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December 4, 2020

Via E-Mail

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 20-34
Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report

Dear Ms. Mitchell:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in response to FINRA Regulatory Notice 20-34 *Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report* (the "Notice"), issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on October 5, 2020.[2] The Notice solicits comment on FINRA's proposed amendments to Rule 2165 (Financial Exploitation of Specified Persons).

BACKGROUND

In August 2019, FINRA launched a retrospective rule review to assess the effectiveness and efficiency of its rules and administrative processes that help protect senior investors from financial exploitation. As part of this retrospective rule review, FINRA sought comment on several questions with respect to addressing financial exploitation and other circumstances of financial vulnerability for seniors and vulnerable persons. In response to FINRA's retrospective rule review, the Committee submitted a comment letter ("2019 Comment Letter") that supported FINRA's review of its rules and administrative processes related to senior investors and vulnerable persons and raised a few additional points for FINRA's consideration.[3]

FINRA Rule 2165. Under the current framework, FINRA Rule 2165 permits a firm that reasonably believes that financial exploitation[4] has occurred, is occurring, has been attempted or

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[1] The Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's 31 member companies represent more than 80% of the annuity business in the United States. The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of insurance, securities, banking, and tax policies regarding annuities. For over three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities at both the federal and state levels, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury Department, and Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee's member companies is attached as Appendix A.
[2] The Notice is posted at https://www.finra.org/rules-guidance/notices/20-34.
[3] The 2019 Comment Letter is available at https://www.finra.org/sites/default/files/2019-10/19-27_Eversheds-Sutherland_comment.pdf.
[4] "Financial exploitation" includes: (A) the wrongful or unauthorized taking, withholding, appropriation, or use of a Specified Adult's funds or securities; or (B) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or any other authority, regarding a Specified Adult, to: (1) obtain control, through deception, intimidation or undue influence, over the Specified Adult's money, assets or property; or (2) convert the Specified Adult's money, assets or property.

will be attempted to place a temporary hold on the disbursement of funds or securities from the account of a "Specified Adult" customer.[5] If a firm places a temporary hold, the firm must immediately initiate an internal review of the facts and circumstances that caused the firm to reasonably believe that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted or will be attempted. In addition, the firm must provide notification of, and the reason for, the hold to the Trusted Contact Person[6] and all parties authorized to transact business on the account, including, but not limited to, the customer, no later than two business days after the date that the firm first placed the hold. A firm is not required to provide notification to the Trusted Contact Person or a party authorized to transact business on an account, respectively, if the Trusted Contact Person or party is unavailable or the firm reasonably believes the Trusted Contact Person or party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult.

Rule 2165 allows the firm to place a temporary hold on a Specified Adult customer's account for 15 business days after the date the firm first placed the temporary hold on the disbursement of funds or securities, unless otherwise terminated or extended by an order of a state regulator or agency or court of competent jurisdiction. In addition, the firm may extend the temporary hold for an additional 10 business days, if the firm's internal review of the facts and circumstances supports its reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted or will be attempted, unless otherwise terminated or extended by an order of a state regulator or agency or court of competent jurisdiction.

FINRA Rule 2165 also requires firms to retain records related to compliance with the rule, which must be readily available to FINRA upon request.[7]

Proposed Amendments. In response to comments received during the retrospective rule review, FINRA proposed to amend Rule 2165 to permit extending the temporary hold period for an additional 30 business days, if the firm had reported the matter to a state agency or a court of competent jurisdiction. This 30-business day hold period would be in addition to the initial 15-business day hold period outlined in Rule 2165(b)(2) and the additional 10-business day hold period outlined in Rule 2165(b)(3).

In addition, FINRA proposed amendments to establish a standard for placing holds on securities transactions related to suspected financial exploitation of Specified Adults. Under the proposed safe harbor, a firm would be permitted, but not required, to place a temporary hold on a securities transaction when there is a reasonable belief that the financial exploitation of a Specified Adult has occurred, is occurring, has been attempted or will be attempted.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to submit comments in response to the Notice. The Committee generally supports the proposed amendments, and appreciates FINRA's

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[5] A "Specified Adult" is (A) a natural person age 65 and older or (B) a natural person age 18 and older who the firm reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.

[6] A "Trusted Contact Person" means the person who may be contacted about the Specified Adult's Account in accordance with Rule 4512.

[7] Firms must keep records of: (1) requests for disbursement that may constitute financial exploitation of a Specified Adult and the resulting temporary hold; (2) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted or will be attempted underlying the decision to place a temporary hold on a disbursement; (3) the name and title of the associated person that authorized the temporary hold on a disbursement; (4) notification(s) to the relevant parties pursuant to the rule; and (5) the internal review of the facts and circumstances supporting the firm's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted or will be attempted.

work to protect senior investors and vulnerable persons from potential financial exploitation. In addition, the Committee offers the following specific comments in response to the Notice.

Extension of Temporary Holds on Disbursements. The Notice requests comment on whether Rule 2165's temporary hold period should be extended for an additional 30 business days, if the firm had reported the matter to a state agency or a court of competent jurisdiction.[8]

The Committee generally supports the proposal to permit an extension of the temporary hold period for an additional 30 business days, if the firm had reported the matter to a state agency or a court of competent jurisdiction. As indicated in the 2019 Comment Letter, Committee member companies have found that placing a temporary hold on a specified customer's account for up to 25 business days does not provide adequate time for a firm to reach a resolution as to whether financial exploitation has occurred, is occurring, has been attempted or will be attempted. In its collective experience, Committee member companies note that investigations of financial exploitation often take longer than 25 business days; such internal investigations may take several weeks or more to complete.

Additionally, Committee member companies have found that placing a temporary hold on a specified customer's account for up to 25 business days does not provide adequate time for a state adult protective services agency or similar agency to reach a resolution as to whether financial exploitation has occurred, is occurring, has been attempted or will be attempted. FINRA's proposal would provide additional time for state adult protective services agencies, state regulators, and law enforcement to conduct through investigations.

The Committee would like to thank FINRA for taking its comments in the 2019 Comment Letter into consideration and supports FINRA's proposed extension of the temporary hold period for an additional 30 business days, subject to the conditions identified in Rule 2165.

Extension of Temporary Holds to Transactions. The Notice requests comment on whether Rule 2165's safe harbor should be extended to apply to transactions in securities, in addition to disbursements of funds and securities.[9] The Committee supports FINRA's proposal to extend Rule 2165's safe harbor to apply to transactions in securities. The Committee believes this expansion will provide additional tools to firms to combat possible financial exploitation and is a worthy change.

Other Comments. The Notice requests comment on whether there are alternative approaches, other than the proposed amendments, that FINRA should consider.[10]

As noted in the 2019 Comment Letter, Committee member companies have found that the two-business day notification requirement is an insufficient length of time in which to conduct an internal investigation which may support the reasonable belief that a Trusted Contact Person or family member is responsible for financial exploitation or is a contributing party. In addition, Committee member companies noted that there may be instances when a specified customer may benefit from a firm sharing information with other financial institutions related to the suspected financial exploitation of the specified customer, similar to the sharing of consumer information under Regulation S-P.

In response to these, and similar, comments, FINRA published a set of frequently asked questions (FAQs) to provide guidance on these topics, among others, in March 2020.[11]

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[8] See Notice at Question #3.
[9] See Notice at Question #2.
[10] See Notice at Question #1.
[11] These FAQs are available at https://www.finra.org/rules-guidance/guidance/faqs/frequently-asked-questions-regarding-finra-rules-relating-financial-exploitation-seniors.

The Committee would like to thank FINRA for taking its comments in the 2019 Comment Letter into consideration and for providing helpful FAQ guidance related to the Rule 2165 notification period and information sharing between unaffiliated financial institutions. The Committee hopes that there is an opportunity for further discussion on these topics so that firms and FINRA may work together to continue to refine the guidance on these points, as well as others.

Coordination with the U.S. Securities and Exchange Commission ("SEC") and State Regulators. The Notice requests comment on all aspects of the proposed amendments to Rule 2165.

Committee member companies have found that many states have adopted their own laws, rules, and regulations related to the financial exploitation of senior investors and vulnerable persons. These state requirements, along with FINRA's Rule 2165, have created a patchwork of rules and regulations related to the financial exploitation of seniors and vulnerable persons.

As a result, the Committee asks that, to the greatest extent possible, FINRA coordinate with the SEC and state regulators to address financial exploitation of seniors and vulnerable persons and create a more cohesive framework governing the prevention of financial exploitation of seniors and vulnerable persons.

Coordination with State Adult Protective Services Agencies. The Notice requests comment on all aspects of the proposed amendments to Rule 2165.

Committee member companies have found that state adult protective services' agencies or similar agencies often investigate reports of financial exploitation for several months. Thus, a temporary hold on a specified customer's account for up to 25 business days, or even the additional 30 business days under the proposed rule, does not always provide adequate time for a firm or state adult protective services agency or similar agency to reach a resolution as to whether financial exploitation has occurred, is occurring, has been attempted or will be attempted. Furthermore, it can be difficult to obtain an extension of a temporary hold from a state agency or a court of competent jurisdiction.

The Committee, therefore, asks that FINRA coordinate with state adult protective services agencies or similar agencies to create a more cohesive process for investigating and sharing information related to suspected financial exploitation of seniors and vulnerable persons. In doing so, firms would be able to better protect seniors and vulnerable persons from potential financial exploitation.

CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch [Redacted] or Eric Arnold [Redacted] with any questions or to discuss this comment letter.

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EVERSHEDS SUTHERLAND

Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: Clifford Kirsch (ARS)
Clifford Kirsch

BY: Eric Arnold (ARS)
Eric Arnold

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Brighthouse Financial, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Financial Group
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Lincoln Financial Group
Massachusetts Mutual Life Insurance Company
Metropolitan Life Insurance Company
National Life Group
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Sammons Financial Group
Security Benefit Life Insurance Company
Symetra Financial Corporation
Talcott Life Insurance Company
The Transamerica companies
TIAA
USAA Life Insurance Company