



**Wells Fargo & Company**  
420 Montgomery Street  
San Francisco, California  
wellsfargo.com

December 3, 2020

**Via E-mail:** *pubcom@finra.org*

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

**RE: Regulatory Notice 20-34: Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report**

Dear Ms. Mitchell:

Wells Fargo & Company, together with its affiliates and subsidiaries (collectively, “Wells Fargo”), appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (FINRA) Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report, set forth in Regulatory Notice 20-34 (the “Notice”).<sup>1</sup>

Wells Fargo is a diversified, community-based financial services company with \$1.9 trillion in assets and approximately 259,000 team members, which provides banking, investment and mortgage products and services, as well as consumer and commercial finance. Our broker-dealer<sup>2</sup> and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States, helping millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals.

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<sup>1</sup> Regulatory Notice 20-34, Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report (October 2020). <https://www.finra.org/sites/default/files/2020-09/Regulatory-Notice-20-34.pdf>

<sup>2</sup> Wells Fargo Advisors (WFA) is a dually registered broker-dealer and investment advisor that administers approximately \$1.5 trillion in client assets. It employs nearly 13,300 full-service financial advisors in branch offices in all 50 states and 5,431 licensed bankers in retail bank branches across the United States. WFA is a non-bank affiliate of Wells Fargo & Company.

## **I. BACKGROUND**

In October of 2020, FINRA issued this Notice seeking comments in response to proposed amendments to FINRA Rule 2165 (Financial Exploitation of Specified Adults), which would permit a firm to place a temporary hold on a securities transaction (in addition to the existing ability to place a temporary hold on a disbursement of funds or securities) if there is a reasonable belief that financial exploitation of a Specified Adult has occurred, is occurring, has been attempted, or will be attempted, and extend any temporary hold period for an additional 30 business days if certain conditions are met.

## **II. DISCUSSION**

Wells Fargo is supportive of FINRA's proposed amendments to Rule 2165 to permit a firm to place a temporary hold on a transaction when there is a reasonable belief that the customer is being financially exploited, and extend any temporary hold period for an additional 30 business days if the member firm had reported the matter to a state agency or a court of competent jurisdiction.

As we noted in our [comment letter](#) in our response to Regulatory Notice 19-27, Wells Fargo believes senior investors suffer financial exploitation when their account is liquidated under fraudulent circumstances, as the sale of long-held assets could trigger adverse and unwanted tax consequences. The proposed extension of Rule 2165 to cover transactions would provide additional protection for investors. Wells Fargo also believes FINRA's amendment to permit extension of a temporary hold under Rule 2165 for an additional 30 business days would provide member firms with additional time to resolve matters and for Adult Protective Service agencies, state regulators and law enforcement to conduct thorough investigations of, and act in response to, claims of reported financial exploitation.

The COVID-19 pandemic has highlighted two additional areas where FINRA can amend its rules to better assist Specified Adults, namely, seniors and senior investors who have been impacted by COVID-19. According to the [Centers for Disease Control and Prevention](#) (CDC), as a group, seniors have had the highest mortality rate related to COVID-19, and consequently have suffered from societal restrictions and closures enacted as a response to the pandemic. Some believe surviving COVID-19 can have debilitating lingering effects on older persons. Wells Fargo believes that, in light of the impacts the COVID-19 pandemic has had on the economy and senior investors, FINRA should take a closer look at diminished capacity issues and consider extension of the Rule 2165 safe harbor to apply where there is a reasonable belief that the investor has an impairment that renders the individual unable to protect his or her own interests, irrespective of whether there is evidence the customer may be the victim of financial exploitation by a third party.

*Jennifer Piorko Mitchell*

*December 3, 2020*

*Page 3*

FINRA Rule 4512 allows firms to obtain the name of a trusted contact person for a customer account as a resource for the firm in administering the customer's account and responding to possible financial exploitation. In the Notice, FINRA recognizes the reality that many clients have not named a trusted contact to date. Where investors have not had the foresight or opportunity to name a trusted contact in writing, Wells Fargo notes that a number of states currently permit firms, in circumstances where financial exploitation may be suspected, to contact a person "reasonably associated" with the customer in question. Wells Fargo believes FINRA also should give member firms the flexibility to contact someone reasonably associated with the account in such circumstances. Coupled with expanding Rule 2165 to aid in situations where diminished capacity is suspected, these changes could help protect a senior investor suffering from diminished capacity if a trusted contact person is not provided for the account, or if the trusted contact person is suspected of exploiting the customer. We urge FINRA to take a second look at these concerns in light of the real world challenges exacerbated by the current COVID-19 environment.

### **III. CONCLUSION**

Wells Fargo appreciates the opportunity to respond to FINRA's proposed amendments to Rule 2165. If you would like to discuss this issue further or need additional information, please contact me at [Redacted], or Carl Tugberk, Head of Wealth and Investment Management Public Policy for Wells Fargo & Company, at [Redacted]

Sincerely,



Ron Long  
Head of Aging Client Services