

VIA ELECTRONIC MAIL

November 25, 2015

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

RE: Regulatory Notice 15-37 – Financial Exploitation of Seniors and Other Vulnerable Adults

Dear Ms. Asquith:

In its Regulatory Notice 15-37, the Financial Industry Regulatory Authority, Inc. (“FINRA”), solicited comments regarding a proposal to amend Rule 4512 (Customer Account Information) (hereinafter “Proposed Amendment”) and adopt new FINRA Rule 2165 (Financial Exploitation of Specified Adults) (hereinafter “Proposed Rule”).

Commonwealth Financial Network<sup>®</sup> (“Commonwealth”) is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 1,600 registered representatives (“RRs”) who are independent contractors conducting business in all 50 states. Commonwealth and its RR’s serve, among others, individual retail investors, many of whom would fit the Proposed Rule’s definition of “Specified Person.”

Commonwealth supports FINRA’s efforts to protect seniors and other vulnerable investors from financial exploitation. FINRA’s approach provides member firms with effective tools to help safeguard vulnerable investors, without exposing its members to additional liability.

I. Proposed Amendment to Rule 4512, Customer Account Information

FINRA’s Proposed Amendment to Rule 4512, requiring firms to make a reasonable inquiry to obtain a trusted contact’s information when opening an account or updating existing accounts, is fair because it does not prohibit firms from opening or maintaining the account if the customer fails to provide the requested information. FINRA should provide template language that member firms can use in account applications or stand-alone forms to obtain the trusted contact’s information and requisite consent to notify the trusted contact if the firm believes financial exploitation of the account owner has occurred, is occurring, has been attempted, or will be attempted.

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Commonwealth supports the Proposed Amendment's requirement that the trusted contact be 18 years of age or older. FINRA should modify the final rule in a manner that expressly permits firms to rely on the representations of the account owner regarding the trusted contact's age, so that firms will not have to independently verify that the trusted contact is 18 years of age or older.

With regard to existing accounts, firms should be able to rely on existing procedures for updating accounts pursuant to Securities Exchange Act Rule 17a-3(a)(17)(i)(B) to obtain trusted contact information. It should be sufficient to indicate that no trusted contact has been provided to the member firm, and the account owner should contact the member firm if he or she would like to provide the firm with a trusted contact.

## II. Proposed Rule 2165, Financial Exploitation of Specified Adults

The Proposed Rule is a welcome safe harbor for firms maintaining accounts for persons who may be vulnerable to financial exploitation. Commonwealth appreciates any tool it can use to help with the challenging issue of working with clients who are potential victims of elder abuse or other undue influence. Proposed Rule 2165 will permit Commonwealth to place temporary holds on disbursements, allowing us to notify a trusted contact or immediate family member if it believes the client is a potential victim of financial exploitation.

The Proposed Rule also requires members to develop training policies or programs. It would be helpful for member firms if FINRA provided guidance regarding training for registered persons, including FINRA-created training modules.

## III. Specific Requests for Comment

Q3. "Should Rule 4512 require customer consent to contact the trusted contact or is customer notice sufficient? Should the types of information that may be disclosed to the trusted contact under Rule 4512 be modified?"

A3. Customer notice should be sufficient for a member to contact the trusted contact. Requiring customer consent could jeopardize the member's ability to seek to protect seniors and other vulnerable investors from financial exploitation, as the customer could be manipulated, afraid, or mentally incapable of providing informed consent. The types of information that may be disclosed to the trusted contact under Rule 4512 should be modified to include the reason for the temporary hold, as well as the details about the request to disburse funds.

Q7. "Should the definition of 'account' be expanded to include accounts for which a specified adult is named a beneficiary?"

A7. No, it would not be appropriate to include accounts for which a specified adult is named a beneficiary in the definition of “account” because beneficiaries typically do not have the authority to direct account activity or withdraw funds from an account.

Q9. “Is the two business day period for notifying the appropriate parties under proposed Rule 2165 appropriate? If not, what circumstances may warrant a shorter or longer period?”

A9. It may be difficult to notify the appropriate parties within 2 business days if the trusted contact or family member is unavailable. If a member firm is unable to reach a trusted contact or family member within 2 business days of placing a temporary hold on an account, the firm should have up to 10 business days to make contact with the appropriate party.

Q12. “What direct costs for the firm will result from the proposed rules?”

A12. To comply with the Proposed Amendment and Proposed Rule, Commonwealth will need to make changes to existing account profile systems that will require development time. A rough estimate of the costs associated with making the changes is approximately \$40,000.00.

Overall, Commonwealth supports the Proposed Amendment to Rule 4512 and Proposed Rule 2165. If FINRA adopts the changes as proposed, however, it should allow for at least 12 months for firms to implement changes to systems, policies, and procedures to comply with the rules.

If you have any questions regarding our comments or concerns, please contact me at 781.736.0700.

Sincerely,  
Brendan Daly  
Legal and Compliance Counsel  
Commonwealth Financial Network