



October 4, 2019

Via email to [pubcom@finra.org](mailto:pubcom@finra.org)  
Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**RE: Regulatory Notice 19-27 FINRA Requests Comment on Rules and Issues Relating to Senior Investors**

Dear Ms. Mitchell:

We are providing responses to the following questions posted for comment with respect to addressing financial exploitation and other circumstances of financial vulnerability for senior investors:

**Rule 4512**

To gain a better understanding of the effectiveness of the trusted contact provision in Rule 4512: what methods have firms used in seeking to obtain trusted contact person information?

**This is included in the custodian new account form, as part of our firm Client Profile and a stand-alone form.**

What methods have firms found most helpful in obtaining such information?

**A discussion with the customer of what this person represents and examples of situations in which we would contact that person. Most customers have had a positive reaction.**

What have been the response rates from new and existing customers in providing the trusted contact person information?

**This has been well received. We make it clear that this is not granting authority to the trusted contact to effect account transitions or request the disbursements of funds, but rather this is someone whom we could contact should we have concerns about the customer's well-being. There is a level of comfort for both the customer and Member having this information should the situation arise. This is particularly important for sole account owners.**

Has your firm suspected financial exploitation of a customer, but not had the trusted contact person information? If so, what did your firm do, if anything?

**Yes, we followed the customer's state of residence guidance and contacted adult protective services.**

**While we may suspect financial exploitation or cognitive impairment, we cannot diagnosis it. Members are limited in what we can and should do. The reality is that each situation is unique, just as the customer relationship is unique. Members need to be aware of legal and privacy obligations and the professional resources available to best handle the situation. There is the human element as well. We've known many customers for decades and when we suspect something is wrong it takes a toll the representative. This is an area where imposing too many specific rules on Members can create a regulatory overreach on a person's asset, and even hinder the ability to protect a customer in an already difficult situation.**

Has your firm sought assistance from trusted contact persons, and, if so, was this outreach constructive?

**Yes. We are thankful to have it when needed. While the merit of making this a rule requirement is debatable, offering customers this opportunity and addressing privacy obligations was a step in the right direction to help customers and Members through challenging circumstances.**

### **Reporting Requirements**

Should FINRA develop a dedicated Rule 2165-related problem code for use in meeting reporting requirements pursuant to FINRA Rule 4530?

**Absolutely.**

Is guidance needed to address when complaints related to placing a temporary hold pursuant to Rule 2165 should be reported on Forms U4 and U5?

**YES. THIS IS IMPERATIVE. I cannot emphasize how critical this is. This industry has taken significant strides to protect seniors and specified adults. However, all of this is hollow if a person's instinct is telling them that something is wrong with their customer, and a hold decision should be made, they could be faced with a complaint filed on their U4. It is similar to retaliation against a whistleblower. The decision to place a hold is not to be taken lightly. The counter party likely will be displeased with the Members decision. Complaints regarding an associated person or Member regarding their actions in response to reasonably believing that financial exploitation of a specified adult has occurred, is occurring, has been attempted or will be attempted must be treated differently. Nothing should hinder helping to protect those who are being exploited, which by not addressing Rule 4530 in these matters, is what would happen.**

To what extent have registered persons received complaints in situations relating to disbursement holds, and have they been reportable complaints?

**We have not. However, after Members and associated persons to go through in-depth training to identify financial exploitation of specified adults, establish policies and procedures to encourage and escalate suspicions, it is not right to then turn around and say to them, “Regarding that hold, we received a complaint by the customer and I need to file it on your U4”. Unfortunately, no one can predict how a customer will react when a hold is implemented, or their account is restricted to liquidating trades. Members and their associated persons are in a precarious position and it needs to be remedied.**

**I am hopeful that by posting these questions for comments the conflicts that Rule 4530 and Form U4 presents are apparent and that FINRA is committed to remedy.**

### **General Effectiveness, Challenges and Economic Impact**

Should FINRA require additional disclosure or heightened supervision for any particular product or investment strategy that is marketed to senior investors?

**No, current rules suffice.**

What additional guidance, tools or resources would be helpful to firms or the investing public to address suspected financial exploitation and other circumstances of financial vulnerability for senior investors? Are there areas where FINRA or the FINRA Investor Education Foundation should conduct additional research or publish additional materials to promote greater awareness and education?

**From the videos posted online at <https://www.finrafoundation.org/> and in talking with FINRA employees, I observed a shared pride in their work for investor protection. I was unaware of the activities of the *FINRA Investor Education Foundation* until only recently. I think there is an army of talented and motivated individuals who may like to serve their communities by serving as a sound resource for the education of seniors. Would employees be open to more community outreach seminars and perhaps joint presentations with senior focused association?**

Thank you for your consideration of these responses and the opportunity to present them.

Jennifer L. Szaro, CRCP®

Lara May & Associates, LLC

Joining this response:

Robert L. (Bob) Hamman, President, First Asset Financial Inc.