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Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

November 30, 2015

Re: Regulatory Notice 15-37; Proposed Rules Relating to Financial Exploitation of Seniors and Other Vulnerable Adults

Dear Ms. Asquith,

The Alzheimer's Association appreciates the opportunity to comment on FINRA's proposed rules addressing the financial exploitation of seniors and other vulnerable adults.

The Alzheimer's Association is the world's leading voluntary health organization in Alzheimer's care, support, and research. Today, there are more than 5 million Americans living with Alzheimer's disease, including an estimated 200,000 people under the age of 65. Individuals affected by Alzheimer's experience impaired judgment and progressive cognitive decline, making them susceptible to financial exploitation. As more baby boomers reach the age of greater risk of developing Alzheimer's, it can be expected that millions of them will spend their retirement years either living with the disease or caring for someone who has it. Protecting their financial future must be a priority.

The Alzheimer's Association supports legislative and regulatory efforts to protect people with Alzheimer's disease from financial exploitation. Through our chapters across the country, we will be working to see such protections enacted in all states. The proposed rules by FINRA are an important contribution to this cause. Thus, we offer the following comments to Regulatory Notice 15-37.

**Specific Comments**

*Proposed amendments to FINRA Rule 4512 (Customer Account Information)*

The Alzheimer's Association appreciates FINRA's proposal to identify a trusted contact person, but believes the proposed amendment can be strengthened with earlier identification of trusted contacts, required notification of the designation, and a broader approach in engaging with these individuals.

Early identification of trusted contacts ensures clients are able to name a person for this role before cognition declines. Advancing age is the biggest known risk factor for developing Alzheimer's disease; thus, older existing customers may already be experiencing cognitive deficits by the time firms request a trusted contact name through routine and customary business. We suggest FINRA amend its proposal to encourage firms to request this information from all its existing clients within 12 months of the amendment's effective date.

We also suggest FINRA require firms notify individuals in writing when they are named as trusted contacts and when their designation changes because account holders have named new trusted contacts. Currently, the proposed amendment makes the underlying assumption that a trusted contact will engage in conversation with a firm and willingly confirm personal details about its customers. However, many individuals who are unaware of their status as a named trusted contact will likely find it concerning when a stranger contacts them about someone they know and asks about personal details like the customer's contact information, health status and any existing legal representation. Notifying individuals in writing that they've been named as trusted contacts will help to mitigate confusion when a firm reaches out. Likewise, notifying named trusted contacts when their designation has changed may serve as a flag for these individuals to investigate if the change is due to factors such as diminished capacity or financial exploitation.

Lastly, we suggest FINRA amend the type of information firms seek to confirm from trusted contacts. Rather than attempting to confirm a customer's health status, firms should seek other information potentially relevant to an account's unusual activity. As previously mentioned, trusted contacts may decline to reveal personal details about a customer with firms they do not recognize. Trusted contacts may also live long-distance and be unable to speak accurately to a customer's cognitive or functional status. Furthermore, "health status" does not adequately assess whether a customer is being financially exploited and can be subject to interpretation. Thus, we suggest FINRA amend its supplementary material so firms do not seek to confirm a customer's health status, but rather information relevant to an account's unusual activity.

*Proposed New FINRA Rule 2165 (Financial Exploitation of Specified Adults)*

The Alzheimer's Association appreciates FINRA's efforts to encourage firms to protect clients from financial exploitation by providing safe harbor if they exercise discretion, but believes this new proposed rule can be strengthened by including situations of suspected diminished capacity; requiring firms to report suspected financial exploitation or diminished capacity; and clarifying some of its processes for temporary holds and record retention.

Currently, the only type of situation FINRA defines for the purposes of this rule under §(a)(6) is financial exploitation. However, delaying disbursement may also be appropriate due to suspected diminished capacity. Alzheimer's disease is characterized by a progressive decline in memory, problem-solving, and other cognitive skills that affect a person's judgment and executive function. As their cognition declines, affected individuals may engage in poor decisions and fail to recognize the consequences of their actions. Firms may encounter these types of situations and be asked to take action on customers' preferences, even if these preferences are based on impaired judgment. FINRA appears to acknowledge the potential of encountering customers with diminished capacity by including in its definition of specified adults, "a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests." We suggest FINRA include suspected diminished capacity under §(a) and §(b)(1) so firms are encouraged to apply this rule if a customer is making poor financial decisions due to the presence of cognitive impairment.

We also suggest firms be required to report suspected financial exploitation or diminished capacity to appropriate external authorities such Adult Protective Services (APS) and the state securities agency. As outlined under §(b)(1)(B)(i) and (ii) in the proposed rule, the only people a firm is obligated to inform in the event of a delayed disbursement due to financial exploitation are authorized parties on the account, a named trusted contact, and if needed, an immediate family member. Because financial exploitation is a recognized crime and diminished capacity may indicate self-neglect, a recognized form of abuse in several state statues on APS, it would be appropriate for firms to notify external authorities if they reasonably suspect one of these situations is occurring, and thus, choose to exercise discretion under this rule.

Lastly, we suggest FINRA further clarify some of its processes outlined under §(b) and §(c). Specifically:

- The window of time allowed to take action under §(b)(1)(B) should be reduced to 24 hours. This is in line with most guidance for mandatory reporters of abuse. FINRA should also clarify how individuals will be notified, including external authorities such as APS.
- It is not clear how a firm would identify an "immediate family member" in the event the named trusted contact cannot be reached under §(b)(1)(B)(ii).

- The provisions for a delay of disbursement expiration [§(b)(2)] or extension [§(b)(3)] should be clarified. Because firms may not recognize cognitive change or be trained in detection of cognitive impairment, it is not clear under what expertise or authority a temporary hold on disbursements would expire or continue, or under what mechanism a case involving delayed disbursement would reach a court, even though these provisions indicate a court may terminate such a delay.
- Under §(c), firms should also be required to document referral to external authorities such as APS and the final outcome of the temporary holds they place.

Thank you for the opportunity to comment. The Alzheimer's Association would welcome a chance to serve as a resource to FINRA as it refines its rules and considers other issues facing individuals living with Alzheimer's and other dementias. Please contact Hye Kim, Sr. Associate Director, Policy Development, at 312-335-5809 or hkim@alz.org if you have questions or if we can be of additional assistance.

Sincerely,

Robert Egge
Executive Vice President, Government Affairs