GOVERNMENT OF PUERTO RICO

Office of the Commissioner of Financial Institutions

TO: BROKER-DEALERS AND INVESTMENT ADVISERS

FROM: George Joyner, Commissioner

DATE: April 4, 2018

SUBJECT: EFECTIVENESS OF FINRA RULE 2165 (FINANCIAL EXPLOITATION OF SPECIFIED ADULTS) AND DIFFERENCES TO OCFI REGULATION 7900 (REGULATION TO ESTABLISH A PROTOCOL FOR PREVENTION AND DETECTION OF CASES OF FINANCIAL EXPLOITATION TO ELDERLY OR DISABLED PERSONS)

EFECTIVENESS OF FINRA RULE 2165 AND DIFFERENCES TO OCFI REGULATION 7900

State regulation of broker-dealers exists in parallel with self-regulation conducted by the Financial Industry Regulatory Authority ("FINRA"), a federally-sanctioned self-regulatory organization ("SRO"). FINRA has significant authority over the conduct of broker-dealers, but its role is also strictly circumscribed by federal statute and regulation. State laws are legally and functionally distinct from rules adopted by FINRA or any other SRO.

In March 2017, the Securities and Exchange Commission approved the adoption of new FINRA Rule 2165 (Financial Exploitation of Specified Adults), allowing members to place temporary holds on disbursements of funds or securities from the account of specified customers where there is a reasonable belief of financial exploitation of these customers, as well as amendments to Rule 4512 (Customer Account Information), requiring members to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a

PO Box 11855, San Juan, PR 00910-3855
1492 Ponce de León Ave.
Centro Europa Building, Suite 600
San Juan, PR 00907- 4024
Phone: 787-723-3131 exts. 2204, 2206
email: georgej@ocif.pr.gov

customer's account. New Rule 2165 and the amendments to Rule 4512 became effective on February 5, 2018.

On the other hand, Regulation 7900, known as the "Regulation to Establish a Protocol for Prevention and Detection of Cases of Financial Exploitation to Elderly or Disabled Persons", was adopted and promulgated pursuant to the authority conferred by Section 10 (a) (2) of Act No. 4 of October 11, 1985, as amended, known as the "Office of the Commissioner of Financial Institutions Act" (hereinafter "Act No. 4"); and Act No. 206 of August 9, 2008 "to direct the Commissioner of Financial Institutions, the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico and the Office of the Insurance Commissioner to implement such necessary regulations in order to require that all financial institutions, cooperative associations and insurance institutions in Puerto Rico shall establish a protocol to prevent and detect potential cases of financial exploitation of elderly persons or persons with disabilities; and for other purposes."

Regulation 7900 is intended to require all financial institutions operating on the basis of Act No. 4 the implementation of a protocol for the prevention and detection of cases of financial exploitation to elderly or disabled persons pursuant to the applicable criteria and guidelines.

Therefore, it should be emphasized that FINRA and SRO rules are not a substitute for the enactment of legislation. Moreover, the protections afforded by the FINRA rules are substantively different from those afforded by Regulation 7900 and related legislation. For example, FINRA does not require mandatory reporting of suspected financial exploitation to the concerned agencies handling these type of cases, and does not incentivize reporting by offering civil immunity for disclosing information to government and third-parties. Further, while FINRA requires retention of records, it does not require the sharing of records with the concerned and law enforcement agencies, which can prove to be an essential tool for agencies tasked with preventing exploitation. Regulation 7900 also establishes specific time periods to conclude internal investigations of possible financial exploitation cases and to make the appropriate referrals to the concerned or designated agencies.

In addition to FINRA Rule 2165, we urge your compliance with the enclosed Regulation 7900 to facilitate the prevention and detection of cases of financial abuse to elderly or disabled persons. Although FINRA Rules do not apply to investment advisers, this communication is also being sent to investment advisers registered in Puerto Rico, since Regulation 7900 applies to all the financial institutions in Puerto Rico.