

VIA ELECTRONIC MAIL

December 4, 2015

Marcia Asquith
Secretary
Financial Industry Regulatory Authority
1735 K Street N.W.
Washington, D.C. 20006

Re: Notice of Request for Comment on Rules Relating to Financial Exploitation

Dear Ms. Asquith:

On October 14, 2015, FINRA released Regulatory Notice 15-37 (“the Proposal”) requesting public comment on a proposal to address abuse of senior investors and those with diminished capacity. The notice would amend an existing rule and create a new related rule. First, FINRA is proposing to amend Rule 4512 to require firms 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 account. Second, the proposal creates FINRA Rule 2165, which would allow a “qualified employee” to place a temporary hold on a client’s account if there is a reasonable suspicion of abuse. The proposal would require the firm to contact the previously designated trusted contact within two business days and for the firm to undertake an internal review of the facts. If the trusted contact person is the one who is suspected of committing the abuse, a firm may contact an immediate family member.

The Financial Services Institute¹ (FSI) appreciates the opportunity to comment on this important proposal. FSI’s members are strongly committed to working with regulators to eliminate elder abuse. FSI applauds FINRA for proposing a workable solution that provides firms with tools to combat and prevent elder abuse. FSI believes that FINRA’s intentions are well-placed and makes suggestions to address potential unintended consequences of the proposal as currently written. FSI offers several recommendations to improve the investor protection goals of the proposal.

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 U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% producing

¹ 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.

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

FSI member firms provide business support to 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 who typically have 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 with 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 middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

A. Introduction

FINRA's proposal provides the securities industry and regulators with tools to protect senior investors. FSI is committed to the prevention of elder abuse and has worked to create tools for its members to use to combat it.² FSI was included on NASAA's Advisory Council to its Committee on Senior Issues and Diminished Capacity and submitted a comment letter on NASAA's proposal.³ FSI applauds FINRA for its proposal and believes that with some adjustments, it can be adopted by the securities industry for the benefit of investors and firms alike. We elaborate on our comments below.

B. FSI recommends additional considerations regarding the inclusion of a trusted contact

Through its proposal, FINRA would enable firms to make reasonable efforts to obtain the name of a "trusted contact person" who may be contacted when financial exploitation is suspected. As stated in the proposal, the trusted contact person is intended to be a resource for firms in "administering customer's account and in responding to possible financial exploitation."⁴ A trusted contact person must be 18 years or older and cannot be authorized to do business on behalf of the account. In instances where the trusted contact is suspected of being responsible for the abuse or is unavailable, the proposal allows for a firm to contact an immediate family member. FINRA defines an immediate family member as a spouse, child, grandchild, parent, brother or sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, and son-in-law or daughter-in-law."⁵

FSI's members strongly support the idea of including a trusted third contact person that they may work with to protect senior investors and strongly endorse this portion of FINRA's provision. By requesting that the investor provides this information, firms and FINRA can know that the trusted contact will have the best interest in mind for the senior investor. FSI welcomes the inclusion

² FSI's Elder Abuse Prevention Resource Center, available at, www.financialservices.org/elderabuse

³ FSI's Comment Letter on NASAA's Elder Abuse Prevention Model Regulation or Legislation, available at, <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2015/10/Bellaire103015.pdf>

⁴ FINRA Regulatory Notice 15-37, available at, https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-37.pdf

⁵ *Id.*

of a trusted contact person to help administer a senior investor's account and to help prevent abuse.

While FSI strongly supports the provision, FSI believes that FINRA should elaborate on several issues to improve the proposal. FSI requests that FINRA consider broadening the scope of the person who may be contacted under the proposal beyond just a family member when the trusted contact person is suspected of the exploitation or unavailable. In many instances, a senior investor may not have a family member or may not have a family member who could be readily contacted. Reasons may vary for the unavailability of a family member. For example, a family member may have lost touch with the senior investor or may simply have changed their contact information. Under these circumstances, a firm would be limited in their efforts to contact an individual who can assist the firm in administering the account. To overcome this issue, FSI recommends that FINRA add language that states that in instances where the trusted contact is unavailable or suspected of abuse, that in addition to a family member, a firm may contact an individual who shares a trusted relationship with a client. Examples include attorneys and accountants, who commonly serve as trusted individuals for clients. Expanding the scope of who is notified would provide maximum protection to vulnerable investors while maintaining that those individuals who are contacted have the senior investor's best interest in mind.

C. FSI endorses the Proposed Rule 2165, and applauds FINRA for adopting a Permissive Reporting Standard.

FINRA's proposal creates Rule 2165, which permits "qualified persons" who reasonably believe that financial exploitation is occurring to place temporary holds on disbursements of funds or securities from the accounts of "specified adult" customers.⁶ The proposed rule would also create a safe harbor provision from liability for firms and qualified employees when they exercise discretion in freezing an account.⁷ In addition, the proposed rule does not create a mandatory duty for firms, qualified employees, or financial advisors to report possible abuse.

FSI strongly endorses this provision and believes that it will prevent instances of exploitation against senior investors. FINRA provides firms with the opportunity to make a determination on whether or not to freeze an account without fearing legal liability in instances where they decide not to report possible abuse. Mandating that qualified persons of broker-dealers report any suspicion of abuse or face civil liability will in turn lead to these individuals reporting even the slightest suspicion of elder abuse to regulators. While this, on its face, appears to be in the best interest for senior investors, it is likely to over-tax regulatory resources by flooding them with mere suspicions, making it more difficult to investigate urgent and legitimate claims. The permissive reporting standard enables qualified employees to undertake a reasonable inquiry into suspected elder abuse without considering their own liability. This will ensure that resources are utilized to inquire into the most urgent and egregious claims of abuse. FSI strongly believes that this provision will help prevent instances of abuse against vulnerable adults and applauds FINRA for its inclusion.

⁶ FINRA RN 15-37, available at, https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-37.pdf

⁷ *Id*

D. FSI Requests FINRA allow firms to freeze transactions in addition to disbursements and extend the notification requirement to five days

As stated above, FINRA's proposal would enable firms to freeze disbursements if they "reasonably believe" that financial exploitation has occurred, is occurring, has been attempted, or will be attempted.⁸ In addition, the proposal requires that a broker-dealer notify within two business days all individuals authorized to conduct business on the account and to the trusted contact person.

FSI strongly endorses this provision of the proposal. However, FSI requests that FINRA include a provision enabling firms to freeze a transaction if there are reasonable suspicions that financial exploitation has occurred, is occurring, has been attempted, or will be attempted. FSI believes a freeze on disbursements will be a strong deterrent against those perpetrating financial exploitation. However, a transaction freeze can be another tool that broker-dealers can use when they reasonably believe abuse is occurring. If a qualified employee reasonably suspects abuse before processing a transaction or shortly thereafter, a freeze on the transaction could greatly benefit investors. A freeze on transactions may prevent the liquidation of securities that could have serious financial consequences for a client, such as a liquidation of an annuity with high early termination fees and significant tax implications. Those perpetrating financial exploitation will not consider these consequences when attempting to gain access to the funds. FSI believes providing firms the option to freeze either a transaction or a disbursement would provide maximum protection to senior investors.

FINRA's proposal also requires the broker-dealers notify all those involved on the account and the trusted contact within two business days in the event of a disbursement hold. While FSI agrees that notifying clients of a possible freeze in their account is in the best interest of senior investors, FSI requests a longer timeline to notify those individuals. FSI believes that the two day time period may be insufficient in some circumstances and requests a slight change to the proposal to extend the notification period from two days to five days. Notifying each person who is authorized to conduct business on an account may take several days, especially in instances where there are multiple individuals who may need to be contacted. FSI believes extending the time period to five days balances the logistical challenges involved with contacting several individuals on an account and investor protection. Further, FSI believes that five days can be the maximum allowed time, and believes that firms will still immediately attempt to notify all parties. FSI believes that extending this time period an additional three days would greatly assist broker-dealers when dealing with logistical challenges.

E. FSI Requests that FINRA work with other regulatory bodies to provide consistent regulation to the industry.

FSI has always advocated for clear and consistent regulation so that our member firms can be confident they are following all requirements and meeting all the regulators' expectations. Recently, NASAA released a Model Rule which provides broker-dealers and financial advisors the ability to freeze transactions and would require that firms undertake an internal investigation of suspected elder abuse and to present its findings to the state agencies within seven business

⁸ FINRA Regulatory Notice, available at, https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-37.pdf

days.⁹ NASAA's Model Rule would further create a mandatory duty on broker-dealers, financial advisors, and qualified employees to disclose suspicions of elder abuse to state securities regulators and state Adult Protective Services.

FSI lauds both FINRA and NASAA for undertaking essential steps to prevent abuse to vulnerable adults. However, we note that if each rule is finalized as proposed, there will be significant differences in the requirements placed on firms with regard to suspected elder abuse. For example, while NASAA's model rule allows for a freeze on disbursements of 10 days with a possible extension to an additional 10 days. Conversely, FINRA allows for a freeze of 15 days with the possibly of an extension of an additional 15 days. FSI believes a time limit on disbursement delays is appropriate; however inconsistencies in this space can lead firms to unintentionally violate a state requirement while complying with a FINRA requirement. Further, NASAA's model rule requires firms to report suspected instances of abuse while FINRA's proposal expressly provides for permissive reporting. This could once again lead to an instance where a firm or employee is confused about their obligations and complies with one regulation while unintentionally running afoul of another.

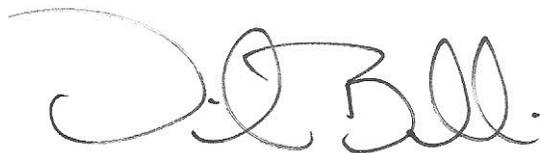
FSI therefore requests that FINRA work specifically with NASAA and other stakeholders to ensure that all of the elder abuse obligations of firms are consistent. Doing so will enable firms to concentrate fully on protecting vulnerable clients and furthers this essential investor protection goal.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA 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

⁹ Notice of Request for Comments Regarding NASAA's Proposed Model Legislation or Regulation To Protect Vulnerable Adults From Financial Exploitation, available at, <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2015/09/Request-for-Comments-Model-Seniors-Legislation-Final-2.pdf>