

MEMO# 29508

November 19, 2015

ICI Draft Comment Letter on FINRA's Proposed Rules to Address Senior Exploitation; Feedback Requested by November 24

[29508]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 49-15
PRINCIPAL UNDERWRITERS WORKING GROUP
TRANSFER AGENT ADVISORY COMMITTEE No. 57-15 RE: ICI DRAFT COMMENT LETTER ON
FINRA'S PROPOSED RULES TO ADDRESS SENIOR EXPLOITATION; FEEDBACK REQUESTED BY
NOVEMBER 24

As we previously informed you, last month FINRA published for comment amendments proposed to Rule 4512, relating to customer account information, and proposed new Rule 2165, relating to the financial exploitation of specified adults. These rules are intended to enable FINRA members to better protect seniors and other vulnerable adults from financial exploitation by (1) requiring a member to maintain the name of a "trusted contact person" for each retail customer; and (2) enabling a FINRA member to place a temporary hold on a disbursement of funds or securities from the account of a specified adult in the event of suspected financial exploitation. [\[1\]](#) Following a call of members to discuss the proposal, the Institute has prepared the attached comment letter, which is briefly summarized below.

Persons with comments on the Institute's letter should provide them to the undersigned by phone (202-326-5845) or email (linda.french@ici.org) no later than close of business [Eastern] Tuesday, November 24th. In the interest of our short time frame for finalizing this letter, when providing comments, please provide the text of your recommended revisions. The ICI's letter expresses our support for FINRA's efforts to address the vulnerability of senior citizens and to protect such persons from financial exploitation. Notwithstanding our support for FINRA's efforts, our letter notes that the proposed rules raise a variety of issues relating to privacy concerns, due process, and civil liability that warrant additional consideration and resolution prior to the rules' adoption.

ICI's letter recommends that, with respect to Rule 2165, FINRA:

- Revise the rule to be consistent with the limits Regulation S-P imposes on a member's

ability to share customers' non-public personal information;

- Consider providing account owners recourse for removing an account freeze other than by obtaining a court order, which would be time consuming, expensive, and burdensome;
- Expressly limit the number of freezes that a member may impose on an account during a calendar year (or other specified period);
- Address the rule's impact on jointly-held accounts;
- Address concerns with members' civil liability under the rule; and
- Include in the rule or its supplementary material language clarifying that (1) no member is required by FINRA to impose a hold on any customer account; and (2) a member's failure to impose a hold on a customer account pursuant to Rule 2165 shall not be deemed to be an abrogation of the member's duties under FINRA's rules.

Finally, should FINRA determine to pursue adopting a revised version of its proposal, the Institute's letter strongly recommends that FINRA consult with the North American Securities Administrators Association ("NASAA") and consider their efforts to protect seniors from financial abuse and exploitation. Our letter observes that many, if not most, of the concerns with FINRA's proposal that are discussed in the Institute's letter appear to be addressed in NASAA's pending proposal. The Institute's letter also notes that consistency between FINRA's approach to addressing financial abuse and the approach of the states would appear to be in the best interest of both investors and FINRA's members.

Linda M. French
Counsel

[Attachment](#)

endnotes

[1] See Financial Exploitation of Seniors and Other Vulnerable Adults, FINRA Notice 15-37 (October 2015), which is available at:

https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-37.pdf.

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