PIABA
protecting public investors

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<u>Via Electronic Mail</u>
Rule-comments@sec.gov

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F St. NE
Washington, DC 200549-1090

RE: FINRA Proposed Rule Change to Amend Rule 2165 (Financial Exploitation of Specified Adults) – File No. SR-FINRA-2021-016

Dear Ms. Countryman:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors. Since its formation in 1990, PIABA has promoted the interests of the public investor in all dispute resolution forums, while also advocating for public education regarding investment fraud and securities industry misconduct. Our members and their clients have a fundamental interest in the rules promulgated by the Financial Industry Regulatory Authority ("FINRA") that relate to investor protection.

PIABA members frequently represent senior investors, and we are particularly concerned with enhancing protections for this vulnerable population. PIABA previously commented on FINRA Regulatory Notices 15-37 and 19-27, which included a variety of senior protection proposals, and FINRA's previously proposed revisions to Rule 2165, as detailed in Regulatory Notice 20-34 ("RN-34"). FINRA's current rule proposal concerns revisions to FINRA Rule 2165, which creates a "uniform national standard" for FINRA-registered members and associated persons regarding certain tools to help prevent financial exploitation of specified adults. This includes a "safe harbor" provision allowing firms to place a temporary hold on a disbursement of funds or securities when there is suspected misconduct. Based on FINRA's retrospective review, FINRA proposes extending the time of the permissible hold period under Rule 2165 and allowing temporary holds on securities transactions, not just disbursements.

As noted in PIABA's comment letter to RN-34,[1] while PIABA cautiously supports FINRA's proposal to permit an extension of time on the permissible hold period under rule 2165 and the expansion of temporary holds to include securities transactions, rather than just disbursements, PIABA remains concerned with maintaining investor autonomy and protecting senior investors from member firms potentially misusing the expanded hold periods and the extension of holds to securities transactions.

As such, PIABA reiterates to the Commission its recommended revisions to Rule 2165 made in the PIABA RN-34 Comment Letter that member firms be required to: (1) update their written supervisory manuals to include training and review transactions suspected of elder abuse; (2) include in their retained records documentation of the firms' reasonable efforts to quickly investigate the matter; and (3) file a report with the appropriate Adult Protective Services agency and state regulator as soon as reasonably practical but no later than seven business days from the commencement of the initial hold period.

In response to PIABA's recommended revisions, FINRA noted that Rule 2165 "currently include[d] several safeguards designed to prevent misapplication of the rule" and that FINRA "expect[ed] member firms to comply with all applicable state requirements, including reporting requirements."[2] FINRA's response fails to adequately address PIABA's recommended revisions.

Requiring member firms to include additional training and review of transactions regarding suspected elder abuse would help to ensure adequate protection for elderly investors. Requiring member firms to explicitly retain records that document the firms' reasonable efforts to investigate the matter helps to ensure Rule 2165's requirements are met and not used as an excuse by member firms for their own financial benefit or other ulterior motive.

Further, PIABA's recommendation that member firms be required to file a report with the appropriate Adult Protective Services agency and state regulator within seven business days from the commencement of the ***initial*** hold period will provide more robust and earlier protection by appropriate governmental agencies than FINRA's current rules proposal regarding notifying government agencies and/or courts, which is only triggered when member firms seek an additional thirty-day extension of the initial hold period. Given that FINRA's current rules proposal acknowledges the importance of notifying appropriate governmental agencies regarding suspected cases of financial exploitation, the Commission should opt for PIABA's recommendation for an earlier notification requirement to ensure that the appropriate governmental agencies can take action earlier and that the protection of senior investors is not left to the whims of FINRA's member firms.

In reviewing FINRA's proposal to revise and strengthen Rule 2165, the Commission should look beyond FINRA's limited and narrow requested revisions and adopt other appropriate revisions to Rule 2165 that would enhance the protection of vulnerable senior investors. PIABA's suggested revisions provide three such mechanisms for doing so.

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[1] *See* PIABA Comment Letter to Jennifer Piorko Mitchell, FINRA Regulatory Notice 20-34, *Senior Investors Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report* (December 4, 2020), attached as exhibit 2b, comment 11 to FINRA Rule Proposal ("PIABA RN-34 Comment Letter").

[2] *See* FINRA Proposed Rule Change to Amend Rule 2165 (Financial Exploitation of Specified Adults), File No. SR-FINRA-2021-016, pg. 29.

PIABA appreciates the opportunity to submit these comments and urges the Commission to approve the proposed rules with the revisions suggested above.

Respectfully submitted,

David P. Meyer
PIABA President