

MEMO# 29465

November 3, 2015

FINRA Requests Comment on Rules to Address Financial Exploitation of Seniors; Call to Discuss on Nov. 10 at 2pm Eastern

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 47-15
PRINCIPAL UNDERWRITERS WORKING GROUP RE: FINRA REQUESTS COMMENT ON RULES TO ADDRESS FINANCIAL EXPLOITATION OF SENIORS; CALL TO DISCUSS ON NOV. 10 AT 2PM EASTERN

FINRA has published a notice seeking comment on rules proposed to address the financial exploitation of seniors and other vulnerable adults. [\[1\]](#) In particular, FINRA proposes to: (1) revise Rule 4512, relating to Customer Account Information, to require firms to make reasonable efforts to obtain the name and contact information for a “Trusted Contact Person” for each customer’s account; and (2) adopt new Rule 2165, Financial Exploitation of Specified Adults, to permit “Qualified Persons” of FINRA members to place temporary holds on disbursements of funds or securities from the accounts of “Specified Customers” where there is a reasonable belief of financial exploitation of these customers. [\[2\]](#) The proposal is briefly summarized below.

Comments are due to FINRA on the proposal no later than Monday, November 30th. The Institute has scheduled a call for Tuesday, November 10th at 2 p.m. [Eastern] to discuss the proposal. If you would like to participate in the call, please contact Jennifer Odom by phone (202-326-5833) or email (jodom@ici.org) to obtain the call-in information. If you cannot participate in the call but have issues you would like the Institute to consider including in our comment letter, please provide them to Linda French of the Institute’s Law Department by email (linda.french@ici.org) prior to the call.

Proposed Revisions to FINRA Rule 4512, Customer Account Information

As proposed, added to the list of information FINRA members are required to obtain on retail customers would be the “name and contact information for a trusted contact person

who may be contacted about the customer's account." Such person must be at least age 18 and not authorized to transact business on the customer's account. This provision would apply to all customer accounts except institutional accounts.

Supplementary Material .06 would be added to the rule and would consist of two subsections. Subsection (a) would require a member to disclose in writing (which may be electronic) to the customer that the member or associated person is authorized to contact the customer's Trusted Contract Person and "disclose information about the customer's account to confirm the specifics of the customer's current contact information, health status, and identity of any legal guardian, executor, trustee, or holder of a power of attorney." Subsection (b) would clarify that the absence of the name or contact information for a trusted contact person on an account "shall not prevent a member from opening or maintaining" the account, "provided that the member makes reasonable efforts to obtain" such information.

Proposed New FINRA Rule 2165, Financial Exploitation of Specified Adults

Subdivision (a) of the new rule would define the terms "Specified Adult," "Account," "Qualified Person," "Trusted Contact Person," "Immediate Family Member," and "Financial Exploitation." Subdivision (b) of the rule would authorize a qualified person to place a temporary hold on the disbursement of funds or securities from the Account of a Specified Adult if:

1. The Qualified Person reasonably believes that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted; and
2. The FINRA member, "not later than two business days" provides notice of the hold and the reason for it to all parties authorized to transact business on the account and to the Trusted Contact Person.

The rule would further require the member to "immediately" initiate an internal review of the facts and circumstances that caused the Qualified Person to reasonably believe that financial exploitation is occurring or may occur.

With respect to the temporary hold, the rule would provide that it will expire "not later than 15 business days" after it was originally placed on the account, "unless sooner terminated by an order of a court of competent jurisdiction or extended by an order of a court of competent jurisdiction" or unless, as provided in Subdivision (b)(3) of the new rule, it is extended for an additional 15 days. Subdivision (b)(3) provides that, if the member's internal review of the facts and circumstances that resulted placing the hold on the account supports the Qualified Person's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted, the temporary hold may be extended "for no longer than 15 business days . . . unless sooner terminated by an order of a court of competent jurisdiction."

The rule would include four items of Supplementary Material that provide as follows:

Supplementary Material .01, Applicability of Rule, would clarify that the rule (1) provides members with a "safe harbor" when placing holds on an account in accordance with the rule; and (2) does not require any member to place any holds on an account.

Supplementary Material .02, Supervision, would require members relying on the rule to establish and maintain specific written policies and procedures relating to the rule, including, but not limited to, those that govern procedures related to the identification, escalation, and reporting of matters related to financial exploitation of Specified Adults.

Supplementary Material .03, Training, would require a member relying on the rule to develop and document specific training policies or programs reasonably designed to ensure that registered persons comply with the rule.

Supplementary Material .04, Reasonable Belief of Mental or Physical Impairment, would provide that a member's reasonable belief that a natural person age 18 or older has a mental or physical impairment that renders the person unable to protect his or her own interests may be based on the facts and circumstances observed in the member's business relationship with such person.

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endnotes

[1] See Financial Exploitation of Seniors and Other Vulnerable Adults, FINRA Notice 15-37 (October 2015), which is available at:
https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-37.pdf.

[2] Pursuant to Rule 4512, a "Trusted Contact Person" is a person age 18 or older who the account owner authorizes to be contacted about the customer's account. Rule 2165 would define a "Qualified Person" as an associated person of a member who serves in a supervisory, compliance, or legal capacity that is "reasonably related to the Account of the Specified Adult." "Specified Adult" would mean a natural person who is either age 65 or older or "who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests."