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Via email:

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington DC, 20006-1506

RE: University of Pittsburgh Securities Arbitration Clinic response to the “Proposed Fraud Protections” request for comment Regulatory Notice Comment 26-02

By: Professor Alice L. Stewart*, Professor Rachael T. Shaw*, Sabrina Briceno*, Hayley Schultz,* and Oladimeji Babalola*

Introduction

Dear Secretary Jennifer Piorko Mitchell,

The University of Pittsburgh Securities Arbitration Clinic (the “Clinic”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) proposed Fraud Protection rule. The Clinic, a University of Pittsburgh curricular offering, provides legal representation to investors with limited resources, often advocating for people whose claims

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represent much of their life savings. The Clinic offers the following commentary on the proposed initiative.

Clinic's Statement

The proposed amendments to Rules 4512, 2165, and 2166 will bring about several economic impacts- both negative and positive- for investors with limited resources. The Clinic urges FINRA to consider the impact the changes will have on our clients and other potential investors with limited resources and small investments.

Trusted Contact Amendments

Use of the Term "Emergency Contact"

Rule 4512 currently permits member firms to request the name and contact information of a "trusted contact person," defined as an individual authorized to assist firms in limited circumstances, including updating contact information, responding to concerns of diminished capacity, and addressing potential financial exploitation. The proposed amendment would expand this terminology to include the option of designating an "emergency contact," while expressly clarifying that such designation would not confer power of attorney or transactional authority.

While the Clinic supports FINRA's broader objective of protecting vulnerable investors, particularly seniors, it hesitates to endorse the introduction of "emergency contact." The Clinic is not persuaded that this terminology will increase participation, and instead, anticipates that it is likely to introduce confusion regarding the authority associated with the designation. The term carries a well-established meaning in medical and personal decision-making contexts that

materially differs from the limited communicative role stipulated. The term “emergency contact” extends beyond the communication role of a trusted contact.

Research demonstrates that individuals routinely misunderstand the role of emergency contacts and frequently assume they possess legal authority to make healthcare decisions, even in the absence of formal advance directives or healthcare proxy status.¹ Patients commonly and incorrectly conflate emergency contacts with decision-makers authorized to act on their behalf during medical crises.² The widespread misconception of the term underscores that “emergency contact” is not a neutral or purely administrative term. It conveys an implied level of authority that exceeds the purpose of a “trusted contact” in Rule 4512. If patients mistake emergency contact in a medical context, they are likely to do the same with their member firm.

As a result, rather than the intended outcome of increasing comfort and participation through clarity, the terminology may inflate investors’ expectations regarding the powers of the designated contact. Senior investors may reasonably infer that an emergency contact can intervene substantively in financial matters during periods of incapacity. When that authority does not in fact exist, the designation risks becoming misleading, ultimately decreasing investor comfort and participation.

The Clinic suggests that the existing “trusted contact” terminology remains. Introducing “emergency contact” is unlikely to enhance adoption in a meaningful way and may instead generate misunderstanding for investors. Alternatively, to increase participation of “trusted contact,” we suggest adding a description of what a trusted contact does in the corresponding

¹ Patients misunderstand role of emergency contacts versus advance directives,” *ScienceDaily* (Sept. 10, 2014), <https://www.sciencedaily.com/releases/2014/09/140910185904.htm>

² *Id.*

trusted contact portion of the form. We recommend that the description should mirror the content in the FINRA Trusted Contact Info Sheet found online.³ Using this consistent information, investors can understand what a trusted contact actually is, what authority they hold, and what they are supposed to do. Additionally, we recommend adding a twice-yearly reminder for both investors to add trusted contact to their account. These notification reminders can be used via the portal to create the account. Ultimately, the Clinic sees these routes as better alternatives for senior investors to better understand the role of a trusted contact and therefore, elect to have one assigned to their account.

Cross-Account Designation of Trusted or Emergency Contacts

Further, the proposed amendment would permit investors to apply a trusted or emergency contact designation across all existing and future accounts at a member firm, subject to customer authorization. However, the Clinic is concerned that a default or broadly applied cross-account designation introduces significant unintended consequences.

Investment accounts often serve distinct financial purposes and reflect varying levels of sensitivity and risk. Customers may intentionally separate retirement savings, joint family accounts, business assets, and estate planning funds. An appropriate trusted contact for one account may be unsuitable for another. Extending a single designation across all accounts creates a presumption that risks unintentionally expanding access to sensitive financial information beyond what the investor reasonably intended.

³ FINRA, Trusted Contact Person Infographic (2021), <https://www.finra.org/sites/default/files/2021-09/trusted-contact-infographic.pdf>.

Additionally, interpersonal relationships evolve over time. Changes in caregiving roles, family dynamics or conflicts may render a once-trusted individual inappropriate for continued involvement across all financial matters. A cross-account presumption, particularly one that automatically extends to future accounts, may inadvertently lock in access long after the underlying relationship has changed. While investors technically retain the ability to modify or revoke designations, default structures matter. When access is broadly applied by default, many customers, especially senior investors, may not revisit or fully understand the scope of the designation, increasing the risk of over-disclosure and misuse.

To balance flexibility with protection, the Clinic recommends an account-by-account presumptive structure that allows customers to affirmatively apply the same trusted contact to multiple accounts if they so choose. This model preserves efficiency for investors who desire uniformity while preventing overextension of access. An account-by-account presumptive structure would allow investors to select the same trusted contact for either, all or specific individual accounts. This structure is set up for each account to be assigned a trusted contact, instead of one trusted contact being automatically assigned to all accounts. It allows different accounts to have different trusted contacts, while maintaining the possibility that a trusted contact may be assigned to multiple accounts. The Clinic recommends this option to allow investor flexibility and increase participation.

Temporary Hold Amendments

The proposed amendments to Rule 2165 would extend the maximum temporary hold period from 55 business days to 145 business days through three additional 30-business-day increments, conditioned on the member firm having made reasonable follow-up efforts with the

relevant government authority, not having received a substantive response, and continuing to hold a reasonable belief of financial exploitation. The Clinic opposes this extension and urges FINRA to retain the current 55-business-day maximum.

Disproportionate Impact on Elderly Investors with Limited Resources

The proposed 145-business-day hold period, approximately seven calendar months, would impose severe and disproportionate financial hardship on elderly investors living on fixed incomes. This concern is not hypothetical. The Clinic's clients are investors with limited resources whose brokerage accounts often represent the entirety of their accessible savings. For these individuals, even the current 55-business-day maximum poses significant risk. Nearly tripling that period dramatically compounds the potential harm.

The average American aged 65 and older spends approximately \$60,087 annually, or roughly \$5,007 per month.⁴ A seven-month asset freeze therefore represents approximately \$35,000 in spending needs that a senior investor may be unable to meet. Healthcare expenditures alone account for approximately \$6,168 per year in out-of-pocket costs for Medicare recipients,⁵ and housing consumes roughly one-third of retirees' budgets. Over 17 million adults aged 65 and older are economically insecure, with incomes below 200% of the federal poverty level.⁶ Approximately 80% of older adult households are unable to weather a major financial shock

⁴ Bureau of Lab. Stats., Consumer Expenditure Survey, Table 1300: Age of Reference Person (2023), <https://www.bls.gov/cex/tables.htm>

⁵ Kaiser Fam. Found., *How Much Do Medicare Beneficiaries Spend Out of Pocket on Health Care?* (2019), <https://www.kff.org/medicare/issue-brief/how-much-do-medicare-beneficiaries-spend-out-of-pocket-on-health-care/>.

⁶ Nat'l Council on Aging, *Get the Facts on Economic Security for Seniors*, <https://www.ncoa.org/article/get-the-facts-on-economic-security-for-seniors/> (last visited Feb. 4, 2026).

such as serious illness or widowhood.⁷ For these investors, a prolonged asset freeze is not merely inconvenient, it is potentially catastrophic.

Wealthier seniors may draw upon alternative resources during a hold, other bank accounts, home equity lines, or family support. Low-income seniors who have most or all of their savings in a single brokerage account have no such alternatives. The rule as proposed would therefore fall hardest on the investors least equipped to endure it, while imposing comparatively little burden on those with diversified resources.

Market Volatility and Lost Opportunity

As this Clinic has previously noted in its November 25, 2020 comment letter responding to Regulatory Notice 20-34, markets can be extremely volatile, and a client may suffer severe impact to their account during a hold. An investor unable to rebalance a portfolio, sell declining positions, or act on time-sensitive opportunities for seven months faces losses entirely beyond their control. Rule 2165 provides no built-in mechanism for customers to recover losses caused by holds, whether those holds are ultimately determined to be legitimate or not. The safe harbor protects the member firm from FINRA discipline; nothing in the rule protects the customer from financial harm caused by the hold itself.

Absence of Judicial Oversight

No comparable asset-freezing mechanism in American law permits a private entity to restrict access to an individual's property for seven months without judicial involvement. Federal temporary restraining orders expire within 14 days and require a full court proceeding. Civil

⁷ Nat'l Council on Aging, LeadingAge & Nationwide, *Addressing the Nation's Retirement Crisis: The 80% (2024)*, <https://www.ncoa.org/article/addressing-the-nations-retirement-crisis-the-80-percent-financially-struggling/>.

asset forfeiture requires a warrant and affords the property owner a hearing. Even temporary guardianship, the closest legal analogy to restricting a person's financial autonomy, requires a court petition, notice, evaluation, and a hearing with the right to counsel.

By contrast, Rule 2165 requires only a member firm's internal "reasonable belief" of financial exploitation, a standard this Clinic has previously characterized as a very low bar, particularly because the review of facts and circumstances is conducted internally rather than by an outside regulatory agency. The Clinic's 2020 survey of 28 states with financial exploitation protections found the average total hold period was 24.82 business days⁸, a figure the proposed 145-day maximum would exceed by nearly six times. In the majority of those states, an outside court or agency must initiate any extension beyond the initial hold, a safeguard entirely absent from FINRA's current proposal.

FINRA's own reasoning underscores this concern. In proposing Rule 2166's five-business-day "speed bump" for all customers, FINRA expressly acknowledged that the potential cost to investment opportunities increases as the length of the hold extends and cited concerns about impacts on customer autonomy. If five days warranted such caution for general fraud holds, the same reasoning applies with significantly greater force to a 145-day hold imposed on Specified Adults.

The Extension Rewards Government Dysfunction Rather Than Protecting Investors

The proposed extension's most troubling structural feature is that it conditions each 30-day increment on the member firm not having received a response from government authorities.

⁸ Letter from Alice L. Stewart & Rachael T. Shaw, Univ. of Pittsburgh Sec. Arb. Clinic, to Jennifer Piorko Mitchell, Off. of the Corp. Sec'y, FINRA (Nov. 25, 2020), <https://www.finra.org/rules-guidance/notices/20-34> (follow "Comments" tab).

This creates a perverse incentive: the worse Adult Protective Services (“APS”) agencies and other government authorities perform, the longer member firms can hold customer assets.

APS agencies across the country face well-documented resource constraints. In New York City, a 2025 Comptroller audit found caseworkers dropped 30% from 2019 to 2022, with some handling up to 90 active cases against a recommended target of 25–30. NYC APS rejected approximately 95% of referrals in early 2025 due to severe staffing shortages.⁹ Nationally, federal funding for APS comes through Social Services Block Grants with no dedicated appropriation, leaving programs historically underfunded.¹⁰

FINRA’s own 2020 survey data demonstrate that only approximately 28% of member firms reported matters taking more than 50 days to resolve, meaning the majority of matters resolve within the current 55-business-day maximum.¹¹ An APS non-response may indicate that the referral was screened out, deprioritized, or that the agency simply lacks the capacity to respond, not that ongoing exploitation demands continued asset restriction. The Clinic submits that the appropriate response to slow government action is to improve the speed and quality of government engagement with member firm referrals, not to extend the period during which a private, financially interested party may restrict an elderly investor’s access to their own assets.

⁹ Press Release, N.Y. State Comptroller, DiNapoli: Help for Vulnerable Adults in NYC Falls Short (Oct. 2025), <https://www.osc.ny.gov/press/releases/2025/10/dinapoli-help-vulnerable-adults-nyc-falls-short>; David Brand, *NYC Agency Meant to Help Vulnerable Adults Rejected 95% of People Referred for Aid*, Gothamist (2025), <https://gothamist.com/news/nyc-agency-meant-to-help-vulnerable-adults-rejected-95-of-people-referred-for-aid>.

¹⁰ Letter from Nat’l Adult Protective Servs. Ass’n to Jennifer Piorko Mitchell, Off. of the Corp. Sec’y, FINRA (Dec. 3, 2020), <https://www.finra.org/rules-guidance/notices/20-34/comment/national-adult-protective-services-association-comment>.

¹¹ FINRA, Regulatory Notice 20-34, Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report (Oct. 5, 2020), <https://www.finra.org/rules-guidance/notices/20-34>; see also FINRA, Regulatory Notice 26-02 (Jan. 8, 2026), <https://www.finra.org/rules-guidance/notices/26-02>.

Conflicts of Interest and Absence of Enforcement

The entity deciding whether to impose and extend a hold is the same entity that benefits financially from retaining assets under management. Member firms earn advisory fees, maintenance fees, and other revenue from assets in customer accounts. They also avoid the costs associated with account transfers to competitors. As this Clinic has previously argued, neither the current Rule 2165 nor the proposed amendments provide a safeguard that would prohibit member firms from taking advantage of a client by placing a hold on an account to financially benefit themselves, whether to report higher quarterly earnings, to prevent a customer from leaving their firm, or to continue earning maintenance fees.

This concern is compounded by the absence of any enforcement history. It does not appear that FINRA has ever brought an enforcement action for Rule 2165 misuse.¹² This enforcement vacuum may reflect either perfect compliance or inadequate oversight, but the absence of any external mechanism for detecting misuse strongly suggests the latter. Extending the hold period to 145 business days without first establishing a meaningful enforcement track record effectively expands a tool that has never been independently verified to be free from abuse.

Alternative Approaches

The Clinic respectfully submits that alternatives exist which would protect vulnerable investors without freezing their assets for the better part of a year. PIABA has consistently advocated requiring firms to report to APS and state regulators within seven business days of

¹² Letter from David P. Meyer, President, Pub. Invs. Arb. Bar Ass'n, to Vanessa A. Countryman, Sec'y, SEC (July 19, 2021), <https://piaba.org/comment-letter-finra-proposed-rule-change-amend-rule-2165-financial-exploitation/>.

placing any hold, and NASAA's Model Act, now adopted by over 34 jurisdictions, caps holds at approximately 25 business days with extensions available only at the direction of state regulators or courts.¹³ This approach shifts the extension decision from a financially conflicted firm to an independent government agency.

Additionally, FINRA's own FAQ guidance already contemplates that holds may be placed on particular suspicious disbursements rather than entire accounts. Requiring member firms to target holds narrowly by restricting only the specific suspicious transaction or disbursement rather than freezing an entire account, would preserve an elderly investor's access to funds needed for living expenses, medical care, and regular bills.

The Clinic recommends that FINRA retain the current 55-business-day maximum, require mandatory APS or regulator reporting within a shorter timeframe, and mandate that any extensions beyond 55 days be directed by an outside government authority or court—not by the member firm itself. This approach would preserve the protective framework while ensuring that the burden of government dysfunction does not fall on the investors the rule is designed to protect.

New “Speed Bump” for Suspected Fraud

The Clinic supports FINRA's proposal to adopt Rule 2166, which would permit a member firm to impose a temporary delay of up to five business days on a transaction or disbursement when the firm reasonably believes a customer is being targeted by fraud. The

¹³ N. Am. Sec. Adm'rs Ass'n, Model Act to Protect Vulnerable Adults from Financial Exploitation (2016), <https://www.nasaa.org/industry-resources/senior-issues/model-act-to-protect-vulnerable-adults-from-financial-exploitation/>; Letter from David P. Meyer, President, Pub. Invs. Arb. Bar Ass'n, to Vanessa A. Countryman, Sec'y, SEC (July 19, 2021), <https://piaba.org/comment-letter-finra-proposed-rule-change-amend-rule-2165-financial-exploitation/>.

limited duration of the proposed rule will protect investors while also respecting customer autonomy.

A recurring feature of fraud schemes is a false sense of urgency and isolation.¹⁴ Victims are pressured to act immediately and are discouraged from consulting family members or other trusted individuals. In these situations, the harm stems from the victim's lack of time to think through the situation, away from the perpetrator's influence. Behavioral research indicates that urgency and emotional arousal increase susceptibility to fraud, especially in older adults, and even brief pauses to reassess a transaction outside the influence of a perpetrator can reduce risk.¹⁵ Proposed Rule 2166 directly addresses this issue by allowing a delay in the transaction process.

The Clinic agrees that a five-business-day delay is a sufficient and appropriate intervention window. The purpose is not to facilitate extended investigations, but to function as a cooling off period. The FBI highlighted the importance of this cooling off period in the "Take a Beat" campaign where they urged the public to resist pressure to act quickly, pause, and assess the situation.¹⁶ Rule 2166 would facilitate this by allowing the firm to communicate with the customer, provide education regarding fraud schemes, and confirm the transaction aligns with the customer's informed intent. Even a short delay can change an outcome by spurring customers to reassess the situation once the initial emotional pressure has subsided.

The Clinic also supports the notice and documentation requirements included in the proposed rule. This promotes transparency and helps confirm that temporary delays are only

¹⁴ Press Release, FBI, FBI Announces Nationwide "Take A Beat" Campaign to Increase Awareness of Frauds and Scams (Aug. 19, 2024), <https://www.fbi.gov/news/press-releases/fbi-announces-nationwide-take-a-beat-campaign-to-increase-awareness-of-frauds-and-scams>.

¹⁵ Katharina Kircanski et al., *Emotional Arousal May Increase Susceptibility to Fraud in Older and Younger Adults*, 33 *Psych. & Aging* 325 (2018), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6005691/>.

¹⁶ Press Release, FBI, *supra* note 14.

imposed when appropriate. Given that this rule will apply to customers of all ages, requiring firms to provide notice and documentation will help ensure that the rule is a narrow fraud prevention technique rather than an overbroad risk management tool.

For these reasons, the Clinic supports the adoption of the proposed Rule 2166 and agrees with FINRA's judgment that a five-business-day delay is an appropriate response to curtail urgency-based fraud schemes.

Conclusion

Thank you for this opportunity to comment on Regulatory Notice 26-02 - proposed fraud protection changes to further assist member firms in protecting customers from fraud and financial exploitation. The commentary above highlights the potential benefits and risks that our Clinic at the University of Pittsburgh School of Law foresees for our current and prospective clients, as well as for small investors in general.

Respectfully Submitted,



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