December 4, 2020

Marcia E. Asquith
Executive Vice President, Board and External Relations
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 20-34

The National Adult Protective Services Association's (NAPSA) Policy Leadership is pleased to comment on FINRA's Regulatory Notice 20-34 (Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report). We applaud FINRA for continuing to prioritize the protection of senior investors and the great work in this area.

Hold Period
NAPSA agrees with FINRA's recommendation to extend the hold period an additional 30 business days. While we suggested 60 days in our initial comments, we are supportive of the proposed total of a 55-business day hold extension. The survey data from your members supports this extension as well as data from Adult Protective Services programs (APS). The latest data submitted to the federal National Adult Maltreatment Reporting System (NAMRS) indicates the average investigation duration of all reported cases is 52.6 days[i]. Recognizing that financial exploitation investigations are often more complicated and time consuming, we appreciate the additional days as a starting point with the ability to revisit as more data becomes available.

We would like a clarification on the wording in the last paragraph of the Hold Period which states "FINRA is proposing amending Rule 2165 to permit extending a temporary hold for an additional 30 business days if the member firm had reported the matter to a state agency or court of competent jurisdiction." We are commenting on the notable absence of law enforcement from the equation as some cases are reported to law enforcement without the involvement of APS and sometimes it is local and not state law enforcement that is involved.

We would again like to emphasize the diversity in APS programs and difficulty in obtaining an extension of a temporary hold from an APS agency or a court. NAPSA welcomes partnership with FINRA to bring awareness and solutions to this challenge as we have developed new protocol and forms around this matter.

Transactions in Securities
NAPSA is pleased to see that FINRA is recommending holds should be extended to matters beyond disbursements. We applaud proposed creation of the first uniform national standard for placing holds on transactions related to suspected financial exploitation.

This is an important step in the protection of investors.

Cognitive Decline or Diminished Capacity

NAPSA reiterates our position that Rule 2165 be expanded to include temporary holds on transactions when a firm is concerned about customers managing their own assets as opposed to only when there is financial exploitation by a third party. FINRA has decided not to propose to extend Rule 2165 in this scenario and cites lack of expertise and too much discretion on part of the members as well as impeding on the autonomy of the investor as their major concerns. We share some of the concerns and recognize that this a sensitive and complicated matter. However, we think this is overshadowed by the potential harm to investors if action is not taken and concerns can be addressed in an appropriate manner.

Financial service professionals are in a unique position of often being the first and only place to detect the potential of financial harm. We know the devastating effect wealth loss has on older investors who are not in a position to reclaim the losses. We believe that through experience and education offered by FINRA, as well as many other entities, that many members have or can get the required expertise to recognize the red flags and the hold would enable the investor to be protected while an investigation is completed. Existing protections in the process put in by FINRA and the individual firms mitigate the discretion that individuals would have.

Many studies link cognitive ability to financial decision making. Data reported by APS programs report that over 31% of victims of financial exploitation suffer from cognitive issues[ii]. A 2019 study in Health Economics concluded that people in the early stages of Alzheimer's Disease (AD) face a heightened risk of damaging financial outcomes[iii]. Stiegel reported in 2012 that people in early stages of Alzheimer's disease are more likely to be susceptible to financial exploitation and fraud by others[iv]. Wood and Lichtenberg stated in 2017 that "individuals who are mildly impaired prior to AD are the perfect victims as they have control of their assets but have impairment that may not be recognized and have broad exposure to the community.[v]" We think it is critical that the ability to hold and report be maximized here.

Trusted Contacts

The requirement of member firms to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer's account or when updating account information for a non-institutional account is a great resource for investor protection and the benefits are clear. We would like to see a higher usage rate. Information in this regulatory notice was unclear on actual usage rate as it was stated that most survey respondents reported a 25% or less of the firm's existing or new clients had provided trusted contact information. Data on practices and usage would be helpful in advancing this resource.

We recommended that FINRA look at other industries that have similar requirements and a much higher success rate. We are recommending more specific ideas to promote trusted contacts be provided such as FINRA publishing stories of how the provision has helped protect investors, video discussion with the trusted contact and client which proved instrumental in stopping exploitation and fraud, or other materials. We would like to see the FINRA Foundation create an annual educational campaign to promote the use and benefits of having a trusted contact person on the account. Older investors are used to similar annual campaigns during the Medicare open enrollment period. Such a campaign for trusted contacts would support ease in navigation.

Application of Hold Rules
NAPSA continues to recommend that the hold rules apply to investment companies (e.g. mutual funds). Currently, the SEC has made " suggestions" but nothing stronger. Oftentimes, they are the custodian of the actual assets and there is nothing to be done to hold the actual assets if the client goes to them directly circumventing the broker-dealer.

Thank you for the opportunity to comment and we look forward to working with you in the future on behalf of senior investors.

Sincerely,

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[i] McGee, L and Urban K (2020) Adult Maltreatment Data Report 2019. Submitted to the Administration for Community Living, US Department of Health and Human Services pg. 15.
[ii] McGee, L and Urban K (2020) Adult Maltreatment Data Report 2019. Submitted to the Administration for Community Living, US Department of Health and Human Services pg. 27.
[iii] Roan Gresenz, Carole, Mitchell, Jean M., Marrone, James and Federoff, Howard A. (2019) Effects of Early-stage Alzheimer's on household financial outcomes. Health Economics, Volume 29, Issue 1, January 2020 pgs. 18-29.
[iv] Stiegel, Lori A., (2012) An Overview of Elder Financial Exploitation. Generations 36 73-80.
[v] Woods, S., Lichtenberg, P.A. (2017) Financial Capacity and Financial Exploitation of Older Adults: Research Findings, Policy Recommendations and Clinical Implications. Clinical Gerontologist, 40 (1), 3-13.