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Via E-Mail: rule-comments@sec.gov

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 200549-1090

Re: SR-FINRA-2021-016: FINRA Notice of Filing of a Proposed Rule Change to Amend Rule 2165 (Financial Exploitation of Specified Adults)

Dear Ms. Countryman:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in response to the U.S. Securities and Exchange Commission's ("SEC") notice: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 2165 (Financial Exploitation of Specified Adults).[2] The Proposing Release solicits comments on proposed changes to FINRA Rule 2165 (the "Proposed Rule Change") to amend the scope of Rule 2165, and the timing requirements related to potential holds on disbursements of funds or securities (and effecting securities transactions), under Rule 2165.

BACKGROUND

FINRA's Proposed Rule Change originated from its Retrospective Rule Review announced in August 2019 in Regulatory Notice 19-27 ("RN 19-27") to assess its rules and processes designed to help protect senior investors from financial exploitation. After reviewing the comments received on RN 19-27, including a comment letter from the Committee,[3] FINRA followed up with Regulatory Notice 20-34 announcing proposed amendments to FINRA Rule 2165 in October 2020 ("RN 20-34"). Among other things, RN 20-34 sought comments on proposed changes to FINRA Rule 2165. The Committee also commented on RN 20-34, and was generally supportive of the proposed changes.[4]

Under the current version of FINRA Rule 2165, a member firm generally may, but is not required to, place a hold on disbursements of customer funds or securities if it reasonably believes financial exploitation has occurred, is occurring, has been attempted, or will be attempted. In addition, the

[1] The Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's 31 member companies represent more than 80% of the annuity business in the United States. The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of insurance, securities, banking, and tax policies regarding annuities. For over three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities at both the federal and state levels, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury Department, and Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee's member companies is attached as Appendix A.

[2] 86 Fed. Reg. 34084 (June 28, 2021) (the "Proposing Release").

[3] Letter from Eric Arnold, Clifford Kirsch and Holly Smith of Eversheds Sutherland on behalf of the Committee of Annuity Insurers (Oct. 8, 2019).

[4] Letter from Eric Arnold and Clifford Kirsch of Eversheds Sutherland on behalf of the Committee of Annuity Insurers (Dec. 4, 2020) ("RN 20-34 Comment Letter").

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hold on such disbursements is permitted for up to 25-business days, subject to certain requirements being met by the firm that determines to place the hold.

In response to its assessment of the retrospective rule review comments under RN 19-27, and the comments FINRA received in response to its proposed amendments to FINRA Rule 2165 under RN 20-34, FINRA filed the Proposed Rule Change with the SEC that would:

- Permit a member firm to place a temporary hold on a *securities transaction* (in addition to disbursements of funds and securities) where there is a reasonable belief of financial exploitation; and

- Extend the permitted time period for the temporary hold on a disbursement of funds or securities (or now, under the Proposed Rule Change, a transaction in securities) for an additional 30-business days if the member firm has reported the matter to a state regulator or agency or a court of competent jurisdiction.

COMMITTEE COMMENTS

As indicated above, the Committee commented on each of RN 19-27 and RN 20-34. While not all of the Committee's comments were accepted and acted upon, the Committee remains generally supportive of the Proposed Rule Change. The Committee does have a few comments and suggestions related to the Proposed Rule Change identified below.

Holds on Securities Transactions. As indicated above, the Proposed Rule Change would allow member firms to place holds on *securities transactions*, in addition to holds on *disbursements* of customer funds and securities. As stated in the RN 20-34 Comment Letter, the Committee is in favor of this change, and believes that extending FINRA Rule 2165 to cover securities transactions will provide additional tools for firms to use to combat financial exploitation. In addition, the Committee believes that allowing for such a practice will provide more clarity on the manner in which member firms can attempt to combat financial exploitation with respect to direct held securities products, such as variable annuities, that are not usually held in a brokerage account that has a disbursement account.

Extension of Time Period to Suspend Disbursement of Funds or Securities, or Securities Transaction. The Committee supports the extension of 30-business days to the time period for which a firm may hold a disbursement or suspend execution of a securities transaction. The Committee is in favor of this change, given that it believes many firm investigations, and the activities/investigation of applicable regulatory agencies (e.g., a state's adult protective services ("APS") agency) or courts takes a considerable time frame, often well beyond the current 25-business day limit. The Committee recognizes and appreciates that FINRA did significant outreach and collected considerable data on the appropriate amount of time required to resolve a potential case of financial exploitation.[5] Ultimately, the Committee recognizes that FINRA tried to strike a balance on the appropriate amount of time that allows for a reasonable investigation but also a recognition that time may be of the essence to the customer.

The Committee notes, however, that even with the extension of the additional 30-business days, the difficult choices faced by firms that run up to, and past, the deadlines under FINRA Rule 2165, have not been solved. State laws do not conform to the additional 30-business days granted under the Proposed Rule Changes, and thus firms will be forced to continue to wade through a patchwork of requirements.[6] In addition, there will still be a sizeable percentage of cases of potential financial

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[5] See, e.g., Proposing Release at 34088 (identifying data from the Philadelphia Financial Exploitation Task Force ("Task Force") indicating an average investigation time of 52.6 days).

[6] NASAA's Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation has been adopted by many states, and currently includes a 25-business day hold period. The Committee notes with disappointment that NASAA argued against any consideration of extending the time period for reviewing the

exploitation that are not resolved in a timely manner, even with the 30-business day extension. In fact, the data received from the Task Force (cited above in footnote 5) suggests that a decent percentage of cases will not be concluded within the extended 30-business day limit. Moreover, under FINRA's survey on the timing of investigating financial exploitation, 59% of the respondents indicated that it took an average of 51-100 days to resolve matters.[7] Even with the 30-business day extension, firms will still be in the unenviable position of determining whether to engage in the disbursement, or execute the securities transaction, prior to their ability to conclude the investigation and ensure that the customer has not been exploited.

The Committee therefore believes that FINRA should plan, and must continue, to work with the applicable state agencies and courts to ensure a speedy process for resolution of the issues raised by financial exploitation and attempt to impress upon them the vital importance of aligning the interests of the different regulatory and judicial constituencies with respect to the permitted time frame to hold disbursements or transactions. In this regard, we note that FINRA did indicate in the Proposing Release that it "may consider extending the temporary hold period in future rulemaking,"[8] and the Committee would encourage FINRA to review this timeline again in the future to assess its efficacy.

CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Proposed Rule Change. Please do not hesitate to contact Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com) or Eric Arnold (202.383.0741 or EricArnold@eversheds-sutherland.com) with any questions or to discuss this comment letter.

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Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: _____
Clifford Kirsch

BY: _____
Eric Arnold

FOR THE COMMITTEE OF ANNUITY INSURERS

cases of financial exploitation ("NASAA does not support extending the temporary hold period and expressed concern about the potential impact of a longer hold period on customers." Proposing Release at 34091).

[7] Proposing Release at 34087.

[8] Proposing Release at 34090.

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
Brighthouse Financial, Inc.
Equitable
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Financial Group
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Lincoln Financial Group
Massachusetts Mutual Life Insurance Company
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Sammons Financial Group
Security Benefit Life Insurance Company
Symetra Financial Corporation
Talcott Life Insurance Company
Thrivent
TIAA
USAA Life Insurance Company