

VIA ELECTRONIC MAIL

November 28, 2016

Brent Fields, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

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

Dear Secretary Fields:

On November 7, 2016, the Securities and Exchange Commission (SEC) published its request for public comment on the Financial Industry Regulatory Authority's (FINRA) proposed rule change regarding the Financial Exploitation of Specified Adults (Proposed Rule).¹ The Proposed Rule would require members to make reasonable efforts to obtain a trusted contact person for a customer's account and would permit members to place temporary holds on disbursements of funds or securities from a customer's account where there is a reasonable belief of financial exploitation.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI's members are strongly committed to working with regulators to eliminate the financial exploitation of vulnerable adults. FSI applauds FINRA for proposing a workable solution that provides firms with tools to combat and prevent such abuse. The Proposed Rule addresses several of the concerns raised in response to FINRA's previous proposal to address abuse of senior investors and others with diminished capacity.³ FSI supports these changes and reasserts suggestions made in our comments on the original FINRA proposal to improve the investor protection goals of the Proposed Rule.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all

¹ Proposed Rule Change to Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults), 81 Fed. Reg. 78238 (November 7, 2016).

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

³ FINRA Regulatory Notice 15-37, available at <http://www.finra.org/industry/notices/15-37>

producing registered representatives.⁴ These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners with strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.⁵

Discussion

FSI appreciates the opportunity to express its support for the Proposed Rule, which provides the securities industry and regulators with important tools to protect vulnerable investors. FSI supports the protection of all vulnerable adults and has created member tools to combat financial abuse.⁶ We offer further supportive feedback and suggestions below.

A. FSI Strongly Supports Obtaining a Trusted Contact Person

The Proposed Rule would require members to make reasonable efforts to obtain contact information for a trusted contact person for a customer's account. This written disclosure would authorize the advisor to disclose information about the customer's account to the trusted contact person to address possible financial exploitation, to confirm the customer's current contact information, health status, or the identity of any legal guardian, executor, trustee, etc. FSI's members strongly support the idea of obtaining a trusted contact person that they may work with to protect their customers from financial harm due to suspected abuse or exploitation related to diminished capacity. The Proposed Rule offers protection in cases of illness or infirmity, diminished capacity, and/or financial exploitation; and requesting that the investor provide this information in advance allows advisors to act quickly to protect their clients without fear of violating privacy laws. In fact, many of FSI's members have been seeking to collect this information from customers well before the rule was proposed. The Proposed Rule will provide additional guidance to these firms in particular and will assist in creating more uniform practices among firms so that requesting

⁴ The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

⁵ Oxford Economics for the Financial Services Institute, *The Economic Impact of FSI's Members* (2016).

⁶ FSI's Elder Abuse Prevention Resource Center, available at, www.financialservices.org/elderabuse.

this information will become standard practice and customers will be even more willing to provide it.

B. FSI Supports the Safe Harbor for Temporary Holds on Disbursements of Funds or Securities and Suggests Extending it to Include Transactions

The Proposed Rule creates a safe harbor from liability for advisors who place temporary holds on disbursements of funds or securities from a customer's account when there is a reasonable belief that exploitation is taking place. However, we are concerned that placing a hold on a disbursement does not protect against transactions in securities made as a result of exploitation or diminished capacity. For example, if an advisor reasonably suspects abuse before processing a transaction or shortly thereafter, a freeze on the transaction could greatly benefit the investor. A freeze on transactions may prevent the liquidation of securities that could have serious financial consequences for a client, such as a liquidation of a variable annuity with high early termination fees and significant tax implications. FSI encourages FINRA to extend the safe harbor to transactions in securities in a future rulemaking, as FSI suggested in comments on the previous proposal.⁷

C. FSI Strongly Supports a Permissive Reporting Standard

FSI commends FINRA for adopting a permissive reporting standard in the Proposed Rule. This approach allows firms and advisors to undertake a reasonable inquiry and to decide whether or not to freeze an account without considering their own potential liability. FSI believes that mandating advisors report any suspicion of abuse or face civil liability will in turn cause advisors to report even the slightest suspicion of abuse to regulators, resulting in inaccurate reports that will take significant time and resources to investigate. Therefore, this permissive approach will ensure that regulatory resources are utilized to investigate the most credible claims of abuse.

D. FSI Supports Expanding Who Can Place, Terminate, or Expand a Temporary Hold

The Proposed Rule allows FINRA members as opposed to "a qualified person" to place a temporary hold and does not require that person's employment to be "reasonably related to the account" as was initially proposed. The Proposed Rule also allows a state regulator or agency to terminate or extend a temporary hold in addition to a court of competent jurisdiction. These changes allow advisors, adult protective services and state regulators to act quickly to protect vulnerable adults, but also to quickly resolve concerns that may be unfounded.

E. FSI Supports Clear and Consistent Regulation of the Industry

FSI has always advocated for clear and consistent regulation so that our member firms can be confident they are satisfying all regulatory requirements. FSI supports FINRA's efforts to make the proposal more consistent with NASAA's Model Seniors Act, particularly setting the time limit on disbursement delays at 10 business days with a possible extension of an additional 10 [business] days. FSI lauds both FINRA and NASAA for undertaking essential steps to prevent abuse of vulnerable adults, but requests that FINRA, NASAA and other stakeholders work together to ensure that all of the elder abuse obligations of firms are consistent. Doing so will enable firms to

⁷ Comment Letter from FSI to FINRA (December 4, 2015) available at http://www.finra.org/sites/default/files/notice_comment_file_ref/15-37_FSI_comment.pdf

concentrate fully on protecting vulnerable clients and furthers this essential investor protection goal.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA and the SEC on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel

cc: Joseph Brady, Executive Director, North American Securities Administrators Association