



December 4, 2020

via email: pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Regulatory Notice 20-34: Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report

Dear Ms. Mitchell,

In its Regulatory Notice 20-34 ("RN 20-34"), the Financial Industry Regulatory Authority, Inc. ("FINRA"), solicited comments regarding a proposal to amend Rule 2165 (Financial Exploitation of Specified Adults) (hereinafter "Proposed Amendment") to extend the time firms may withhold distributions of suspected elder financial abuse victims and expand the scope to include the withholding of securities transactions.

RN 20-34 proposes to amend Rule 2165 to allow member firms to extend a temporary hold for an additional 30 business days when they have reported their concerns to the appropriate state agencies. Secondly, RN 20-34 proposes amending the rule to include a temporary hold on securities transactions.

Currently, Rule 2165 allows a member firm to place a temporary hold on disbursements of funds or securities from a specified adult customer's account for up to 25 business days when there is reasonable belief that financial exploitation of a specified adult has occurred, is occurring, has been attempted, or will be attempted, and where the firm has taken appropriate steps, including opening an internal investigation, notifying the proper parties to the account of the hold, and referring the matter to the applicable agencies in the state where the customer resides.

Commonwealth Financial Network® is an independent broker/dealer and an SEC registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 2,000 registered representatives who are independent contractors conducting business in all 50 states. Commonwealth's purpose is to make a profound difference in our world by helping people. The firm is inspired by empowering the goals and dreams of the entire Commonwealth community.

Commonwealth welcomes and appreciates the opportunity to comment on the Proposed Amendment. The impact of financial exploitation on investors is emotionally, psychologically, physically, and financially devastating. Financial exploitation is a public health issue, and studies have shown that victims of all forms of elder abuse, including financial exploitation, have an increased risk of death. Firms have a duty to protect investors, especially those who are most vulnerable.

Commonwealth is sensitive to the fact that placing a hold on a customer's disbursement is, to say the least, a significant event; however, it doesn't hesitate to do so, when the facts and circumstances warrant it, to protect a senior or vulnerable investor.

Hold Period

Commonwealth supports the extension of the temporary hold for an additional 30 business days as proposed.

In some cases, 25 business days may be enough to resolve an issue of exploitation; however, in our experience, most circumstances require additional time to seek support from one or more state agencies, law enforcement, or regulators and to engage trusted contacts or family members. In the event that Adult Protective Services may not be willing or able to accept a referral, firms need time to engage other agencies. The additional 30 business days will be beneficial in our efforts to ensure that we are exhausting all avenues in an attempt to protect these individuals.

Our efforts don't stop at alerting the proper authorities. Depending on the case, we rely on leveraging the 314(b) information-sharing provision of the PATRIOT Act to gain a more thorough understanding of the other side of a completed or attempted transaction. Some 314(b) participating financial institutions, due to volume or resources, may not respond for 30 days. The resulting information can be critical in determining if there is financial exploitation and in alerting the receiving financial institution or informing the proper authorities of its existence. Commonwealth has found in several reported cases of suspected financial exploitation that the actual exploitation occurred outside of our purview at a separate financial institution. Our advisors' intuition and our ability to leverage Rule 2165 in conjunction with 314(b) have allowed us to take additional measures to ensure the welfare of clients. Having the time to properly pursue this information and knowledge is pivotal to a thorough investigation.

Commonwealth fully supports the extension of the hold period and believes the additional 30 business days will allow the firm to perform a more robust investigation. We believe there should be some additional remedy when the hold period ends. Faced with the end of the hold period, in situations where the firm has not been able to resolve the issue, it has two very undesirable options: to continue to allow suspected financial exploitation or de-market the customer. While the Senior Hotline is an incredible resource for senior investors, it has been our experience that the hotline is limited in terms of assisting member firms in resolutions with cases. Commonwealth suggests that FINRA continue to collaborate with NAPSA, whose members are key to member firms when these referrals are made; that it continue to work with NASA to encourage state securities regulators to enhance existing laws to further protect seniors as well as provide support to member firms when cases are referred; and also that it engage with law enforcement agencies, including FinCEN. In addition, Commonwealth also suggests that FINRA consider creating regional committees to include member firms, local law enforcement, and local agencies combatting exploitation to collaborate on cases and make recommendations on additional tools and resources to combat financial exploitation.

Transactions in Securities

Commonwealth supports the expansion of temporary holds on transactions in securities as proposed. As noted in RN 20-34, 16 states already allow firms to place a hold on securities transactions.

Currently, even if a firm places a temporary hold on a disbursement of funds, it must allow any related sales of securities. There is no way to un-ring the bell once those trades have been effected. Seniors and



vulnerable adults holding positions with large gains can be subject to significant tax consequences resulting from the sales.

In closing, Commonwealth appreciates the opportunity to comment on the Proposed Amendment. We look forward to engaging with FINRA to develop additional tools and resources to further protect the senior and vulnerable adults in our communities.

If you should have any questions or would like additional information on our comments, please do not hesitate to call me at [Redacted]

Sincerely,

A handwritten signature in black ink, appearing to read "H. Murphy", written over a light blue horizontal line.

Heather Murphy
Director, AML Compliance
Commonwealth Financial Network®