



December 4, 2020

Submitted via e-mail: [pubcom@finra.org](mailto:pubcom@finra.org)

FINRA  
1735 K Street, NW  
Washington, DC 20006

Re: Regulatory Notice 20-34

To Whom It May Concern:

Thank you for the opportunity to provide feedback on Regulatory Notice 20-34 which proposes amendments to Rule 2165. SIFMA<sup>1</sup> appreciates the continuing work that FINRA has undertaken to protect senior and vulnerable adults from financial exploitation, and we believe Rule 2165 has been helpful in the fight against financial exploitation. We believe these additional amendments proposed will further assist financial institutions in that continued effort.

## **I. We Support the Inclusion of Transactions**

Rule 2165 permits a financial services provider to place a temporary hold on a disbursement of funds from the account when the firm reasonably believes there is financial exploitation. We fully support FINRA's proposal to expand the rule's safe harbor to include temporary holds on transactions in securities. FINRA RN 20-34 notes that a significant number of member firm customer agreements permit placing holds on transactions, and 16 state laws permit broker dealers to place holds on suspicious transactions. FINRA's proposal to now include temporary holds on securities transactions will help protect against financial exploitation relating to purchases or sales, and thus protect senior investors from significant harm.

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

It is worth noting that approximately one half of the entire U.S. population already benefits from broader, transaction-based protections under state law.<sup>2,3</sup>

## **II. We Support Extension of the Length of Time for Holds**

Currently, 2165 allows firms to place a temporary hold on a disbursement of funds for up to 25 business days. The rule states that this period may be extended by a state agency or a court. We find that the number of days is often too short for the issues to be resolved, and that it can be difficult to obtain an extension from a state agency or a court. As a result, we support FINRA's proposal extending the period of time an additional 30 days if the firm reported the matter to a state agency or a court of competent jurisdiction.

Firms often work with law enforcement, securities and financial regulators, and – critically - Adult Protective Services to resolve senior financial exploitation. The APS workers need more time to investigate cases of senior financial exploitation, as they are also investigating cases of abuse and neglect. As a result, the National Adult Protective Services Association specifically noted in their letter to FINRA<sup>4</sup> that the 25 day limitation was often not enough time due to understaffing at their offices, along with an increase in reports. Their request was for 60 days plus flexibility to extend, which we support. This extension of time would permit the firm to extend a hold under FINRA's rules to maintain the status quo and allow for more time for greater collaboration with APS, state regulators, and local law enforcement.

## **III. We seek editing clarification to include local APS agencies**

We would suggest an editing correction to the operating language in part (b)(4). Since APS offices could be local or state agencies, we would suggest adding a comma after the phrase "state regulator" and inserting an "an" before agency so that it covers either model. This would result in the following edits:

(4) Provided 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

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<sup>2</sup> Based on 2010 Census numbers.

<sup>3</sup> Arizona, California, Florida, Kentucky, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, North Dakota, Oklahoma Texas, Utah, Virginia, Washington State and West Virginia

<sup>4</sup> [https://www.finra.org/sites/default/files/2019-10/19-27\\_NAPSA\\_comment.pdf](https://www.finra.org/sites/default/files/2019-10/19-27_NAPSA_comment.pdf)

provided notification of the member's reasonable belief to a state regulator, ~~or an~~ agency of competent jurisdiction or a court of competent jurisdiction, the temporary hold authorized by this Rule may be extended by the member for no longer than 30 business days following the date authorized by paragraph (b)(3) of this Rule, unless otherwise terminated or extended by a state regulator, ~~or an~~ agency of competent jurisdiction or a court of competent jurisdiction.

#### **IV. We encourage FINRA to consider relief with regard to Form U-4**

The industry continues to be concerned about bad actors filing malicious complaints against an advisor after a firm places a temporary hold on an account. We urge FINRA to consider developing a specific hold-related problem code and to issue guidance that such hold-related complaints should be reportable against the firm and not be allocated to an individual advisor's Form U-4 – regardless of whether the hold was placed pursuant to Rule 2165, state laws or a firm's client agreement. This is important because an individual advisor does not have the authority to place a temporary hold, and an advisor should not be penalized for actions that the firm takes to protect their senior client – regardless of how the complaint is drafted. This would also prevent bad actors from using the threat of a complaint to try to achieve their malicious goals of taking advantage of vulnerable senior investors.

#### **V. Conclusion**

Thank you for the opportunity to comment. We look forward to discussing these issues further. Please feel free to contact either myself at [Redacted] or Marin Gibson at [Redacted]

Sincerely,

*Lisa Bleier*

Lisa J. Bleier