PIABA
PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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July 14, 2025

Via Email Only @ pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1700 K Street, NW
Washington, DC 20006

RE: Comment Letter Regarding FINRA Regulatory Notice 25-07 / FINRA Requests Comment on Modernizing FINRA Rules, Guidance, and Processes for the Organization and Operation of Member Workplaces

Dear Ms. Mitchell:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitration and litigation. Since its formation in 1990, PIABA has promoted the interests of public investors in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members represent and advocate for investors harmed by fraud, misconduct, and the damage caused by members of the securities industry who put their interests ahead of their clients. As a result of representing the public investors, PIABA is in the unique position to uncover patterns of conduct and regulatory inefficiencies that lead to customers being misled, misinformed, or mistreated.

Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") particularly relating to investor protection issues. As such, PIABA frequently comments upon proposed rule changes and retrospective rule reviews to protect the rights and fair treatment of the investing public.

Background

PIABA agrees substantial improvements can be made to modernize the FINRA Rules and regulatory landscape to better address the risks to investors and the markets. However, PIABA believes that any efforts to modernize FINRA Rules and standards must ***prioritize*** and ***strengthen*** investor protection. FINRA's notice is admittedly rather broad, but PIABA suggests several areas that FINRA should focus on in modernization efforts to balance the interests of protecting the investing public and integrity of the capital markets.

In short, PIABA supports a variety of common-sense amendments and improvements that will enhance investor protection, but PIABA encourages FINRA to ensure that any considered changes would prioritize the strengthening of investor protection and integrity of the markets. PIABA looks forward to the opportunity to comment on any future proposals.

A. Branch Offices and Hybrid Work

FINRA first asks for comment regarding supervision under FINRA Rule 3110. In particular, FINRA seeks comment on branch office supervision, hybrid work spaces, recent changes that allow for residential supervisory locations, and other changes that allow for virtual or remote branch inspections.

PIABA has been consistently opposed to allowing for residential supervisory locations, as well as the pilot programs that relies solely on virtual or remote branch inspections under certain circumstances. As our organization has previously highlighted, this creates a large loop hole for problem brokers to skirt the rules and defraud innocent investors. The amendments to allow for residential supervisory locations and the remote inspection pilot programs are terrible ideas and run counter to FINRA stated objective of investor protection.

The changes are most concerning considering numerous past enforcement cases from both FINRA and the SEC. One such case is *In the Matter of Royal Alliance Associates, Inc*., Release No. 38174, 63 S.E.C. Docket No. 1606 (Jan. 15, 1997). In this case, the SEC took issue with Royal Alliance's practice of performing announced audits on "small dispersed offices" beyond the "direct aegis of the firm":

> …Royal Alliance operates 1,500 offices with 2,700 registered representatives. Some 49 of these are one-person Offices. Here, Royal Alliance's failure to scrutinize adequately the securities-related business of its registered representatives, which were conducted beyond the direct aegis of the firm, was a certain recipe for trouble. Further, Royal Alliance's practice of conducting a pre-announced compliance examination only once a year was inadequate to satisfy its supervisory obligations.
> * * *
> Nevertheless, such arrangements necessarily entail greater supervisory challenges and the Commission requires firms organized in such a fashion, and individual supervisors at those firms, to meet the same high standards of supervision as at more traditionally organized firms.

The SEC continued to recognize this problem in another matter, *In the Matter of 1st Discount Brokerage, Inc.,* Release No. 66212A, Admin. Proc. File No. 3-14710 (Jan. 23, 2012). The SEC opined that firms that have an independent broker model require greater supervision than that of a traditional wire house brokerage firm. The lack of unannounced audits for a far-away broker with no one looking over his shoulder was wholly deficient. The failure to adequately supervise this broker's conduct resulted in a nearly $9 million Ponzi scheme.

In a 2022 regulatory action, FINRA barred a broker from the securities industry. *See* FINRA No. 2021072636101. The broker had been stealing money from a client and sending fake account statements to the client to conceal his fraud. After the client discovered the fraud, the firm performed an unannounced audit at the broker's branch and discovered a box under his desk that contained dozens of drafts of these fake statements. If the remote inspection pilot program was enacted years earlier, this broker would have been eligible for remote inspections at his office, without the need for any in-person inspections. This is the type of conduct that a remote inspection will never uncover.

There are some things that technology cannot detect that an in-person audit would discover. For example, when an auditor visits the advisor's home office, the auditor can see their home, car, and other assets. Many firms' compliance procedures ask supervisors to gauge whether the advisor is living within their means (or at least, their legitimate commissions or compensation), and this cannot be done effectively remotely or once every three years in-person. Moreover, if the advisor has files or other documents related to unapproved investments (*i.e.*, "selling away"), a remote inspection will not capture this. Our members have had cases where brokers sold unapproved investments with brochures and other offering documents in plain sight of their office; a remote inspection will not catch this.

Other regulatory actions involving brokers running "selling away" or Ponzi schemes from residential or remote (often one-broker) offices are too plentiful to count but include *In re Lawrence John Fawcett, Jr.*, FINRA No. 2017056329801 (operating from home); *see also Hailey v. Westpark Capital, Inc.*, FINRA Arb No. 20-00320 (detailing the lack of sufficient supervision of Fawcett's home office); *In re Jerry Irvin Chancy*, FINRA No. 2014043629801 (operating from home), *In re Mark Lewton Hopkins*, FINRA No. 2018060968101 (operating from an office on a golf course owned by the broker); *In re Malcolm Segal*, FINRA No. 2014041990901 (home office); *In re Robert Van Zandt*, FINRA No. 2011027577001; *In re Nevin Gillette*, FINRA No. 2006007067401; *In re Charles Caleb Fackrell*, FINRA No. 2014043705201; *In re Thomas H. Laws*, FINRA No. 2019061095601; *In re Brian Royster*, FINRA No. 2017052882601; *In re Michael James Blake*, FINRA No. 2010021710501; *In re Murray Todd Petersen*, FINRA No. 2019064432901; *In the Matter of Rebecca Engle*, SEC Admin. Release 34-75127 (June 9, 2015); *In the Matter of Brian Schuster*, SEC Admin. Release 34-75128 (June 9, 2015); *In the Matter of Larry Dearman Sr.*, SEC Release No. 75292 (June 24, 2015); *In the Matter of Levi D. Lindemann*, SEC Release No. 77696 (Apr. 22, 2016); and *In the Matter of Securities America Advisors, Inc.*, SEC Release No. 94995 (May 26, 2022) (regarding a failure to supervise Hector May, who ran a $8 million Ponzi scheme).

The recent amendments provided that the broker is not allowed to have visits with clients at their remote office, but as we all know, firms simply cannot rely on an unfaithful broker to follow the rules with no real oversight. *See NASD v. Robert Joseph Kernweis*, NASD No. C02980024 (Feb. 16, 2000) (finding that supervisors cannot rely on unverified representations of a broker). Likewise, a review of all electronic communications that are made through the member firm's electronic data systems would only be sufficient if firms are required to adequately review these emails; often firms only review a small *sampling* of electronic correspondence. Our members have seen numerous cases where the broker engaged in selling away and openly discussed such through their firm-approved email address, but the firm did not detect it for years (or ever) because the firm simply did not see or review the emails.

Simply, any provision that weakens the rules as it relates to inspections of home or remote offices is wrong and would likely lead to more harmed investors suffering larger damages. These proposed rules would provide even more ample opportunity for the broker to engage in fraudulent conduct without a supervisor or auditor adequately supervising the broker's conduct. If anything, FINRA should require firms to develop and implement more unannounced inspections as remote offices and virtual technology becomes more prevalent. Additionally, rules that require firms to review more than just a sampling of electronic correspondence would be needed to combat potential problem brokers.

Finally, as the world moves beyond the COVID-pandemic era, the need for hybrid work is becoming less frequent. The need for remote work is just not the same as it was five years ago.

<u>B. Registration Process and Information</u>

PIABA also would like to thank FINRA the opportunity to comment on issues related to registration information and what is available to the public. While PIABA has no position on registration issues for the most part, PIABA would like to see greater transparency on BrokerCheck, and in particular, for BrokerCheck to look more like what someone would find on a Legacy CRD report that is available to State regulators. BrokerCheck reports often omit information about brokers that is highly relevant and necessary for investors to make informed decisions about who they may want to hire.

PIABA has repeatedly called for FINRA to enhance BrokerCheck and, at a minimum, harmonize it with whatever information was already available in the public domain through the Legacy CRD reports the States provide in response to investor requests for broker background information. PIABA was not, however, the first to call upon FINRA to improve the BrokerCheck system. PIABA issued a Report in March 2014 (as well as an update in October 2016) that explored in great detail the continuing demands for improvements through the years.

As highlighted in the previous PIABA reports, in 2010 the SEC urged FINRA to consider the commentators' comments and provide information already available from the states. *See* SEC Release No. 34-62476; File No. SR-FINRA-2010-012, at 15. A year later, the SEC renewed its recommendation to improve BrokerCheck by, among other things, including U5 notes regarding the reasons for broker employment termination, as well as historical filings going back more than 10 years. *See SEC, Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers,* January 2011.

There is certain information that is still not available to investors who research their advisor on BrokerCheck:

a) Formerly Reportable Information. Certain information that was, but is no longer required to be, reported through the registration and licensing process is not disclosed through BrokerCheck. This information includes, for example, judgments and liens originally reported as outstanding that have been satisfied and bankruptcy proceedings filed more than ten years ago;

b) Examination Details. Scores on industry qualification examinations, and failed examinations, are also excluded from BrokerCheck Reports, although BrokerCheck displays industry examinations that a registered representative has passed;

c) FINRA does not release "Internal Review Disclosure" information reported on Section 7 of the Form U5. One of the questions in Section 7 contained in Form U-5 entitled, Internal Review Disclosure, asks:

> 7B. Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating investment-related statutes, regulations, rules or industry standards of conduct?

This information only shows up after a broker has been terminated while under internal investigation.

In summary, PIABA continues to ask that the information on BrokerCheck align with what the State regulators can see on Legacy CRD reports.

C. Qualifications and Continuing Education

If any rule changes are contemplated, they must go hand-in-hand with investor protection enhancements.

D. Delivery of Information to Customers

PIABA thanks FINRA for the opportunity to address information delivery mechanisms. We set out our views below.

> D.1. What are the costs and risks for investors and members associated with the current standards for electronic delivery? How has the balance among these costs and risks changed with advances in technology as customers have become more familiar with electronic communications? What protections should be available to customers who are less comfortable with receiving electronic communications?

PIABA believes that a broker-dealer's information delivery to its customers in the digital age is an important area of investor protection, particularly for senior investors. Accordingly, FINRA should ensure that member firms consider and address, among other things, the following:

- **Security Concerns:** While convenient, electronic delivery can pose risks to investors, such as unauthorized access. One example of the security concerns is the broker-dealer actually obtaining the customer's informed consent via electronic signatures on a firm's platform or related third-party vendor. *See, e.g.,* FINRA Regulatory Notice 25-07. PIABA believes that FINRA should continue its focus on ensuring member firms appropriately supervise to identify and respond to "red flags" or suspicious activity that suggest security concerns may be occurring related to obtaining a customer's informed consent on forms, applications, *etc.*

- **Reliability of Delivery:** For a retail investor to understand the information they receive from member firms, they must first actually receive the information. Delivery issues, such as outdated email addresses, can prevent investors from receiving electronic information timely. Accordingly, PIABA believes more frequent account verifications, whether through a member firm's mobile application or otherwise, is appropriate to ensure the customer is actually receiving and viewing the electronic information. Supervisory systems that detect failed delivery, or other processes like confirming electronic deliveries such as read receipts, might be appropriate.

- **Digital Literacy Among Seniors:** While many investors are comfortable with electronic communications, some retail investors, particularly seniors or those with limited digital literacy, may struggle with accessing and understanding electronic documents delivered from their broker-dealer. This gap can lead to potential miscommunication and misunderstandings. As a result, PIABA believes that investors should continue to be able to choose their preferred method of communication, ensuring those uncomfortable with electronic delivery can receive paper documents.

D.2. Should FINRA consider any changes to its rules relating to the delivery of disclosure documents to customers, including the disclosure requirements under the FINRA Rule 2200 Series?

PIABA believes that FINRA should "do no harm" to the delivery of disclosure documents to customers by relaxing any requirement under those rules. For instance, FINRA Rule 2264 requires member firms to deliver, with a frequency of not less than once a calendar year, in paper and electronic form, the margin disclosure statements to non-institutional customers. *See* FINRA Rule 2264. PIABA would not support any disclosure changes in the Rules that, for example, lessens the frequency or remove the requirement to deliver these type of important notices to customers.

To the contrary, we believe that more disclosures are necessary in light of expansive complex product offerings in today's securities markets. For instance, consider PIABA's Comment Letter in 2022 on Regulatory Notice 22-08 (detailing the investor protection issues with complex products such as leveraged ETFs, options, *etc.*). Stronger disclosures delivered and electronically signed by the customer at account opening, account upgrade, or other appropriate stages of a customer's account for complex products should be required.

D.3. Would principles-based guidance on using negative consent letters be useful for members, rather than the current guidelines? What principles should FINRA apply? And D.4. Are the practices regarding the transfer of investment advisory accounts instructive in the broker-dealer context? Given many customer advisory accounts are also accounts with a broker-dealer, would alignment be warranted and feasible?

While PIABA is not closed to considering a principles-based approach in the context of negative consent letters, our concern is the potential cost of weaker investor protection. We generally believe that negative consent letters should be the exception, and not the rule, relating to activities within and across a customer's account. For instance, a negative consent letter that would materially affect a customer's rights or protections is highly inappropriate, which is why FINRA thoughtfully provided certain scenarios where negative consent letters are appropriate. *See,* e.g. FINRA Notice to Member 02-57. The greater risk is a principles-based approach, in the name of greater "flexibility[,]" will open the door for issues such as inadequate notice periods, ambiguous disclosures and explanations, and incongruous follow-up processes to ensure customers are on notice about the respective account activity, whether a transfer or otherwise.

E. Recordkeeping and Digital Communications

The Exchange Act Rule 17a-4(b)(4) requires broker-dealers to preserve originals of all communications it receives and copies of all communications the broker-dealer sends (including inter-office memoranda and communications) relating to its business as such, including all communications with the public that are subject to the rules of the SRO of which the broker-dealer is a member. Also, FINRA rules require members to supervise their internal and external communications relating to their investment banking and securities business and retain records of such communications.

Advances in technology have expanded the channels through which members and their associated persons communicate and conduct their business. Members and their associated persons and customers have embraced digital communication channels, including email, instant messaging, and video or online meeting applications. Although the new channels provide benefits and efficiencies, their use also raises questions about which communications the member must retain and the best way to do so.

In addition, questions arise regarding members' use of other emerging communication technologies (e.g., the integration of dynamic content into websites, AI-generated chat bot communications and transcripts of video discussions). Members' and associated persons' use of these technological capabilities has raised questions about their ability to comply with current SEC and FINRA recordkeeping rules and whether such rules need to be updated. Rule 25-07 hopes to address the issues in emerging communications and record keeping/retention requirements.

Associated persons of member firms now have access to a nearly endless number of options to communicate with customers—including text messaging, WhatsApp, and other internet-based services. These "alternative" and often unapproved and unsupervised messaging platforms are increasingly being used to engage with customers. PIABA members have observed a troubling rise in misconduct, including "selling away" and material misrepresentations, that occur via these unofficial and unmonitored communication platforms. These methods enable associated persons to communicate with customers in ways that circumvent regulatory oversight and firm compliance functions.

To address this risk, associated persons should be required to disclose all communication platforms they use to engage with clients, in the same manner they are currently obligated to disclose outside business activities. Member firms and regulators must strictly prohibit the use of any non-disclosed or unmonitored communication methods. Moreover, there should be a presumption of impropriety associated with the use of any undisclosed communication platform—creating a strict liability framework that shifts the burden to the associated person and firm. This deterrent would reduce misconduct and protect investors from individuals attempting to evade supervision.

In addition to proactive monitoring, member firms should be required to obtain a forensic copy of all electronic communications between associated persons and customers on an annual basis, or at a minimum upon the termination of an associated person's employment. These records often play a critical role in FINRA arbitration proceedings. Unfortunately, firms frequently claim that relevant communications are unavailable because they are stored on an associated person's personal device, allegedly beyond the firm's control. Courts, however, have repeatedly held that employers can and must produce such records where relevant. See, e.g., In re Gonzalez, 2022 WL 17583628, at *8 (S.D. Fla. Aug. 8, 2022) (citing Matter of Skanska USA Civ. SE Inc., 2021 WL 4953239 (N.D. Fla. Aug. 5, 2021) and State Farm Mut. Auto. Ins. Co. v. Precious Physical Therapy, 2020 WL 7056039 (E.D. Mich. Dec. 2, 2020)).

Member firms should not be permitted to ignore their supervisory obligations while benefiting from the very misconduct they fail to prevent. Member firms often resist producing documents that are presumptively discoverable under the FINRA Discovery Guide, citing undue burden based on their own poor recordkeeping practices. Specifically, firms claim that searching for responsive documents is difficult because records are not stored in a searchable electronic format. This problem is entirely self-created. In the modern era, virtually all documents originate in digital form and can easily be made searchable. Firms that convert documents to paper and then re-scan them without using OCR software are deliberately obstructing the discoverability and usability of their records. This conduct frustrates both regulatory oversight and the fair administration of arbitration.

FINRA should modernize its expectations and require member firms to store all documents in standardized, searchable formats—such as PDF/A—which are already used in many courts. Doing so would reduce regulatory burden, enhance document accessibility for customers and regulators, and ensure that firms cannot manipulate record formats to avoid producing usable documents.

F. Compensation Agreements

Under some broker-dealer business models, registered representatives of the member have established personal services entities (PSEs)…legal entities such as limited liability companies…to receive compensation for their services and to achieve tax savings and other benefits. At times, representatives work in teams to provide a broader array of financial services (e.g., brokerage, investment advisory, insurance), with the member paying compensation to the team. However, FINRA is concerned members may be reluctant to pay transaction-based compensation directly to PSEs or to teams of registered representatives because of uncertainty about broker-dealer registration and supervision obligations and FINRA commission requirements.

FINRA has stated an increase in representatives at or near retirement age has elevated programs that offer the payment of commissions to retired registered representatives or their beneficiaries without giving rise to the recipient of such payments being considered a "broker" under the Exchange Act (also known as Continuing Commission Programs). FINRA Rule 2040(b) (Retiring Representatives) permits members to make continuing commission payments to retired registered representatives or their beneficiaries, subject to specified conditions, including a requirement that the member and retiring registered representative enter into a contract (while the individual is a registered representative of the member) providing for the continuing payments.

FINRA goes on to state that associated persons increasingly face life events that impact their continued work, such as early retirement, illness, death or disability. FINRA is concerned limitations in Rule 2040(b), may present obstacle to his emerging compensation model. For example, the rule does not provide for a registered representative, or the beneficiaries of the registered representative (in the event of the representative's death) to receive continuing commissions unless the registered representative contracts for continuing commissions before an unexpected life event that impacts the representative's ability to work. As such, FINRA is proposing a rule change.

As an investor advocate, PIABA is always concerned with transparency surrounding the costs associated with individual transactions. Naturally, these costs include commissions, mark-ups and mark-downs and who/what entity is receiving the payments. Even as it currently stands now, the aggregate costs of any commission or fees is often difficult for investors to track and understand. Hence, Members should provide investors with information and data regarding the aggregate trading costs on a periodic basis through account statements or confirmations. This naturally should include any payments to retired, disabled or otherwise non-working representatives and affiliated CCP's. Members already maintain this type of data and information electronically, and there would be minimal burden in providing such important data to customers. Therefore, PIABA opposes changes to Rule 2040(b) that would in any way reduce transparency or associated compliance surrounding payments to the subject class of registered representatives.

In summary, as with many aspects of the relationship between retail customers and member firms, PIABA strongly believes full and fair disclosure should be the guiding principle in any and all transactions with Member firms and their registered representatives regardless of employment status. Any attempts to water down compliance, or reduce transparency on commissions or other compensation to registered representatives (or their beneficiaries) by way of the any proposed rule amendment is vehemently opposed by the association.

G. Fraud Protection

PIABA thanks FINRA for the opportunity to comment on ways to better protect investors from frauds.

G.1. How have technological advances helped or hindered members' ability to fight fraud under FINRA rules, guidance and processes? What additional modifications or changes should FINRA consider to further address changes in fraud practices created by these advances?

FINRA's approach to investor protection has not kept pace with the current threat landscape. Sophisticated frauds operating at scale now victimize Americans, driving billions of dollars in losses annually. FINRA must do more to clarify member obligations to respond to red flags and odd transaction requests.

FINRA should be requiring more robust practices around significant transaction authorizations. For example, FINRA members should be actively training personnel on how to identify red flags for scams and exploitation. It should also encourage members to work with their customers to develop code phrases or other indicia of authorization that cannot be technologically faked.

G.2. Members have raised concerns that the time limits Rule 2165 specifies restrict their ability to protect customer assets when the financial exploitation is ongoing (e.g., when a member has been unable to convince the customer of the financial exploitation and adult protective services has not concluded its investigation before time expires). Should FINRA further extend the temporary hold period in Rule 2165? If so, for how long?

PIABA believes that FINRA should coordinate with state regulators to set an appropriate time frame or to create mechanisms to extend existing time frames while state regulators investigate. FINRA should amend its rules to allow member firms to hold assets whenever a state regulator so directs.

G.3. Should FINRA expand the application of Rule 2165: such as (1) beyond "specified adults" to any customer where there is a reasonable belief of financial exploitation; or (2) 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?

An incorrect perception often exists that scams only impact Americans who are incapacitated or vulnerable, such as elderly individuals with dementia or Alzheimer's.[1] Data suggests, however, that scams impact a wide swath of the American public. A recent report finds that more than 40% of American adults (over 110 million people) "have had money stolen to due fraud or sensitive information obtained and used fraudulently."[2] Another recent survey indicates

[1] Christina Ianzito, *4 in 10 Americans Have Lost Money to Fraud, AARP Survey Finds*, AARP, April 21, 2025, https://www.aarp.org/money/scams-fraud/fraud-awareness-survey-2025.html (last visited June 17, 2025).
[2] *Id.*

over one-third of U.S. Adults have faced a financial scam or fraud in the past year.[3] Simply put, scams can affect anyone and in certain circumstances younger victims may be even more prone to victimization.[4]

At present, FINRA guidance does not clearly sketch the boundaries of a "mental or physical impairment that renders the individual unable to protect their own interests."[5] Cognitive decline may be difficult to identify and assess and it may fluctuate over time.[6] Persons may bristle at the mere suggestion that they may be experiencing cognitive decline.[7] A person seeking to withdraw funds at the request of a scammer likely lacks a meaningful ability to protect their own interests. Scammers succeed by exploiting some vulnerability to cause them to believe a false reality.

FINRA should take immediate steps to meaningfully define "an impairment that renders the individual unable to protect his or her own interests" as including a client being deceived by some scam. These clients temporarily operate in a false reality forced onto them by scammers, rendering them unable to protect their own interests. FINRA should immediately provide guidance clarifying that the existing rule encompasses these situations.

This is entirely consistent with the existing rules. To encourage its Members to err on the side of freezing suspicious transactions, FINRA's guidance makes clear that it also provides its Member firms with a safe harbor from other FINRA Rules to allow them to stop transactions they would otherwise facilitate and initiate an "internal review of the facts and circumstances" to determine how to proceed.[8] FINRA should mandate that its member firms respond to red flags in these situations.

Beyond that, FINRA should modify the rule to explicitly include clients likely being victimized by some scam.

<u>G.4. Are there aspects of the trusted contact provisions in Rule 4512 that FINRA should consider modifying or enhancing?</u>

FINRA should require firms to also notify their customers that FINRA's members will reach out to the trusted contact if they suspect the client may be the victim of a scam or a fraud. At present, far too many brokerages operate as though reaching out to a trusted contact would somehow be a breach of client privacy. Giving explicit notice to customers about this possibility will make clear that doing the right thing and calling a trusted contact to confirm a significant transaction is not in any way a privacy breach. Moreover, instructing member firms to tell customers that it will call trusted contacts whenever a transaction appears odd will likely stop

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[3] Katie Kelton, *Survey: More than 1 in 3 Americans have faced a financial scam or fraud in the past year*, BANKRATE, Mar. 3, 2025, https://www.bankrate.com/credit-cards/news/financial-fraud-survey/ (last visited June 17, 2025).

[4] FTC, Who experiences scams? A story for all ages, Dec. 8, 2022, https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/12/who-experiences-scams-story-all-ages (last visited June 17, 2025).

[5] *Id.* at (a)(1)(B).

[6] *See* Sharona Hoffman, *Cognitive Decline and the Workplace*, 57 WAKE FOREST L. REV. 115, 120 (2022) (discussing cognitive decline).

[7] *Id.*

[8] FINRA Rule 2165 (b)(1)(C).

brokerage firms from claiming, in arbitration, that they could not reach out about ongoing exploitation because of some misplaced privacy concern.

G.5. Are there other tools (including rules, guidance or technology solutions) that FINRA can provide to members to further facilitate protection of senior and vulnerable investors from fraud and other types of financial exploitation?

FINRA's enforcement actions send a signal to brokerage firms about their responsibilities and potential exposure for failures in this context. Devoting resources to enforcement actions on these issues would send a strong signal that brokerage firms must become more diligent and vigilant around these issues.

At present, it does not appear that FINRA has ever brought any enforcement action against member firms for failing to collect trusted contact information or for failing to reach out to trusted contacts. FINRA should rectify this by making these rules a meaningful priority for enforcement.

H. Leveraging FINRA Systems to Support Member Compliance

If any rule changes are contemplated, they must go hand-in-hand with investor protection enhancements.

CONCLUSION

In sum, PIABA supports a variety of common-sense amendments and improvements that will enhance investor protection, but PIABA encourages FINRA to ensure that any considered changes would prioritize the strengthening of investor protection and integrity of the markets. We urge FINRA to issue specific, enforceable guidance affirming that technological convenience must not come at the expense of investor protection. The core principles of fairness, transparency, and acting in the customer's best interest must remain intact and be upheld regardless of changes in technological advancements. PIABA looks forward to the opportunity to comment on any future proposals.

Sincerely,

Adam J. Gana
Public Investors Advocate Bar Association
President