

24 November 2015

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

Re: Financial Exploitation of Seniors and Other Vulnerable Adults

Dear Ms. Asquith:

CFA Institute¹ is pleased to comment on FINRA's proposed rules that seek to protect senior and other vulnerable adults from financial exploitation. CFA Institute represents the views of those investment professionals who are its members before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

CFA Institute is an organization with a strong interest in investor protections. Accordingly, we strongly support FINRA's efforts to implement procedures for addressing situations where there is, or is a suspicion of, financial fraud involving an individual aged 65 or older or someone 18 or older who appears to the firm to be physically or mentally impaired to a degree that he or she cannot protect their own interests (collectively, "Vulnerable Adults"). FINRA is proposing a two-pronged approach to address financial exploitation of these individuals: securing information of a trusted contact from the client; and allowing members to halt accounts upon a reasonable belief of financially exploitative activity aimed at their client.

Trusted Contact Person

Proposed amendments to Rule 4512 would require firms subject to FINRA's jurisdiction to extend reasonable efforts to get the name and contact information of who is considered a "trusted contact person" of a retail client. Firms would be required to ask for this information when opening an account for a client and upon future updates of the account. Should the client not provide such information, the firm will have fulfilled its duty by making reasonable inquiry.

We believe this requirement will serve a valuable purpose should the firm need to cross-check what may appear to be suspicious activity connected with a client account. We suggest, however, that firms be required to update this contact information during periodic reviews and when clients' situations change, rather than merely considering whether to ask clients to review and update the information. This seems like a logical requirement if the objective is to help thwart financial exploitation of an aging population that becomes more vulnerable with increased age.

¹ CFA Institute is a global, not-for-profit professional association of more than 131,000 investment analysts, advisers, portfolio managers, and other investment professionals in 145 countries, of more than 123,300 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 146 member societies in 71 countries and territories.

Temporary Ban on Account

A proposed new Rule 2165 would provide the option, but not the duty, for firms to temporarily block client accounts if there is a reasonable belief that financial exploitation of a Vulnerable Adult is occurring, has occurred, or will be attempted/occur if there is not a hold placed on the account. For purposes of this new Rule, “financial exploitation” includes not only wrongful or unauthorized taking, withholding, appropriation or use of Vulnerable Adults’ funds or securities, but also acts and omissions by others, including those with power of attorney, to wrongfully obtain control over or convert the money, assets or property of the Vulnerable Adult.

Under the proposed Rule, once the firm has placed a hold on a client’s account, it must immediately start an internal review of the underlying facts and notify within two business days the trusted contact person and any others authorized to transact business on that account. If the firm cannot reach the trusted contact person or believes that person may be involved in the wrongdoing, it will try to contact a family member, unless that member is also suspect. The temporary hold cannot exceed 15 business days, and if the firm’s internal investigation supports its belief that exploitation is involved, the firm can extend the ban for another 15 days unless a court intervenes.

Firms electing to take such actions must create and retain certain records substantiating the basis for the firm’s reasonable belief of financial exploitation, of the notice provided parties, of the disbursement requests that constitute the alleged exploitation and that result in the temporary hold(s) on the account(s), and of the firm’s internal review. In addition, firms would be required to create and maintain written supervisory procedures and develop and document training policies or programs related to complying fully with the proposed rule.

The rise in financial exploitation of Vulnerable Adults—particularly by family members and other persons in positions of trust—needs to be addressed in a concerted effort by various groups, including the investment management profession. Thus, we appreciate and support FINRA’s proposals for a safe harbor to those who refrain from executing transactions in situations where there is a reasonable belief that financial exploitation is involved. FINRA’s proposal is largely consistent with the North American Association of Securities Regulators’ recent proposal for a Model Act also addressing the financial exploitation of vulnerable adults.

In order to combat this unconscionable practice and to raise the trust in the industry, financial service providers need to take active measures to monitor suspected activity in connection with their clients’ accounts and take necessary actions without fear of liability. We therefore strongly support the immunity from liability provided to firms when they take measures to halt transactions in a client account upon reasonable belief that the client is at risk for financial exploitation. Similarly, we support the added provision that the firm can extend the temporary halt another 15 days if the internal review substantiates there is a basis for concern.

While we support the legal safe harbor the proposal provides, the additional requirements and associated costs described above for firms and advisers to undertake when they believe clients are being exploited has the potential to reduce their willingness to consider calling for account

freezes. And given these costs, it is conceivable that they may will defer taking action until or unless there is clear-cut, clearly provable abuse. Unfortunately, this could occur after the Vulnerable Adult's assets have been depleted. Therefore, we suggest that FINRA encourage, rather than simply allow, firms to assume the responsibility for undertaking actions in keeping with the proposal upon reasonable belief that financial exploitation of a Vulnerable Adult may be occurring, and to consider ways to incentivize firms to take on this needed responsibility.

We strongly support efforts by FINRA to address financial exploitation of the elderly and other vulnerable adults. Should you have any questions about our position, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org, 212.756.7728 or Linda Rittenhouse at linda.rittenhouse@cfainstitute.org, 434.951.5333.

Sincerely,

/s/ Kurt N. Schacht

Kurt N. Schacht, CFA
Managing Director, Standards and
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/s/ Linda L. Rittenhouse

Linda L. Rittenhouse
Director, Capital Markets Policy
CFA Institute