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January 19, 2017

Mr. Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: File No. SR-FINRA-2016-039 (Proposed Rule Change to Amend Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults))**

Dear Mr. Fields:

This letter responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing (the “Proposal”) related to: (1) amending FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer’s account; and (2) adopting new FINRA Rule 2165 (Financial Exploitation of Specified Adults) to permit members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers.

The Commission published the proposed rule change for public comment in the Federal Register on November 7, 2016,<sup>1</sup> and received 21 comments in response to the Proposal.<sup>2</sup> The following are FINRA’s responses, by topic, to the commenters’ material concerns.

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<sup>1</sup> See Securities Exchange Act Release No. 79215 (November 1, 2016), 81 FR 78238 (November 7, 2016) (Notice of Filing of File No. SR-FINRA-2016-039).

<sup>2</sup> See Partial Amendment No. 1 for a list of comments received and abbreviations assigned to commenters.

### Overall Proposal

Twenty commenters supported FINRA's efforts to protect seniors and other vulnerable adults but offered suggested modifications as to some aspects of the Proposal.<sup>3</sup> The remaining commenter, Cornell, supported the proposed amendments to Rule 4512 regarding a trusted contact person but opposed the proposed adoption of Rule 2165 that would permit temporary holds on disbursements where there is a reasonable belief of financial exploitation. FINRA believes that the Proposal is needed to provide members with a defined way to respond to situations where there is a reasonable belief of financial exploitation of seniors and other vulnerable adults, including the ability to share customer information with a trusted contact person. Furthermore, the Proposal would promote investor protection by providing members with a safe harbor from FINRA rules that might otherwise discourage them from exercising discretion to protect customers through placing a temporary hold on disbursements of funds or securities.

### Trusted Contact Person

The Proposal would amend Rule 4512 to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer's account. PIRC contended that, if a customer refuses to provide the trusted contact person information, Rule 4512 should require a member to maintain records of its reasonable efforts to obtain the trusted contact person information and the customer's refusal to provide the information. PIRC also believed that the rule text should set forth the minimum contact information that must be obtained (*i.e.*, a name, telephone number, mailing address, email and relationship to customer) and that the information should be added to FINRA's new account application template.

Rule 4512 does not specify the manner in which members should evidence compliance with the rule or what contact information should be obtained for a trusted contact person. Rather, FINRA Rule 3110 (Supervision) requires that members have in place supervisory procedures reasonably designed to achieve compliance with FINRA rules. Members would have flexibility to reasonably design their supervisory systems to achieve compliance with the Proposal's requirements. To aid members in complying with the requirements, FINRA will update its new account application template to reflect the proposed amendments to Rule 4512.

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<sup>3</sup> See ACLI, BDA, CAI, Edward Jones, GSU, FSI, FSR, ICI, Investor Advocate, IRI, Janney, Lincoln, LPL, NAIFA, NASAA, PIABA, PIRC, SIFMA, Reuters and Wells Fargo.

*Notification of Designation*

GSU suggested modifying the proposed amendments to Rule 4512 to require members to notify an individual that he or she was named as a trusted contact person. The Investor Advocate recommended that members voluntarily adopt a practice of notifying the trusted contact person of his or her designation. FINRA believes that the administrative burdens of requiring notification would outweigh the benefits. However, a member may elect to notify a trusted contact person of his or her designation (*e.g.*, if the member determines that notifying the trusted contact person may be helpful in administering a customer account).

*Notification of Temporary Hold*

Proposed Rule 2165 would require a member to provide notification of a temporary hold and the reason for the hold to the trusted contact person, if available, not later than two business days after the date that the member first placed the hold. SIFMA recommended voluntary, rather than mandatory, notification. FSR believed that a member should not be required to notify the trusted contact person if the member determines to lift the hold after speaking with all persons authorized to transact business on the account. Unless a member reasonably believes that doing so would cause further harm to a specified adult, FINRA encourages the member to attempt to resolve a matter with a customer before placing a temporary hold. If a temporary hold is not placed, there is no requirement in the rule to notify the trusted contact person. However, once a member places a temporary hold on a disbursement, FINRA believes a member should be required to notify a trusted contact person. In addition, FINRA strongly encourages the member to notify the specified adult of the temporary hold as soon as practicable but in no case longer than the two business days required by Rule 2165.

IRI suggested that rather than disclosing only that the temporary hold was placed, members should have discretion to disclose and discuss any information relevant to the financial exploitation investigation to the trusted contact person. The proposed amendments to Rule 4512 explicitly permit members to contact the trusted contact person and disclose information about the customer's account to address possible financial exploitation and as permitted by Rule 2165. Accordingly, members are permitted to disclose and discuss information relevant to a financial exploitation investigation to a trusted contact person.

*Update*

With respect to an account that was opened pursuant to a prior FINRA rule ("existing account"), Rule 4512(b) requires members to update the information for the account whenever they update the account information in the course of their routine and customary business, or as required by other applicable laws or rules. PIRC recommended a shorter recurring timeframe (*e.g.*, annually) during which members must reach out to their non-institutional customers regarding the trusted contact

person information. FINRA declines to make the suggested change. Applying the current standard in Rule 4512(b) to the trusted contact person information would ensure that members use reasonable efforts to obtain the information for existing accounts in the course of their routine business, while not imposing undue burdens on members to contact accountholders more frequently.

With respect to any account subject to the requirements of Exchange Act Rule 17a-3(a)(17) to periodically update customer records, proposed Supplementary Material .06(c) to Rule 4512 would require a member to make reasonable efforts to obtain or, if previously obtained, to update where appropriate the name of and contact information for a trusted contact person consistent with the requirements in Rule 17a-3(a)(17). SIFMA requested clarification on how the update requirement would apply to automated compliance processes or tech platforms that permit a client to voluntarily change information at their convenience. The requirements of Rule 17a-3(a)(17) apply to a wide range of account information and would not be unique to trusted contact person information. For any account subject to Rule 17a-3(a)(17), FINRA believes that any automated compliance process or tech platform would need to comply with the requirements of Rule 17a-3(a)(17).

FSR requested confirmation that the obligation to obtain trusted contact person information for existing accounts in the course of the member's routine and customary business would be satisfied where the member updated the account within the 36-month period in accordance with the requirements of Rule 17a-3(a)(17)(i)(D). Consistent with the requirements of Rule 4512(b) discussed above, the requirement to update the account information may be triggered earlier than the 36-month period if the member updates the information for the account either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.

#### Safe Harbor

As set forth in the Proposal, Supplementary Material .01 to Rule 2165 states that members will be provided a safe harbor from FINRA Rules 2010, 2150 and 11870 when members exercise discretion to place temporary holds on disbursements of funds or securities from the accounts of specified adults under the circumstances denoted in the Rule. Rather than providing a safe harbor when members choose to place temporary holds, three commenters supported requiring members to place temporary holds where there is a reasonable belief of financial exploitation.<sup>4</sup> FINRA believes that a member can better protect its customers from financial exploitation if the member can use its discretion in placing a temporary hold on a disbursement of

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<sup>4</sup> See GSU, PIABA and PIRC.

funds or securities from a customer's account. Accordingly, FINRA declines to make the suggested change.

NAIFA requested that the safe harbor language be moved into the body of the rule text and the protection be extended to registered representatives of the member. Because Supplementary Material is part of the rule, FINRA declines to move the language as requested. Two commenters requested that the Supplementary Material be revised to explicitly state that the safe harbor applies to associated persons.<sup>5</sup> As discussed in the Partial Amendment No. 1, FINRA is proposing to incorporate associated persons into the rule text, which is consistent with FINRA's original interpretation of the scope of the safe harbor. As amended, proposed Supplementary Material .01 to Rule 2165 would explicitly provide that members and their associated persons have 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 consistent with the requirements of Rule 2165.

GSU suggested that the inclusion of Rules 2010 and 2150 in Supplementary Material .01 would create protections far beyond the scope of what is necessary to encourage members to act on financial exploitation. FINRA believes that it is appropriate to include Rules 2010 and 2150 in Supplementary Material .01 as the rules may be implicated by a member's exercise of discretion to place a temporary hold on a disbursement. GSU also suggested that when a member exercises discretion and chooses not to place a hold, then the member should not be granted a safe harbor from duties that they would otherwise have under FINRA rules. The proposed safe harbor does not apply to a decision not to place a hold; rather, proposed Rule 2165 explicitly states that it provides members with a safe harbor under FINRA rules when members exercise discretion in placing a temporary hold on disbursements of funds or securities.

ICI requested revising Rule 2165 to clarify that a member's failure to place a hold on a customer account shall not be deemed to be an abrogation of the member's duties under FINRA rules. As noted in the Proposal, FINRA believes that Supplementary Material .01 stating that proposed Rule 2165 is a safe harbor and that the Rule does not require placing holds clearly indicates that there is not a requirement to place a hold on a disbursement.

Three commenters suggested that any associated person that acted in good faith not be subject to complaints reportable on Form U4 (Uniform Application for Securities Industry Registration or Transfer) and that the safe harbor be extended to include FINRA Rule 4530 (Reporting Requirements).<sup>6</sup> As discussed in the Proposal,

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<sup>5</sup> See FSR and Wells Fargo.

<sup>6</sup> See BDA, Janney and SIFMA.

the proposed safe harbor from FINRA rules would not extend to complaints about an associated person that are reportable on Form U4. An associated person may respond to any such complaints on Form U4, including with an explanation of actions taken pursuant to proposed Rule 2165. The proposed safe harbor from FINRA rules also would not extend to reporting required pursuant to Rule 4530, although FINRA would consider whether a member or associated person had acted consistent with the proposed rule when FINRA assesses reported information about a hold on a disbursement.

CAI stated that members may be subject to FINRA sanctions (outside of Rules 2010, 2150 and 11870 violations) and private claims and requested that FINRA extend the safe harbor to cover FINRA sanctions and private claims for members' reasonable determinations regarding whether or not to place a temporary hold on a disbursement. NAIFA suggested that the safe harbor be extended to cover protection against liability for actions taken in connection with notifying the appropriate state authorities of financial exploitation. Proposed Rule 2165 is designed to provide regulatory relief to members by providing a safe harbor from FINRA rules for a determination to place a temporary hold. Some states may separately provide immunity to members under state law.

#### Transactions

Six commenters supported extending the scope of proposed Rule 2165 to apply to transactions.<sup>7</sup> While proposed Rule 2165 does not apply to transactions, FINRA may consider extending the safe harbor to transactions in securities in future rulemaking.

#### Diminished Capacity

Two commenters suggested extending the safe harbor beyond financial exploitation to address a customer's diminished capacity.<sup>8</sup> FINRA recognizes the challenges members face in addressing diminished capacity and that this is an important issue for further consideration. As discussed in greater detail in the Proposal, a member could reach out to a trusted contact person if it suspects that the customer may be suffering from Alzheimer's disease, dementia or other forms of diminished capacity. FINRA also understands that diminished capacity can make seniors especially vulnerable to financial exploitation. However, FINRA believes that a person with diminished capacity would generally qualify as a "specified adult" as defined by proposed Rule 2165(a)(1)(B).

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<sup>7</sup> See FSI, IRI, Janney, Reuters, SIFMA and Wells Fargo.

<sup>8</sup> See Lincoln and SIFMA.

### Specified Adults

Proposed Rule 2165 would define “specified adult” as: (A) a natural person age 65 and older; or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. With respect to persons younger than age 65, two commenters suggested revising the definition to cover other vulnerable persons (*e.g.*, persons who would be deemed vulnerable under state statute).<sup>9</sup> FINRA believes that the suggested change would present operational challenges for members as the customers covered by the definition would vary by jurisdiction. Furthermore, FINRA recognizes that customers who do not have a physical or mental impairment may also be vulnerable; however, proposed Rule 2165 is intended to cover those customers most susceptible to financial exploitation. As such, FINRA declines to make the suggested change at this time.

NAIFA suggested revising proposed Supplementary Material .03 to Rule 2165 to provide that belief of impairment shall not create an assumption or implication that a member or its associated persons are qualified to make, or responsible for making, determinations about impairment. FINRA declines to revise the rule text as suggested because, as stated in the Proposal, FINRA does not intend proposed Rule 2165 to create an assumption or implication that a member or its associated persons are qualified to make impairment determinations beyond the limited purposes of the proposed rule. The “reasonable belief” standard required by proposed Rule 2165 for a member to place a temporary hold imposes no such requirement.

### Account

Proposed Rule 2165 would define “account” to mean any account of a member for which a specified adult has the authority to transact business. ACLI suggested that the definition of “account” may be overly broad and suggested clarifying that transactions in securities, such as variable insurance products, sold by a broker-dealer, but not custodied in a brokerage account, are not subject to proposed Rule 2165. Proposed Rule 2165 applies to disbursements of funds or securities out of a customer account and does not apply to transactions in securities.

### Disbursements

Two commenters expressed concern that a temporary hold pursuant to proposed Rule 2165 may not comply with the requirements of Section 22(e) of the Investment Company Act of 1940 (“1940 Act”).<sup>10</sup> As discussed in greater detail in

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<sup>9</sup> See NASAA and PIRC.

<sup>10</sup> See CAI and Lincoln.

the Proposal, most mutual fund customer accounts are serviced and record kept by intermediaries, such as broker-dealers. In addition, a small proportion of mutual fund customers purchase their shares directly from the mutual fund. In these circumstances, the customer's account may be maintained by a mutual fund's principal underwriter. Based on discussions with SEC staff, FINRA does not believe that a broker-dealer's delay of a disbursement of mutual fund redemption proceeds to its customers in reliance on proposed Rule 2165 and based on a reasonable belief of financial exploitation of the customer would be imputed to the mutual fund, including where the broker-dealer is the fund's principal underwriter. This conclusion is limited to situations where the mutual fund does not have a role in the disbursement of redemption proceeds from the customer's account held by the broker-dealer, including any role in the decision to delay the disbursement of funds in reliance on proposed Rule 2165.

SIFMA requested clarification on how ACATS transfers would be treated under proposed Rule 2165. For purposes of proposed Rule 2165, FINRA would consider disbursements to include ACATS transfers but, as with any temporary hold, a member would need to have a reasonable belief of financial exploitation in order to place a temporary hold on the processing of an ACATS transfer request pursuant to the Rule. FINRA recognizes that, depending on the facts and circumstances, placing a temporary hold on the processing of an ACATS transfer request could also lead the member to place a temporary hold on all assets in an account, for the same reasons. However, if a temporary hold is placed on the processing of an ACATS transfer request, the member must permit disbursements from the account where there is not a reasonable belief of financial exploitation regarding such disbursements. FINRA also reminds members of the application of FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) to the extent that there is not a reasonable belief of financial exploitation.

ACLI requested clarification on where funds from a disbursement subject to a temporary hold should be maintained by a member. While the temporary hold on a disbursement is in effect, the funds or securities would remain in a customer's account and would not be released.

#### Persons Permitted to Place Temporary Holds

Proposed Rule 2165 would provide that a member may place the hold on a disbursement, provided that the member's written supervisory procedures identify the title of each person authorized to place, terminate or extend a hold on behalf of the member and that each such person be serving in a supervisory, compliance or legal capacity for the member. FSI supported this approach. SIFMA suggested expanding the categories of persons authorized to place holds on behalf of a member to include persons who have been designated by the member to review cases involving specified adults as part of the member's escalation process. While the benefits of preventing financial exploitation are significant to both the member and customer, placing a



temporary hold on a disbursement is a serious action on the part of a member and may lead to difficult but necessary conversations with customers that could impact the member-customer relationship. FINRA believes that the current form of proposed Rule 2165 promotes administrative clarity so that it is reasonable to limit authority for placing holds on disbursements to a select group of individuals associated with the member and believes that persons serving in a supervisory, compliance or legal capacity are well positioned to make these determinations on behalf of the member and that such a limitation is not a substantial burden to members that wish to rely on the rule's safe harbor provision. Accordingly, FINRA declines to make the suggested revision.

#### Period of Temporary Hold

As set forth in the Proposal, the temporary hold authorized by proposed Rule 2165 would expire not later than 15 business days for any initial period and up to 10 business days in any subsequent period after the date that the member first placed the temporary hold on the disbursement of funds or securities, unless sooner terminated or extended by an order of a state regulator or agency or court of competent jurisdiction. FSI supported allowing terminations or extensions by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction. Two commenters suggested that the time periods may not be adequate to give state regulators and agencies or courts time to take action on a matter.<sup>11</sup> NASAA suggested that regulatory approval be required prior to extending a temporary hold beyond the initial 15 business day period. In proposing the time periods, FINRA has tried to strike a reasonable balance in giving members adequate time to investigate and contact the relevant parties, as well as seek input from a state regulator or agency or a court order if needed, but also not permitting an open-ended or overly long hold period in recognition of the seriousness of placing a temporary hold on a disbursement.

SIFMA commented that the rule text as set forth in the Proposal could be read to require the termination or extension of the temporary hold by the state regulator or agency of competent jurisdiction or a court of competent jurisdiction prior to the initial hold being extended for an additional 10 business day period. FINRA did not intend to impose any such limitation. As discussed in the Partial Amendment No. 1, FINRA is proposing to revise Rule 2165(b)(2) and (3) to provide that a member may place a temporary hold for up to 25 business days when the Rule's requirements are met, unless the temporary hold is "otherwise" terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction. This proposed change is intended to recognize that a state regulator or agency or a

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<sup>11</sup> See IRI and PIRC.

court may terminate or extend a hold on a disbursement at any time during the time period provided by proposed Rule 2165(b)(2) and (3).

ICI suggested that Rule 2165 should explicitly provide that a member must terminate a temporary hold as soon as the member's internal review of the facts and circumstances that were the basis for the hold does not support a reasonable belief that financial exploitation is occurring or is attempted. While FINRA declines to revise the rule text as suggested, FINRA would expect a member to lift a temporary hold when it no longer has a reasonable belief of financial exploitation (*e.g.*, when subsequent events indicate that the threat of financial exploitation no longer exists).

#### Notifying All Parties Authorized to Transact Business

Under proposed Rule 2165(b)(1)(B)(i), a member is required to notify all parties authorized to transact business on an account of the temporary hold and the reason for the temporary hold when the member places a temporary hold on a disbursement. As discussed in Partial Amendment No. 1, two commenters stated that there are concerns that the rule text does not contemplate a party being unavailable and that notifying all parties could lead to increased risk for the customer where a party is the suspected perpetrator of the financial exploitation.<sup>12</sup> The commenters suggested providing an exception from the notification requirement where a party is unavailable or where the member reasonably suspects that a party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult. While FINRA recognizes that a member will need to exercise discretion in forming a reasonable belief that a party authorized to transact business on an account is engaged in the financial exploitation, FINRA believes that it is appropriate to provide an exception from contacting a party authorized to transact business on an account that is comparable to the exception provided for notifying a customer's trusted contact person. As stated in Partial Amendment No. 1, FINRA is proposing to amend Rule 2165(b)(1)(B)(i) to provide that a member is required to notify all parties authorized to transact business on an account, unless a party is unavailable or the member reasonably believes that the party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult.

IRI commented that requiring notification of all parties authorized to transact business on an account could inadvertently interfere with the ability to use the safe harbor in Rule 2165 if a member has trouble locating one or more authorized parties. FINRA does not believe that the notification requirement should impact a member's decision to place a hold as it is a post-hold obligation.

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<sup>12</sup> See LPL and SIFMA.

### Notifying Immediate Family Member

Due to the privacy and operational challenges noted by commenters in response to the proposal in Regulatory Notice 15-37, the Proposal did not require notifying an immediate family member when a temporary hold is placed. Three commenters supported removing the requirement to contact an immediate family member.<sup>13</sup> While Wells Fargo agreed that requiring a member to contact an immediate family member may be overly restrictive and result in privacy issues, it suggested that the safe harbor be expanded to cover instances in which a member uses its discretion to contact a person reasonably believed to be connected with the account owner when the trusted contact person is unavailable. Expanding proposed Rule 2165 to authorize members to contact any person reasonably believed to be connected with an account owner may create the same privacy and operational challenges raised by commenters to Regulatory Notice 15-37. However, Proposed Rule 2165 would not preclude a member from contacting an immediate family member or any other person provided that the member has customer consent to do so.

### Notification Period

Proposed Rule 2165 would require the member to provide notification of the temporary hold and the reason for the hold to all parties authorized to transact business on the account and the trusted contact person, if available, no later than two business days after placing the hold. Three commenters suggested extending the time period for notification beyond two business days.<sup>14</sup> Given the need for urgency in dealing with financial exploitation and to remain consistent with the NASAA model state act, FINRA declines to extend the time period beyond two business days.

### Privacy Considerations

Three commenters requested clarification on what information may be shared pursuant to the Proposal without violating Regulation S-P.<sup>15</sup> FINRA believes that disclosures to a trusted contact person pursuant to proposed Rules 2165 and 4512(a)(1)(F) would be consistent with Regulation S-P, because such disclosures would be made with customers' consent or authorization,<sup>16</sup> to protect against fraud or

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<sup>13</sup> See GSU, IRI and NASAA.

<sup>14</sup> See CAI, IRI and SIFMA.

<sup>15</sup> See BDA, CAI and FSR.

<sup>16</sup> Under the proposed rule changes, members would be required to disclose to customers the purposes for obtaining the trusted contact information, including the possible disclosure of account information to a trusted contact in specified

unauthorized transactions, or to comply with federal, state, or local laws, rules and other applicable legal requirements, including the requirements of Rule 2165.

### Policies and Procedures

Proposed Rule 2165 would require a member that anticipates using a temporary hold in appropriate circumstances to establish and maintain written supervisory procedures reasonably designed to achieve compliance with the Rule, including, but not limited to, procedures on the identification, escalation and reporting of matters related to financial exploitation of specified adults. PIRC suggested requiring all members to establish and maintain written supervisory procedures reasonably designed to achieve compliance with the Rule. Because placing a temporary hold is discretionary, not mandatory, FINRA declines to make the suggested change.

ICI recommended requiring the written supervisory procedures to include provisions designed to ensure that the member lifts a temporary hold as soon as practicable after the member conducts an internal review and finds that the hold is not warranted. As noted above, FINRA would expect a member to lift a temporary hold when it no longer has a reasonable belief of financial exploitation. ICI also suggested that it is unclear whether the member can freeze all owners' access to the account and recommended that FINRA require a member's written supervisory procedures to include provisions regarding the impact of a temporary hold on those joint account owners who are not believed to be the subject of financial exploitation. Proposed Rule 2165 would permit placing a temporary hold only where there is a reasonable belief of financial exploitation and only with regard to a specific disbursement(s). Accordingly, FINRA declines to make the suggested change.

### Training

The Proposal would require members to develop and document training policies or programs reasonably designed to ensure that associated persons comply with the requirements of Rule 2165. GSU supported applying the training requirement to associated persons but suggested that FINRA should oversee training, including incorporating into its FINRA Rule 1250 (Continuing Education Requirements) training a module on the requirements of the Proposal and recognizing financial exploitation of vulnerable adults. The Proposal provides members with reasonable discretion in determining how best to structure their training policies or programs. While FINRA has developed material for the Continuing Education Regulatory Element Program that addresses the financial exploitation of senior investors, members are responsible for developing and documenting their training

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circumstances, and customers would authorize or consent to such disclosure by voluntarily providing the trusted contact information.

policies and programs. FINRA will consider whether to develop additional continuing education content specifically addressing financial exploitation of seniors and providing additional guidance to members, as appropriate.

### Reporting

FSI supported not requiring as part of proposed Rule 2165 that members report financial exploitation to local adult protective services and law enforcement. On the other hand, some commenters recommended revising proposed Rule 2165 to require members to report financial exploitation to state and local authorities, such as adult protective services and law enforcement, or FINRA.<sup>17</sup> The Investor Advocate also supported requiring members to provide any account information requested by state and local authorities to conduct their investigations. FSR suggested clarifying in Supplementary Material to Rule 2165 how members should coordinate with a state regulator or agency to confirm or validate suspicions regarding financial exploitation. While proposed Rule 2165 does not require that members report a reasonable belief of financial exploitation to a state or local authority, some states mandate such reporting by financial institutions, including broker-dealers. Given the varying and evolving reporting requirements under state law, FINRA believes that states are well positioned to determine whether a broker-dealer or any other entity has satisfied its reporting requirements under state law. FINRA would expect members to comply with all applicable state requirements, including reporting requirements, and FINRA staff may request records related to state reporting as part of the examination process. Even where a state may not require such reporting, FINRA believes that members may find it beneficial to contact relevant state agencies, such as state securities regulators or state or local adult protective services, to assist in resolving matters involving possible financial abuse.

### Implementation Period

If the SEC approves the Proposal, some commenters requested that members have from 12 to 18 months to implement the requirements.<sup>18</sup> The commenters noted that additional time is needed to make all of the necessary adjustments to their internal systems, including updates needed to incorporate the trusted contact person-related requirements. As discussed in the Partial Amendment No. 1, FINRA has determined to extend the implementation period before effectiveness to 12 months from SEC approval. One of the primary purposes of this extended implementation is to provide members more time in committing the necessary resources to implement the Proposal. FINRA believes this change is an appropriate balance of the commenters' concerns

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<sup>17</sup> See Investor Advocate, NAIFA, NASAA and PIABA.

<sup>18</sup> See BDA, Edward Jones, FSR, LPL, Reuters, SIFMA and Wells Fargo.

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and the strong desire to provide tools to members to address possible financial exploitation under the Proposal as soon as practicable.

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FINRA believes that the foregoing responds to the material issues raised by the commenters to the rule filing. If you have any questions, please contact me at (202) 728-8013, email: [jeanette.wingler@finra.org](mailto:jeanette.wingler@finra.org). The fax number of the Office of General Counsel is (202) 728-8264.

Best regards,

/s/ Jeanette Wingler

Jeanette Wingler  
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