

February 27, 2026

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

**Re: Comments on Regulatory Notice 26-02**

Dear Ms. Mitchell:

Sigma Financial Corporation and Parkland Securities, LLC (collectively, the “Companies,” “we,” “us,” or “our”) are registered broker-dealers and FINRA member firms located in Ann Arbor, Michigan.<sup>1</sup> The Companies value FINRA’s longstanding self-regulatory compact with member firms,<sup>2</sup> and we appreciate the opportunity to provide constructive feedback on the various issues raised for comment in Regulatory Notice 26-02. The requests for comments to which the Companies are responding are set forth below and follow the same wording as on page 19 of Regulatory Notice 26-02.<sup>3</sup>

**Request for Comment: Are the proposed conditions for hold extensions reasonable and balanced?**

**Response:** No, because the current conditions for hold extensions remain unclear, and this ambiguity is not resolved in the *Notice*. We believe members would benefit from additional guidance regarding FINRA Rule 2165.03. This provision states:

A member’s reasonable belief that a natural person age 18 and older has a mental or physical impairment that renders the individual unable to protect his or her own interests may be based on the facts and circumstances observed in the member’s business relationship with the natural person.

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<sup>1</sup> The Companies’ CRD numbers are 14303 and 115368, respectively.

<sup>2</sup> This compact was articulated by one of FINRA’s former CEOs. See Richard G. Ketchum, Chief Regulatory Officer, NYSE, Keynote Speech at the Practising Law Institute, Nov. 11, 2004 (“if we do not accept the fact that the burden of self-regulation is collaborative with equal responsibility to the industry and those in this hall who advise them, as it is with the SROs, then we have already failed”).

<sup>3</sup> The comments provided herein are an adaptation and expansion of the Companies’ earlier comments submitted in response to Regulatory Notice 25-07.

It is unclear which “facts and circumstances observed” would be sufficient to make a member’s belief “reasonable.” Courts have concluded that registered representatives have no duty whatsoever to assess a customer’s mental capacity.<sup>4</sup> The reason is not surprising: registered representatives “cannot be expected to have *any expertise* in assessing mental capacity.”<sup>5</sup>

This is why, for example, determining mental impairment (e.g., incapacity) is usually left to licensed medical professionals in the analogous context of trusts and estate planning.<sup>6</sup> Absent a determination from a licensed medical professional, it would be helpful to know if the following are sufficient to form a “reasonable” belief:

- An assertion, whether written or oral, from the customer’s spouse, child, attorney-in-fact, or trusted contact person, indicating or stating that the customer has diminished capacity, has dementia, is experiencing memory or cognition problems, etc.; or
- Several successive or repeat occurrences, directly observed by the registered representative or their office staff, of the customer struggling with memory recall or comprehension.

These are just examples of the types of scenarios that can arise. In general, member firms are commonly provided with only these subjective impressions of well-meaning individuals who have no expertise whatsoever in medical, mental health, psychological, or psychiatric matters.

Overall, member firms lack clarity as to whether they can simply accept the word of, and act upon the mental health assessments made by, individuals who know the customer well but are not licensed medical professionals, or whether registered representatives can reasonably make their own assessments given that they “cannot be expected to have any expertise in assessing mental capacity.” Stated differently, under FINRA Rule 2165.03 it is not clear at what point member firms should (or may) no longer rely upon the conclusions of untrained individuals (e.g., registered representatives) and instead must rely upon assessments from licensed medical professionals. We encourage FINRA to provide additional guidance and clarity on this issue.

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<sup>4</sup> See, e.g., *Edward D. Jones & Co. v. Fletcher*, 975 S.W.2d 539, 544 (Tex. 1998) (“There simply is no responsibility on the part of service providers in general or stockbrokers in particular to determine the competence of their clients.”).

<sup>5</sup> *Id.* (emphasis added).

<sup>6</sup> See, e.g., MO. REV. STAT. § 456.6-603(5) (adopting Section 603 of the Uniform Trust Code with modification by defining an “affidavit of incapacity” to mean a written certificate furnished by “at least one licensed medical doctor that states that the settlor lacks capacity to revoke the trust”). See also David J. Feder and Robert H. Sitkoff, *Revocable Trusts and Incapacity Planning: More than Just a Will Substitute*, 24 ELDER L.J. 1, 31 (2016) (noting that a “familiar solution” to the question of incapacity is “to put the determination in the hands of the settlor’s physician and one or more additional named persons, such as the settlor’s spouse or children”).

**Request for Comment: Are there potential economic consequences not discussed in this Notice?**

**Response:** Yes, there are potentially *significant* economic consequences that have not been addressed by this *Notice*. Specifically, in a world with ever-increasing and record-breaking losses due to fraud,<sup>7</sup> we believe this *Notice* fails to take into account the increased litigation risk, and the substantial defense costs and potential damages associated therewith, that member firms will face as a result of their ability to frustrate fraud attempts by placing extended holds under FINRA Rule 2165 and “speed bump” holds under proposed FINRA Rule 2166.

The Supplementary Material to FINRA Rule 2165 and proposed FINRA Rule 2166 make clear that temporary holds are *optional* in nature and not required:

FINRA Rule 2165

This Rule provides members and their associated persons with a safe harbor from FINRA Rules 2010, 2150 and 11870 when members exercise discretion in placing temporary holds on disbursements of funds or securities from the Accounts of Specified Adults or transactions in securities in the Accounts of Specified Adults consistent with the requirements of this Rule. **This Rule does not require members to place temporary holds on disbursements of funds or securities from the Accounts of Specified Adults or transactions in securities in the Accounts of Specified Adults.**<sup>8</sup>

FINRA Rule 2166

This Rule provides members and their associated persons with a safe harbor from FINRA Rules 2010, 2150 and 11870 when members exercise discretion in placing temporary delays on disbursements of funds or securities from or transactions in securities in Accounts consistent with the requirements of this Rule. **This Rule does not require members to place temporary delays.**<sup>9</sup>

Even so, we are concerned about the proposals in the *Notice* because of the increased financial risk that they pose to member firms. Despite the fact that FINRA Rule 2165 and proposed FINRA Rule 2166 are permissive in nature, there is legal sentiment that when a member *can* place a temporary hold in order to prevent financial harm, it *must* do so or else it risks a lawsuit on a fiduciary theory of negligence and “economic suicide.” As one legal commentator explains:

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<sup>7</sup> “While the impact of fraud can be most devastating for senior investors as a group, the threat of fraud extends across all age demographics and is growing at an alarming pace. The Federal Bureau of Investigation (FBI) reported a record-breaking \$16.6 billion in losses in 2024, representing a 33 percent increase in losses from 2023. Globally, consumers lost over \$1 trillion to scams in 2024.” FINRA Regulatory Notice 26-02, p. 3 (Jan. 8, 2026).

<sup>8</sup> FINRA Rule 2165.01 (emphasis added). See also FINRA Rule 2165(b)(1) (“A member may place a temporary hold on a disbursement of funds or securities”).

<sup>9</sup> Proposed FINRA Rule 2166.01 (emphasis added).

Customer counsel argue . . . that common decency and respect for their profession must be required in an industry where trust plays such a central role. In the securities industry, brokers, managers, and firms know when a customer is walking the ledge of economic ruin. From experience and training, they know how to prevent it. That is rarely an issue in these cases. The question is whether the broker has any obligation to do anything about it. They have the knowledge. But do they have any obligations, armed with that knowledge? . . . A customer's attorney who is considering taking an economic suicide case usually starts with the presumption that because brokerage firms have a greater knowledge of financial affairs than their customers do, they owe certain fiduciary duties to those customers . . . . Some go so far as to say that a broker has a duty to refuse to accept orders the broker knows, or reasonably believes, will result in a loss to the customer.<sup>10</sup>

Such a theory of liability, while not common, is also not unheard of. For example, in 1990, a panel of AAA arbitrators in Florida ruled that a brokerage firm had a duty “to take adequate steps when it became apparent that [the customer] was trading inappropriately, that he was losing large amounts of money and that he was putting excessive amounts of his net worth at risk.”<sup>11</sup> In particular:

Mr. Peterzell claimed that the firm and several of its brokers were liable to him for failing to step in and stop him from ruinous options trading. In the AAA case, the Panel expressly found that the firm breached its fiduciary duty to Peterzell. In their Award, the arbitrators held that, notwithstanding the fact that it was a nondiscretionary account and that Peterzell controlled his money, the firm had a duty to take appropriate steps once there was clear evidence that Peterzell was embarking on a “course which was destined to cause financial ruin.”<sup>12</sup>

This is significant, because even when a member firm can see that a customer's decision is destined to cause financial ruin (e.g., withdrawing funds and sending them to an obvious scammer), the customer himself may be *unwilling* to see as much. This has been a common occurrence noted by the FINRA Investor Education Foundation.<sup>13</sup>

For example, a customer who has been lured into a romance scam may still choose to press forward, despite the red flags brought to their attention, because the desire for human

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<sup>10</sup> ROBBINS, 1 SECURITIES ARBITRATION PROCEDURE MANUAL § 5-27 (discussing economic suicide cases). See also Barbara Black and Jill I. Gross, *Economic Suicide: The Collision of Ethics and Risk in Securities Law*, 64 U. PITT. L. REV. 483 (Spring 2003).

<sup>11</sup> *Joel Peterzell v. Dean Witter Reynolds, Inc.*, AAA Case No. 32-136-0416-88-ID (Nov. 9, 1990), cited and quoted in ROBBINS, 1 SECURITIES ARBITRATION PROCEDURE MANUAL § 5-27.

<sup>12</sup> Black and Gross, *supra* note 91, at 516–17.

<sup>13</sup> FINRA INVESTOR EDUCATION FOUNDATION, EXPOSED TO SCAMS: WHAT SEPARATES VICTIMS FROM NON-VICTIMS?, at p. 10 (Sept. 2019) (“Looking back, it was so obvious that it was a scam. I guess I wanted it to be true. I didn’t read the comments until it was too late.”), available at [https://www.finrafoundation.org/sites/finrafoundation/files/exposed-to-scams-what-separates-victims-from-non-victims\\_0\\_0.pdf](https://www.finrafoundation.org/sites/finrafoundation/files/exposed-to-scams-what-separates-victims-from-non-victims_0_0.pdf).

connection is so strong that the customer “wishes” the relationship to be real and proceeds as if it is.<sup>14</sup> In other words, the temporary hold contemplated by this *Notice* may often be placed against the customer’s wishes *in order to protect the customer from himself* (i.e., to prevent the customer from going along with the scam). Experts in the victimology of online fraud have observed a similar trend:

Victims of [advance fee] fraud, including romance fraud, are highly resistant to warnings about potential frauds, particularly when they have an already established a relationship with an offender. And particularly in cases where the offender has been successfully manipulating the victim to transfer funds, often over long periods of time. The resistance of victims to accept or even consider warnings that may prevent continued victimisation is concerning but not surprising. Several victims in this study likened their relationship to an addiction. This was often exacerbated by the pressure that was exerted by offenders on victims when victim expressed doubts to the offender over the authenticity of the relationship. Victims were often left fearful about disengagement.<sup>15</sup>

Placing a temporary hold on such a customer’s account in these circumstances can lead to significant conflict between the customer and their registered representative. It would not be surprising for such a customer to feel like they are being wronged and denied access to their money—which they perceive as theirs to do with as they wish—leading to frustration, anger, threats of legal action, and eventually a soured relationship. Sadly, the phrase “no good deed goes unpunished” finds ready application in this context.<sup>16</sup> (Worse yet, once the hold expires, the customer is free to do as they wished all along and send the money to the scammer.)

On the other hand, declining to place a temporary hold could result in liability from the customer or, more likely, the customer’s creditors, friends, and relatives who loaned the customer money without knowledge of the scam,<sup>17</sup> or the customer’s heirs who later question how their inheritance was squandered in a scam and seek to hold the member firm (with its “deep pockets”) accountable for inaction. This puts a member firm squarely in a no-win situation.

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<sup>14</sup> A recent study that incorporates interviews with victims of online fraud includes this anecdote regarding bank warnings: “[T]he bank tried to stop me. So I reduced the amount and just did it, I just had to do that transaction that Saturday and then another one on Monday. People were trying to help me but I had the blinkers on.” Jacqueline M. Drew and Julianne Webster, *The Victimology of Online Fraud: A Focus on Romance Fraud Victimization*, 3 J. ECOM. CRIMINOLOGY art. 100053 (Mar. 2024), available at <https://www.sciencedirect.com/science/article/pii/S2949791424000058>.

<sup>15</sup> *Id.*

<sup>16</sup> The fallout is not limited to the registered representative. Thanks to the scammer’s coaching of the victim, a member firm that places a temporary hold can expect frequent (e.g., daily) angry phone calls from the customer demanding their money. Exasperated registered representatives may also refer such customers to the member firm’s back-office team to “handle the matter” for them.

<sup>17</sup> “Several victims indicated that they only stopped sending money to the offender when they simply had no more money to send. This often came after borrowing money from family and friends and taking out loans.” *Id.*

It would be a perverse outcome indeed if FINRA Rule 2165 (or proposed FINRA Rule 2166), which is intended as a shield for member firms, could be ultimately weaponized against members by the plaintiffs' bar. If FINRA does decide to expand the application of FINRA Rule 2165 and promulgate new FINRA Rule 2166, in order to help members out of this no-win situation, we encourage FINRA to revise FINRA Rule 2165.01 and proposed FINRA Rule 2166.01 to read something like the following (new language is italicized and underlined):

**FINRA Rule 2165.01**

*This Rule does not create a private right of action and does not impose a duty that can serve as the basis for a negligence or other tort claim.* This Rule provides members and their associated persons with a safe harbor from FINRA Rules 2010, 2150 and 11870, *and a safe harbor from liability to customers under FINRA rules and the Code of Arbitration Procedure for Customer Disputes,* when members exercise discretion in placing temporary holds on disbursements of funds or securities from the Accounts of Specified Adults or transactions in securities in the Accounts of Specified Adults consistent with the requirements of this Rule. This Rule does not require members to place temporary holds on disbursements of funds or securities from the Accounts of Specified Adults or transactions in securities in the Accounts of Specified Adults, *and members may not be held liable by any person for a decision not to place such a temporary hold on disbursements of funds or securities.*

**FINRA Rule 2166.01**

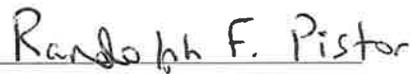
*This Rule does not create a private right of action and does not impose a duty that can serve as the basis for a negligence or other tort claim.* This Rule provides members and their associated persons with a safe harbor from FINRA Rules 2010, 2150 and 11870, *and a safe harbor from liability to customers under FINRA rules and the Code of Arbitration Procedure for Customer Disputes,* when members exercise discretion in placing temporary delays on disbursements of funds or securities from or transactions in securities in Accounts consistent with the requirements of this Rule. This Rule does not require members to place temporary delays, *and members may not be held liable by any person for a decision not to place such a temporary hold on disbursements of funds or securities.*

With this added language, member firms would have greater assurance that they will not be held liable for choosing not to act under a rule that is clearly intended to be permissive in nature.

## **Conclusion**

The Companies sincerely appreciate the opportunity to comment on these important matters and add their voice to the policy discussion. Thank you for considering our feedback and inviting us to play a role in helping FINRA further amend its rules and guidance.

Sincerely,

A handwritten signature in black ink that reads "Randolph F. Pistor". The signature is written in a cursive style and is positioned above a horizontal line.

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