaction Holds and Recordkeeping

Cornell Clinic supported extending the temporary hold to securities transactions where there is a reasonable belief of financial exploitation. Cornell Clinic stated that the extension "would allow member firms to protect their customers to a greater degree." Cornell Clinic also supported requiring that a member firm retain records of the reason and support for any extension of a temporary hold, including information regarding any communications with or by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.<sup>6</sup>

#### Hold Period

Cornell Clinic did not support extending the temporary hold time an additional 30 days when the firm has reported the matter to a state regulator or agency unless the member firm's reasonable belief of exploitation is supported by an internal investigation. Proposed Rule 2165(b)(4) would permit the additional 30-day extension "[p]rovided that the member's internal review of the facts and circumstances under paragraph (b)(1)(C) of this Rule supports the member's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted and the member has reported or provided notification of the member's reasonable belief to a state regulator or agency of competent jurisdiction or a court of competent jurisdiction" (emphasis added). Accordingly, the extension in proposed Rule 2165(b)(4), as with the extension currently provided in Rule 2165(b)(3), requires

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<sup>3</sup> See Letter from Jeanette Wingler, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC (Aug. 23, 2021).

<sup>4</sup> See Securities Exchange Act Release No. 93103 (Sept. 22, 2021), 86 FR 53696 (Sept. 28, 2021) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove SR-FINRA-2021-016) ("Order Instituting Proceedings").

<sup>5</sup> See letter from William A. Jacobson, Esq. and Erik Oakley, Cornell Securities Law Clinic, to Vanessa Countryman, Secretary, SEC (Oct. 13, 2021) (Cornell Clinic).

<sup>6</sup> See proposed Rule 2165(d)(6).

that the member firm's internal review of the facts and circumstances support the need for the temporary hold.

Cornell Clinic stated that it may be desirable to consolidate the two extensions into a single 40-business day extension. FINRA has tried to strike a reasonable balance in giving member firms adequate time to investigate and contact the relevant parties, as well as seek input from a state regulator or agency or a court if needed. FINRA does not support consolidating the two extensions into a single 40-business day extension because doing so would not differentiate between matters of varying complexity. The proposed additional 30-business day extension is intended to provide firms with additional time needed to resolve complex matters, often involving investigations by state regulators or agencies or legal actions in a court.

Cornell Clinic also suggested that it may be desirable to provide a mechanism for the customer to override the temporary hold in limited circumstances (e.g., the customer attesting to their knowledge of heightened risks, showing they are of sound mind, disclaiming the member firm's liability as to the transactions).

Unless a member reasonably believes that doing so would cause further harm to a specified adult, FINRA encourages the member to attempt to resolve a matter with a customer before placing a temporary hold. In addition, Rule 2165(b)(1)(B)(i) requires that, not later than two days after placing a temporary hold, the member firm notify all persons authorized to transact business on the account, including the customer. However, allowing a customer to override a temporary hold when the member firm has a reasonable belief that the customer is being financially exploited would give a powerful tool to the person exploiting the customer and deprive the member firm of a tool to address the exploitation (e.g., the exploiter could direct the customer to override the hold so that the exploiter could access the customer's funds).

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FINRA believes that the foregoing responds to the material issues raised by the commenter. If you have any questions, please contact me at (202) 728-8013, email: [jeanette.wingler@finra.org](mailto:jeanette.wingler@finra.org).

Best regards,

/s/ Jeanette Wingler  
Jeanette Wingler  
Associate General Counsel