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Comments on FINRA Regulatory Notice 15-37

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I applaud brokerage firms that are sensitive to the vast exploitation of seniors, and encourage escalation of suspected senior abuse to proper authorities. However, I urge FINRA to reject rule 15-37.

As a newly-retired financial journalist from South Florida, who has juggled running a company with caring for several elderly relatives, I fear this rule offers too much opportunity for overuse and abuse.

I'm especially worried about the idea of offering firms a safe harbor if they temporarily freeze client funds when suspecting financial exploitation of a person at least 65 years-old or with a mental or physical impairment. This should be an action taken only upon the order of a state or federal regulator, following a quick independent objective investigation.

I know how difficult it was for me—a legitimately appointed Power of Attorney--to gain access to funds desperately needed to arrange full-time care for a relative who didn't live nearby and became unable to regularly eat or pay bills. Among the obstacles in exercising my POA :

- Demands that I produced a "certified" copy of the power of attorney or a "Medallion signature guarantee." Yet, I lived nowhere near the lawyer who drafted the POA and my own bank branch refused to accept the liability of a signature guarantee.
- One out-of-state financial institution refused to accept ANY Power of Attorney document other than the original. How could I possibly entrust my only copy of the POA to a minimum-wage employee at a bank, let alone the U.S. mail?

Fortunately, my relative totally cooperated and was still able to convey the necessary orders himself. But each effort to obtain access to his assets at a variety of institutions required that I miss valuable time at work to travel to his apartment, get him, and bring him to whatever destination was necessary to accomplish this. This is on top of innumerable work days already missed as I made sure he was eating properly, his health care needs were met and his bills were paid. My caregiving also involved researching and locating a suitable long-term care facility and moving his furniture out of his apartment. This proposed rule comes as some 76 million U.S. baby boomers are likely to be experiencing similar nightmarish headaches with their own parents, friends and relatives. Rule 15-37 can only add to their burdens.

Meanwhile, the markets have been subject to unprecedented volatility. A firm's decision to temporarily withhold disbursement of funds prior to Oct. 17, 1987, for example, could have resulted in an average near-23 percent drop in assets for a senior equity investor. That could mean nearly \$23,000 for someone with a \$100,000 nest egg—which, based on published reports, is some three times the average amount a retiree has.

If the market performs poorly long-term, as some say it could, this proposed rule also would provide firms with a very good excuse to freeze senior funds. A temporary freeze would pose an attractive way for a firm to preserve valuable fee income required for profitability or even to stay in business. Although the rule does maintain specific supervisory procedures and requires firms to develop and document specific training, regulatory enforcement tends to be spotty and slow-moving at best. Just look at how well all these enforcement tactics worked prior to the recession in 2008!

As for requesting clients to provide a “trusted contact” in the event of suspected financial exploitation, what guarantee is there that a person whose mental capacity is diminished will use good sense in choosing such a contact? Perhaps the contact will prove just as incompetent as the client or more unsavory than the person suspected of doing the exploiting. Virtually anyone else my own relative might have appointed as a “trusted contact,” predeceased him.

I'm months away from age 65. So I also find the targeting of this rule to someone of that age laughable. My own father is 91 years-old and is sharp as a tack! Yet, I could see firms, under this rule, at least temporarily freezing disbursement of his assets to me, if it ever becomes necessary, due simply to discrepancies between my maiden and married names, both of which I use.

Statistics on senior exploitation are sketchy. Published reports indicate that many such incidents go unreported. Do we honestly know there are more cases of financial exploitation of seniors or impaired persons other than brokers and firms?

FINRA and members would be better off working more closely with authorities knowledgeable about investigating financial exploitation of seniors, and concentrating on making sure that its own members act more responsibly to seniors and impaired persons. They also would do better to upgrade their efforts to encourage all clients to provide them with more than one back-up for a power of attorney designee, beneficiary and executor, so that client wishes are more certain to be followed. My own experience indicates most financial institutions today have no space in their computer systems for such back-up designees. This is significantly more

important than getting clients to provide a “trusted contact,” which may or may not turn out to be as trustworthy or mentally competent as either the client or member firm believes.