

March 4, 2026

Via E-mail: pubcom@finra.org

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

RE: Regulatory Notice 26-02: Proposed Amendments to FINRA Rules 4512 (Customer Account Information) and 2165 (Financial Exploitation of Specified Adults) and Proposed Rule 2166 (Temporary Delays for Suspected Fraud)

Dear Ms. Mitchell:

We appreciate this opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") Proposed Amendments to FINRA Rules 4512 (Customer Account Information) and 2165 (Financial Exploitation of Specified Adults) and Proposed Rule 2166 (Temporary Delays for Suspected Fraud), set forth in Regulatory Notice 26-02 (the "Notice"). We support FINRA's continued efforts to strengthen a consistent nationwide framework to address elder financial exploitation and fraud. Our comments briefly explain this support and offer some suggestions to further improve the proposals.

Our backgrounds provide a solid perch from which to offer comments. For two decades, we have built on our securities experience to help two financial services entities pursue means of protecting their older and vulnerable clients from the growing crime of financial abuse. We engaged adult protective services, academics, regulators, law enforcement and industry organizations in pursuing research and other initiatives designed to create protections that a securities firm could provide to its clients. As consultants, we continue to provide insight to firms, many lacking the resources of larger institutions, on protecting their clients and responding to potential frauds and scams.

I. BACKGROUND

FINRA issued this Notice requesting comments concerning amending its existing rules designed to combat elder financial abuse and proposing a new rule that will aid firms in addressing fraud

against all customers. These changes are essential. FINRA notes that there is an urgency to enhance tools designed to combat elder financial fraud as FBI statistics show the dollars lost to financial fraud are growing year over year. FINRA has previously designed tools to help firms protect their older and vulnerable clients who face fraud situations by: 1) permitting all clients to give the firm the name of a person whom the firm could contact about a possible fraud (FINRA 4512) and 2) with respect to clients who are specified adults (age 65+ or 18+ with impairments) allowing a firm to place a temporary hold on a client's transaction where the firm suspect fraud is under way (FINRA 2165.) While there is no guarantee of preventing fraud, firms find it especially useful to reach out to someone who is trusted by the client and with whom the firm can discuss concerns about fraud while also halting a transaction that might involve exploitation of the client. Each of these rules, however, will benefit from some of the adjustments that FINRA has suggested, and possibly others.

II. FINRA Rule 4512, Trusted Contact

FINRA should permit firms to use an alternative to "trusted contact." Initially effective in 2018, an amendment to FINRA 4512 requires firms to ask all non-institutional account customers if they would like to name a "trusted contact" on their account. The purpose of the trusted contact is to allow a firm to reach out to this person when it has concerns related to the customer, including suspicions of possible fraud. FINRA's rule makes it clear that a trusted contact has no authority or control over the customer's account such as joint ownership or power of attorney. Instead, this person can act as a resource when the firm thinks it would aid in addressing certain situations with the customer.

Unfortunately, the take rate for customers using this crucial tool is under 50%. Some have noted that the term "trusted" contact may be unfamiliar or confusing to investors. For example, a lay person may see "trusted" as akin to "trustee," a term that many attribute to a loss of control over their account(s). The amendment FINRA proposes will allow firms to use the phrase "emergency contact" as an alternative to "trusted contact."

This proposed change will work because the phrase "emergency contact" is in current and frequent use throughout the everyday interactions many customers have. In addition, the person(s) who a customer names will quickly grasp the concept of "emergency contact" thereby reducing the likelihood that the contact thinks that the designation gives them any control or access to the customer's finances. Customers will be more likely to name an "emergency contact" as the term creates no impression of extending control but rather conveys the opportunity for appropriate contact when needed. With that view, the universe of people a customer "trusts" may be smaller than those the customer feels could be notified in the event of an emergency.

FINRA should refrain from any rigidity in the use of the term "emergency contact." Firms should have the flexibility to implement here without restraint to a particular nomenclature. For example, a firm could simply have a heading, "IN CASE OF EMERGENCY" under which are lines for name, email and phone number. Another firm might have a phrase, "PLEASE LIST BELOW SOMEONE WE COULD CALL IN AN EMERGENCY." In neither example is the phrase "emergency contact" used, but almost certainly customers would understand the request. FINRA should allow flexibility in how firms seek out and obtain what in essence will be an emergency contact.

FINRA should also pass the amendments permitting a customer to name a contact for all existing and future accounts. As FINRA explains, firms would make it clear that customers still could assign contacts on an account-by-account basis if that is their wish. For any number of reasons, a customer may have multiple accounts at the firm and permitting a single form for trusted or emergency contact is a reasonable approach to ease administrative burdens on customers.

III. FINRA Rule 2165, Temporary Holds

Since its passage in 2018, FINRA 2165 has permitted brokerage firms to place a temporary hold on certain transactions in an account of a “specified adult” (age 65+ or 18+ with impairments) when the firm suspects financial exploitation is under way. Experience to date has shown that in some instances, these holds may need to last longer. The aggregate time limit for such a hold currently is extended to 55 days. FINRA explains that the nature of the distinct types of fraud and scams coupled with other investigative challenges result in investigations frequently taking longer than 55 days. FINRA’s proposed amendments address these concerns by allowing firms to extend holds in three additional 30-day periods. This potential maximum hold of 145 days also would provide governmental authorities with additional time to investigate, evaluate and possibly resolve the potentially fraudulent activity. FINRA has crafted the amendments so that a firm may extend only in 30-day increments and only after first notifying both those persons authorized to transact business on the account and the trusted contact. Additionally, the firm must document certain details of its investigative efforts related to the extension, such as contacts with the government agencies.

These amendments are a clear recognition that fraud investigations take time. FINRA’s proposed, extended timeline is welcome. FINRA further proposes amending Rule 2165 to include federal agencies along with those state agencies to whom firms must make reports as a prerequisite to extending holds beyond the first 30 days. The inclusion of federal agencies helps FINRA bring the rules in line with some of the realities of how fraud matters are reported and investigated today. As will be discussed later, however, the amendments to Rule 2165 here proposed by FINRA do not address the reality of aging, dementia or diminished capacity. Rule 2165 should recognize that there are instances where medical professionals may advise that a customer is incapable of managing their finances. In such a documented circumstance, it would be prudent to permit a temporary hold based upon this documented request until agencies or authorities submit more formal requests.

FINRA suggests other smaller amendments to Rule 2165 that it should approve. The persons who can place a hold should extend beyond persons in a “supervisory, compliance or legal” position with the firm. As they try to address the growing challenges of elder financial abuse, many firms have established specialized teams focused on these issues. FINRA correctly proposes permitting those in the firm who act in a specialized role focused on senior and vulnerable investors to handle financial holds pursuant to Rule 2165.

Viewed together, FINRA has improved Rule 2165 to make it both flexible and effective as a tool firms can use where they reasonably suspect financial fraud or abuse of older or vulnerable adults.

IV. Proposed FINRA Rule 2166

In its almost eight years of working with rules designed to help protect older investors and those adult investors with vulnerabilities, FINRA notes that the growth of scams and frauds are impacting a firm's customers of all ages. Rule 2166 will act as a tool to help protect investors of all ages. This new rule would permit a firm to impose a temporary hold on a transaction, but only as a "speed bump," by letting the temporary hold last only five business days. Given the crush of matters that currently overwhelm firm staffing, the increasing complexity of attempted frauds and the potential difficulty in connecting with trusted contacts, we advocate for a longer time period, of at least ten business days. This intervention gives the firm a reasonable opportunity to discuss with the customer concerns that the transaction involves fraud. FINRA's apparent intention is that the delay and any accompanying discussion will point the customer towards understanding that they were involved in a fraud. Similar to 2165 for senior investors, the rule will require notice to others who can trade in the account and to any trusted contact. FINRA explains that there is a different rule for non-seniors because there are specific agencies such as Adult Protective Services who work with frauds against seniors and the consequences of losing significant financial assets generally are greater for older investors. Given the growth of financial exploitation of clients, well beyond "specified clients," Rule 2166 is a welcome addition to FINRA's current rules designed to combat fraud.

In extending the application of a temporary hold to investors of all ages, FINRA has indeed recognized that the need for tools for investor protection in this space is not limited only to those above a certain age or with an established vulnerability. That said, FINRA should also consider allowing limited use of Rule 2166 when a customer displays clear signs of cognitive decline even absent evidence of fraud. In situations where a customer's directives contradict known facts or demonstrate an inability to understand their circumstances, a brief delay to permit firms the opportunity to effectively contact trusted contacts and/or appropriate state or federal agencies could prevent irreversible harm. Given that many gerontologists, as well as social scientists and commentators, believe that dementia is becoming more prevalent as more people live longer, Rule 2166 may be appropriate for these situations.

V. Conclusion

FINRA has done a commendable job over the past decade in providing firms with tools and guidance to aid in the protection of their customers from frauds, scams and other financial abuse tactics. As seen in some of the comments to date, there are those who think these rules go too far in temporarily halting an individual's control over transacting in their account. We would submit that these commentators may not have worked with any of the innumerable clients who bear the loss of their complete savings and now exist destitute. Others assert that the rules are too lax, and it should be mandatory that firms hold transactions. The comments are an indication that FINRA

probably has it right. Moreover, since these protective tools have been in place, there has not been a rash of complaints. This dearth implies that firms have used the rules judiciously which favors the current proposals making the rules broader rather than tightening them. The current proposals will strengthen firms' ability to protect their customers of all ages and capacities.

Respectfully submitted,

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