

**MEMO# 30661**

April 3, 2017

# **FINRA Adopts Rules to Protect Seniors and Other Vulnerable Adults from Financial Exploitation and Abuse**

[30661]

April 3, 2017 TO: Broker/Dealer Advisory Committee

Principal Underwriters Working Group

Transfer Agent Advisory Committee RE: FINRA Adopts Rules to Protect Seniors and Other Vulnerable Adults from Financial Exploitation and Abuse

The SEC recently approved amendments to FINRA's rules that are designed to protect senior citizens and other vulnerable adults. These rules are: (1) new FINRA Rule 2165, which authorizes FINRA members to impose a temporary hold on the disbursement of account proceeds whenever financial exploitation<sup>[1]</sup> of a "Specified Adult"<sup>[2]</sup> is suspected; and (2) amendments to FINRA Rule 4512 to require FINRA members to make a reasonable effort to obtain the name and contact information for a trusted contract person for a customer's account. Both changes to FINRA's rule, which are summarized below, are effective **February 5, 2018**.<sup>[3]</sup>

## **NEW RULE 2165, FINANCIAL EXPLOITATION OF SPECIFIED ADULTS**

FINRA's new Rule 2165 permits broker-dealers to impose a temporary hold on the disbursement of funds or securities from an account on which a Specified Adult is authorized to transact business subject to the following conditions:

1. The FINRA member reasonably believes that financial exploitation of a Specified Adult has occurred, is occurring, has been attempted, or will be attempted;
2. The FINRA member, not later than two business days after the date that the member first placed the temporary hold on the disbursement of funds or securities provides notification orally or in writing, which may be electronic, of the temporary hold and the reasons for it to: (a) all parties authorized to transact business on the account; and (2) the account holder's "Trusted Contact Person" unless the FINRA member believes the Trusted Contact Person<sup>[4]</sup> is involved in the financial exploitation of the account holder; and
3. The FINRA member immediately initiates an internal review of the facts and circumstances that caused the member to reasonably believe that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted.

The new rule also requires that each temporary hold expire not later than either (1) 15 business days after it was imposed unless sooner terminated or extended by a state regulator or agency or court of competent jurisdiction; or (2) 25 business days provided the member's internal review of the facts and circumstances under (3), above, supports the member's reasonable belief regarding financial exploitation of the Specified Adult. It further requires any member relying on it to establish and maintain written supervisory procedures that are reasonably designed to achieve compliance with the Rule<sup>[5]</sup> and maintain specified records,<sup>[6]</sup> which must be available to FINRA upon request. Supplementary Material to the Rule requires members relying on it to develop and document training policies or programs reasonably designed to ensure that associated persons comply with the Rule's requirements.

As you may know, Section 22(e) of the Investment Company Act prohibits any investment company or its agent from suspending the right of redemption or postponing the date of payment or satisfaction upon redemption of any redeemable security "for more than seven days after the tender of such security to the company or its agent designated for that purposes for redemption." During the pendency of Rule 2165, the Institute raised concerns in comment letters to FINRA with whether Section 22(e) would preclude broker-dealers from relying on Rule 2165 to delay the disbursement of proceeds from a mutual fund account. FINRA responded to our concerns in a letter to the Commission that states as follows:

Based on discussions with SEC staff, FINRA does not believe that a broker-dealer's delay of the disbursement of mutual fund redemption proceeds to its customers in reliance on proposed Rule 2165 and based on a reasonable belief of financial exploitation of the customer would be imputed to the mutual fund, including where the broker-dealer is the mutual fund's principal underwriter. This conclusion is limited to situations where the mutual fund does not have a role in the disbursement of redemption proceeds from the customer's account held by the broker-dealer, including any role in the decision to delay the disbursement of funds in reliance on proposed Rule 2165.<sup>[7]</sup>

This position is affirmed in footnote 11 of FINRA's Notice.

Importantly, FINRA Rule 2165 does not *require* a broker-dealer to impose a temporary hold whenever financial exploitation of a Specified Adult is suspected. Instead, it provides a safe harbor from FINRA Rules 2010 (Standards of Conduct), 2150 (Improper Use of Customers' Securities and Funds), and 11870 (Customer Account Transfer Contracts) for those broker-dealers relying on the rule.<sup>[8]</sup> Also, the Rule only permits FINRA members to impose a hold on *disbursement of proceeds*, not on transactions requested by a Specified Adult. As such, even when financial exploitation of a Specified Adult is suspected, the FINRA member must effect the transaction requested by the Specified Adult but it may impose a temporary hold on disbursing proceeds from the transaction.

## **REVISIONS TO FINRA RULE 4512, CUSTOMER ACCOUNT INFORMATION**

Revisions adopted to FINRA Rule 4512 require a member to maintain, subject to Supplementary Material .06, the name of and contact information for a trusted contact person age 18 or older who may be contacted about the customer's account. This requirement does not apply to institutional accounts. Supplementary Material .06 to the rule requires the member to disclose to a customer at the time of opening an account that the member or its associated person is authorized to contact the trusted contact person and disclose information about the customer's account to: address possible financial

exploitation; confirm the specifics of the customer's current contact information, health status, or the identity of any legal guardian, executor, trustee, or holder of a power of attorney; or as otherwise permitted by new Rule 2165. For any account opened prior to the rule, the member must provide the disclosure when updating the customer's account information as required by Rule 17a-3(a)(17) under the Securities Exchange Act of 1934. The disclosure required by the rule must be provided either in writing or electronically.

Importantly, pursuant to Supplementary Material .06(b), a customer's failure to provide information on a trusted contact person shall not prevent the member from opening or maintaining the account provided that the member makes reasonable efforts to obtain such information.

According to the FINRA Notice, the trusted contact person is intended to be a resource for the member to protect the customer's account if, for example, the member suspects exploitation, has concerns about the customer suffering from diminished mental capacity, or if the member has been able to reach the customer after multiples attempts. Also, a member could contact a trusted contact person to address possible financial exploitation of the customer before the member relies on Rule 2165 to impose a temporary hold on the disbursement of account proceeds, unless the member has reason to believe that the trusted contact person is involved in financial exploitation of the customer.<sup>[9]</sup>

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#### endnotes

<sup>[1]</sup> Rule 2165(a)(4) defines "financial exploitation" to include the wrongful or unauthorized taking, withholding, appropriation, conversion, or use of a Specified Adult's funds or securities or attempts to obtain control of the Specified Adult's money, assets or property through deception, intimidation, or undue influence.

<sup>[2]</sup> The term "Specified Adult" is defined in Rule 2165(a)(1) to mean: (1) a natural person age 65 and older or (2) 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 interest. Supplementary Material .03 to the Rule provides that a member's reasonable belief that a natural person age 18 and older has a mental or physical impairment that renders the individual unable to protect his or her own interests may be based on the facts and circumstances observed in the member's business relationship with the natural person.

<sup>[3]</sup> See *Financial Exploitation of Seniors*, FINRA Regulatory Notice No. 17-11 (March 2017) ("FINRA Notice"), which is available at:  
<http://www.finra.org/sites/default/files/Regulatory-Notice-17-11.pdf>.

<sup>[4]</sup> "Trusted Contact Person" is defined in Subsection (a)(3) of Rule 2165.

<sup>[5]</sup> In particular, a member's written supervisory procedures under the Rule must include, but are not limited to, procedures related to the identification, escalation, and reporting of matters related to the financial exploitation of Specified Adults and they must identify the

title of each person authorized to place, terminate, or extend a temporary hold on disbursements. Such persons must be an associated person of the member who serves in a supervisory, compliance, or legal capacity for the member.

[6] These records must include: (1) request(s) for disbursement that may constitute financial exploitation of a Specified Adult and the resulting temporary hold; (2) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted, or will be attempted underlying the decision to place a temporary hold on a disbursement; (3) the name and title of the associated person that authorized the temporary hold on a disbursement; (4) notification(s) to the relevant parties as required by the rule; and (5) records relating to the internal review of the facts and circumstances the member is required to conduct to impose a temporary hold.

[7] See Letter from Jeannette Winger, Associate General Counsel, FINRA, to Brent J. Fields, Secretary, SEC, dated January 19, 2017 (“FINRA Letter”) at p. 8.

[8] See Supplementary Material .01 to Rule 2165.

[9] See FINRA Rule 2165(b)(1)(B)(ii).