

December 4, 2020

Submitted electronically to pubcom@finra.org

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 Report

Dear Ms. Mitchell:

LPL Financial LLC (LPL) appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority (FINRA) in response to its request for comments pursuant to Regulatory Notice 20-34 Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report (RN-34).¹ LPL commends FINRA for conducting a retrospective review to assess the effectiveness of its rules and administrative processes and its ongoing efforts to protect senior investors from financial exploitation.

I. Overview of LPL

LPL is a leading retail investment advisory firm, independent broker-dealer and registered investment advisor (RIA) custodian. We serve more than 17,000 independent financial professionals and over 700 financial institutions by providing them with the technology, research, clearing and compliance services, and practice management programs they need to create and grow thriving practices. LPL enables them to provide objective guidance to millions of American families seeking wealth management, retirement planning, financial planning and asset management solutions.

We believe that objective financial guidance is a fundamental need for everyone. We enable our financial professionals to focus on what they do best, which is to create the personal, long-term relationships that are the foundation for turning life's aspirations into financial realities. LPL and its affiliates have more than 4,300 full-time employees working to ensure that our associated financial professionals have the resources they need.

II. Support for and Implementation of Rule 2165

LPL has long supported strong measures to protect senior and vulnerable adult investors from fraud. With an estimated one in five Americans over the age of 65 suspected to be a victim of financial

¹ See Regulatory Notice 20-34, *FINRA Requests Comments on Proposed Amendments to Rule 2165*.

fraud² and a rapidly aging population, we believe that the financial services sector should have robust policies and procedures to protect this vulnerable population. Financial professionals typically have long-standing relationships with their senior clients, often working with them first as small savers, through building families and eventually during retirement. Our financial professionals have a unique perspective into the lives and circumstances of their clients, which makes them a key front-line resource for identifying and preventing financial exploitation that could be devastating.

LPL is committed to ensuring that all LPL professionals have the tools and training needed to recognize and report suspected senior and vulnerable adult exploitation. All LPL home office employees are required to take a training course on working with senior investors and vulnerable adults to understand the requirements under FINRA Rule 2165, and to understand that there are a number of different state laws and regulations that also protect senior investors and vulnerable adults.

We also have a dedicated Senior Investor Protection (SIP) team, with four home office employees who investigate suspected senior and vulnerable adult financial exploitation and abuse. Consistent with FINRA Rule 2165, when fraud is suspected and an investigation is opened, only certain individuals within the Compliance, Legal, and Risk department are authorized to assess whether a hold should be placed on disbursement(s). When a hold is placed on a disbursement, the SIP team notifies all appropriate persons authorized to transact business on the account and the trusted contact person of the hold and provides the reasons for the hold. Further, SIP provides guidance and resources to our home office employees to address suspected financial exploitation and other circumstances of financial vulnerability. The SIP team also works extensively with each state's Adult Protective Services (APS), local law enforcement, and regulators.

LPL continues to advocate for enhanced laws and regulations to address this evolving threat and better equip our financial professionals and our firm with tools to protect aging clients. In fact, LPL was one of the first firms to offer its financial professionals SeniorSafe trainings held in coordination with state securities regulators. This program, which was started by the State of Maine, gives banks, credit unions, broker-dealers, and investment advisers the chance to learn more about elder financial abuse and introduces them to the resources necessary to make a report. This is an issue of utmost importance, and LPL looks to continue to work closely with our regulators.

Given our practical experience working to protect senior investors and vulnerable adults, we respectfully submit the below comments on Proposed Amendments to FINRA Rule 2165.

III. Proposed Amendments to FINRA Rule 2165

LPL views this proposal as a positive change and appreciates FINRA's prioritization of addressing financial exploitation of senior investors, including conducting its retrospective review that considers the input of many stakeholders. When adopted in 2017, Rule 2165³ established a framework to enable member firms to better protect customers, specifically those of an advancing age, from financial exploitation. FINRA acknowledged in RN 20-34 that the proposed changes were driven by feedback from member firms as part of its retrospective review of the rule. We believe that the proposed amendments represent important steps forward in expanding the financial sector's efforts to protect elders from potential financial abuse and exploitation.

Inclusion of "Transactions"

We are particularly supportive of FINRA's proposal to enable firms to place a hold on "transactions" as well as "disbursements," which are included in the original rule. We view these positive

² According to the Investor Protection Trust Elder Fraud Survey, available at: <https://www.investorprotection.org/protect-yourself/?fa=protect-seniors> HOW DO I REMOVE PAGE # on first page only?

³ See Rule 2165. Financial Exploitation of Specified Adults *adopted by FINRA and effective February 5, 2018.*

changes as additional tools that would strengthen member firms' ability to combat financial fraud targeting seniors. When fraud is suspected on a securities transaction, the ability to place a temporary hold on the account would allow the firm to temporarily pause potentially exploitive sales or liquidation of assets and for the elderly client's market position to be maintained. Should the transaction be completed without a hold, the market position could be compromised and result in unnecessary loss to the client.

Additionally, older and vulnerable adults are unlikely to be able to earn back any of their losses, especially those older adults who have already entered retirement. LPL's current Master Account Agreement,⁴ provided to customers at the time of account opening, incorporates the ability to hold transactions, disbursements and account transfers if exploitation of any kind is suspected. We have found that the ability to hold a transaction is a valuable tool for our SIP team when it is investigating potential fraud. We believe that enabling all member firms to use holds on transactions in addition to disbursements will lead to further protection of senior investors and vulnerable adults.

Extending the Hold Period

LPL also strongly supports FINRA's proposal to increase the temporary hold period from 25 days to 55 days. Temporary hold periods are a crucial lever that firms can pull to quickly respond to allegations of financial exploitation before a customer suffers any loss. It is important to note that a hold on one transaction or disbursement in the interim does not preclude the customer from being able to pay standard monthly bills or living expenses.

However, we request that FINRA consider a further extension. According to its retrospective review of Rule 2165, FINRA's survey found that most firms take between 51 and 100 days to complete an investigation. This illustrates that the current hold period of 25 days is not optimal, and even an additional thirty days may not be enough time to complete a thorough investigation. We therefore encourage FINRA to further extend the hold period to at least one hundred days, in keeping with the survey results.

Divergence Among Certain State and FINRA Rules

To date, 31 states have enacted the North American Securities Administrators Association (NASAA) Senior Model Act since it was formally adopted by NASAA members in January 2016. The NASAA Senior Model Act does not include "transactions" in its scope.⁵ However, recognizing that holds on transactions can be an additional tool to further protect senior and vulnerable investors, 17 of the 31 states that have adopted the NASAA model have added language in their state rules that allows for holds on transactions. Our concern with the proposed FINRA change is that the divergence between FINRA's requirements and the state requirements will inadvertently cause an undue burden for member firms, and/or have a chilling effect on firms' use of holds.

Similarly, if FINRA extends the hold period beyond 25 days (whether to 55 days as FINRA proposed or beyond, as we propose herein), the change will result in a discrepancy between the state regulatory hold periods⁶ and FINRA's rule. This will create an unnecessary onus on firms that will still be required to abide by the current 25 business day hold periods under state law and therefore unable to take advantage of the FINRA rule change. We are hopeful that once FINRA's proposed amendments are adopted, states that have adopted the NASAA Model Act will amend their rules to align with FINRA's requirements and harmonize the regulatory framework.

⁴ See, e.g., Account Packet – LPL Master Account Agreement available at <http://lpl.com/disclosures/account-agreements-account-packets.html>

⁵ See NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation available at: <https://www.nasaa.org/industry-resources/senior-issues/model-act-to-protect-vulnerable-adults-from-financial-exploitation/>

⁶Ibid.

An additional area of divergence between FINRA and state law is in the definition of “Specified Adult.” Recognizing that many people begin a cognitive decline earlier than the age of 65, 17 states have adopted legislation that defines a “Specified Adult” as someone aged 62 or older. We request that FINRA consider amending its definition of a “Specified Adult” to be aged 60 or 62 to close a crucial gap that can leave a critical aging population vulnerable and unprotected.

Cognitive Decline and Diminished Capacity

Finally, LPL would like to thank FINRA for summarizing and publishing the best practices regarding suspected customer cognitive decline and diminished capacity. This can be a difficult area to navigate, and the list of red flags allows us to align with others in the industry on how to recognize diminished capacity and cognitive decline.

IV. Conclusion

LPL greatly appreciates the opportunity to provide comments to FINRA on Proposed Amendments to Rule 2165. We are ardent supporters of the current FINRA rule and proposed expansions to protect senior investors and believe that tools that enable increased vigilance will lead to increased protections for our most vulnerable population. If you would like to discuss this letter further or have any questions, please contact me at [Redacted]

Sincerely,

A handwritten signature in black ink, appearing to read 'Katrina', with a stylized flourish extending to the right.

Katrina A. Carroll
Chief Anti-Money Laundering Officer
Executive Vice President
Financial Crimes Compliance