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Via Electronic Filing

Brent J. Fields
Secretary, Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

RE: 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) (File No. SR-FINRA-2016-039)

Dear Mr. Fields:

The Cornell Securities Law Clinic ("Clinic") submits this comment in response to Financial Industry Regulatory Authority's ("FINRA") rule proposal found in File No. SR-FINRA-2016-039, seeking to amend Rule 4512 (Customer Account Information) and adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults). The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and education as to investment fraud in the largely rural "Southern Tier" region of upstate New York. For more information, please visit http://securities.lawschool.cornell.edu.

The Clinic believes the amendment to FINRA Rule 4512 for a trusted contact person benefits customers and should be adopted; and the adoption of FINRA Rule 2165 is unwise because of inadequate safeguards as to temporary holds on accounts.

I. The Clinic generally supports the FINRA Rule 4512 amendment requiring members to make reasonable efforts to obtain a trusted contact person.

FINRA's purpose behind the rule changes is to combat financial exploitation of elders because "[financial exploitation] can be particularly devastating for seniors and other vulnerable adults, many of whom are living on fixed incomes without the ability to offset significant losses over time or through other means."[1] While the amendments are directed towards the protection of vulnerable adults, they apply to all other customers that are not vulnerable adults as well.[2]

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[1] Notice, at p. 3.
[2] See id., at p. 412–13.

The goal of FINRA in creating the amendment was to combat the serious problem of "financial exploitation of seniors and other vulnerable adults."[3] The Clinic shares such concerns.

The Clinic generally supports the rule amendment for selecting a trusted contact person because the amendment increases protections for customers without any substantial downside for the customer. Such a trusted contact person may facilitate communications and monitoring of vulnerable customers. While the amendment applies to persons who may not be vulnerable, reasonable efforts to obtain this information should not be particularly burdensome on member firms.

II. The Clinic opposes the adoption of FINRA Rule 2165 permitting members to place temporary holds on accounts.

FINRA's purpose for adopting Rule 2165 is the same as mentioned above: to protect vulnerable individuals from financial exploitation.[6] Specified adults are vulnerable individuals because they are either 65 years old or older or individuals with impairments that the member reasonably believes have a mental or physical impairment that prevents the individual from protecting their own interests.[7]

Rule 2165 allows members to place a hold on vulnerable adults' accounts that the member has a reasonable belief are being financially exploited. The Clinic believes such a standard is too low relative to the potential harm to a customer from not being able to withdraw funds or securities. Further, the 15 day time period for the hold and the post-hold internal review of the facts and circumstances of the situation do not alleviate the concerns over access to the account. Moreover, there is no explicit remedy available to a customer who disputes such a hold. That is problematic for many reasons, not the least of which is that we can envision circumstances in which a family member makes an accusation of exploitation due to family tensions, thus making a hold on an account a pawn in a larger family drama unrelated to exploitation. Last, but not least, the safe harbor provision all but prevents a person whose account is subject to a hold from having a viable financial remedy after the fact.

Although the Clinic opposes Rule 2165 as drafted, the Clinic believes such a rule would be more appropriate if the standard for members to suspend customer accounts were stricter, the time period more limited, and the post-hold procedures available to the customer more definite. In the absence of more clear standards, Rule 2165 creates an incentive to place a hold on an account as the default response to concerns about a specified adult, a situation which may cause harm to customers.

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[3] Id., at p. 2.

[6] See supra, Section I, ¶1.

[7] Id., at p. 414.

III. Conclusion

The Clinic supports FINRA's amendment to Rule 4512, but opposes the adoption of Rule 2165 as drafted.

Respectfully Submitted,

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