

February 18, 2018

Re: Written disclosure of the new SEC rule (see page 4) relating to financial exploitation of seniors

Dear Client:

The SEC rule to help prevent the financial exploitation of seniors is now effective.

The SEC approved:

- (1) the adoption of new FINRA Rule 2165 (Financial Exploitation of Specified Adults) to permit 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; and
- (2) amendments to FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer's account.

During our 2018 annual review of your account we will be requesting you provide us with a trusted contact which is intended to be a resource for our firm in administering your account. You do not have to comply with this request (see page 3). This is to help protect your assets and give us the ability to respond to possible financial exploitation. The trusted contact must be a natural person age 18 or older.

An executive summary of the new rule begins on the next page, you may review the entire text of the frequently asked questions on the Financial Industry Regulatory Authority (FINRA) website <https://goo.gl/3Y6Tal>. We also recommend you review the entire regulatory notice before providing us with a trusted contact person for your account(s) <https://goo.gl/CYrijm>. The entire notice is attached as an appendix to this written disclosure letter.

Sincerely,



Daniel J. Weiser
Registered Financial Consultant®

Frequently asked questions on the adoption of new FINRA Rule 2165 (Financial Exploitation of Specified Adults)

Note: when the word “member” is used this refers to Weiser Financial Group.

Executive Summary:

Placement of Temporary Holds

Q.1.1. May a member place a temporary hold on a securities transaction pursuant to Rule 2165?

No.

Q.1.2. Under Rule 2165, may a member that has a reasonable belief of financial exploitation of a Specified Adult regarding a disbursement or disbursements place a temporary hold or restrictions on an entire account if the member permits legitimate disbursements from the account?

No.

Q.1.3. Under Rule 2165, may a member that has a reasonable belief of financial exploitation of a Specified Adult place a temporary hold on a disbursement from an account to another account at the member?

Yes.

Extensions of Temporary Holds

Q.2.1. May a member extend a temporary hold beyond the period indicated in Rule 2165 if a state agency, such as adult protective services, securities regulator, or other state agency or regulator, asks a member to extend a temporary hold so that it has more time to investigate the matter or does the state agency need to issue a formal order? In addition, would the member need to report the agency’s request to FINRA?

Yes, upon a state agency’s request to do so.

Trusted Contact

Q.3.1. Who may serve as the trusted contact for an account pursuant to Rule 4512?

A natural person age 18 or older.

Q.3.2. Does the requirement in Rule 4512(a)(1)(F) to make reasonable efforts to obtain the name and contact information for a trusted contact upon the opening of a non-institutional customer's account or when updating account information for an existing non-institutional account apply to all non-institutional accounts?

Yes.

Q.3.3. Does Rule 4512 require that a customer provide the trusted-contact information?

No.

Q.3.4. When is a member required to seek to obtain the trusted-contact information for accounts in existence prior to the effective date of the amendments to Rule 4512 ("existing accounts")? When is a member required to update the trusted-contact information?

A member would not need to seek to obtain the trusted-contact information for existing accounts until such time as the member updates the information for the account either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules (annual account review).

A member should consider asking the customer to review and update the name of and contact information for a trusted contact on a periodic basis or when there is a reason to believe that there has been a change in the customer's situation.

As with Q.3.3., asking a customer with an existing account to provide the name and contact information for a trusted contact (*e.g.*, in a periodic update letter for accounts subject to Exchange Act Rule 17a-3) constitutes reasonable efforts to obtain the information and satisfies the Rule 4512 requirements.

Q.3.5. Where a customer has more than one account, may a member seek to obtain the trusted-contact information for the accounts collectively?

Yes.

Disclosure

Q.4.1. What is a member allowed to disclose to the trusted contact about a customer's account?

Supplementary Material .06(a) to Rule 4512 requires that, at the time of account opening, a member disclose in writing (which may be electronic) to the customer that the member or an associated person is authorized to contact the trusted contact and

- 1) disclose information about the customer's account to address possible financial exploitation
- 2) to 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 Rule 2165
- 3) the member is required to provide this disclosure in writing, which may be electronic, when initially seeking to update the information for existing accounts pursuant to Rule 4512(b)

Rule 4512 identifies reasonable categories of information that may be discussed with a trusted contact, including information that will assist a member in administering the customer's account.

For example, consistent with the disclosure

- 1) if a member has been unable to contact a customer after multiple attempts, a member could contact a trusted contact to inquire about the customer's current contact information
- 2) a member also could reach out to a trusted contact if it suspects that the customer may be suffering from Alzheimer's disease, dementia or other forms of diminished capacity
- 3) a member could contact a trusted contact to address possible financial exploitation of the customer before placing a temporary hold on a disbursement

In approving the amendments to Rule 4512 and new Rule 2165, the SEC confirmed that a member's disclosures to a trusted contact pursuant to Rules 4512(a)(1)(F) and 2165 would be consistent with Regulation S-P because such disclosures would be made with the customer's consent or authorization, to protect against fraud or unauthorized transactions, or to comply with federal, state, or local laws, rules and other applicable legal requirements. Accordingly, a member's disclosures to a trusted contact consistent with Rules 2165 and 4512 would be permissible under Regulation S-P.

Q.4.2. Does Rule 4512 mandate any particular form of written disclosure?

No. Members have flexibility in choosing which document should include the required disclosure (*e.g.*, in an account application or another customer form) or whether to provide the disclosure in a separate document (*e.g.*, in a separate letter or email to the customer) (this letter). However, given the privacy considerations, the written disclosure should be drafted so that customers clearly understand that by providing the trusted-contact information they are consenting to the member contacting the trusted contact consistent with the disclosure.

While Rule 4512 does not mandate any particular form of written disclosure, members are required to include in the disclosure the categories of information set forth in Supplementary Material .06(a) to Rule 4512 – that the member or an associated person is authorized to contact the trusted contact and disclose information about the customer’s account to address possible financial exploitation, to 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 Rule 2165. A member’s decision to include additional categories of information in the written disclosure is beyond the scope of Rule 4512 and members should consider the requirements of Regulation S-P.

Financial Exploitation of Seniors

SEC Approves Rules Relating to Financial Exploitation of Seniors

Effective Date: February 5, 2018

Summary

The SEC approved: (1) the adoption of new FINRA Rule 2165 (Financial Exploitation of Specified Adults) to permit 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; and (2) amendments to FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer's account.¹ New Rule 2165 and the amendments to Rule 4512 become effective February 5, 2018.

The rule text is available in Attachment A.

Questions regarding this *Notice* should be directed to:

- ▶ James S. Wrona, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8270 or jim.wrona@finra.org; or
- ▶ Jeanette Wingler, Associate General Counsel, OGC, at (202) 728-8013 or jeanette.wingler@finra.org.

Background and Discussion

With the aging of the U.S. population, financial exploitation of seniors is a serious and growing problem.² FINRA's Securities Helpline for Seniors[®] has highlighted issues relating to financial exploitation of this group of investors, including the need for members to be able to more quickly and effectively address suspected financial exploitation of seniors and other specified adults.³ The amendments to Rule 4512 and new Rule 2165 provide members with a way under FINRA rules to respond to situations in which they have a reasonable basis to believe that financial exploitation has occurred, is occurring, has been attempted or will be attempted. Members can better protect their customers from financial exploitation if they have the ability to contact a customer's designated trusted contact person and, when appropriate, place a temporary hold on a disbursement of funds or securities from a customer's account.

March 2017

Notice Type

- ▶ Rule Amendment and New Rule

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Senior Management

Key Topics

- ▶ Customer Accounts
- ▶ Financial Exploitation
- ▶ Senior Investors
- ▶ Temporary Holds on Disbursements
- ▶ Trusted Contact Persons

Referenced Rules

- ▶ FINRA Rule 2010
- ▶ FINRA Rule 2140
- ▶ FINRA Rule 2150
- ▶ FINRA Rule 2165
- ▶ FINRA Rule 3310
- ▶ FINRA Rule 4512
- ▶ FINRA Rule 11870
- ▶ Regulation S-P
- ▶ SEA Rule 17a-3

Scope of Amendments and New Rule

Trusted Contact Person—Amendments to Rule 4512

The amendments to Rule 4512 require members to make reasonable efforts to obtain the name of and contact information⁴ for a trusted contact person⁵ upon the opening of a non-institutional customer's account or when updating account information for a non-institutional account in existence prior to the effective date of the amendments (existing account).⁶ The amendments do not prohibit members from opening and maintaining an account if a customer fails to identify a trusted contact person as long as the member makes reasonable efforts to obtain the information.⁷ Asking a customer to provide the name and contact information for a trusted contact person ordinarily would constitute reasonable efforts to obtain the information and would satisfy the rule's requirements.

The amendments also require that, at the time of account opening, a member disclose in writing (which may be electronic) to the customer that the member or an associated person is authorized to contact the trusted contact person and disclose information about the customer's account to address possible financial exploitation, to 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 Rule 2165.⁸ In addition, a member is required to provide this disclosure when it attempts to obtain the name of and contact information for a trusted contact person when updating information for currently existing accounts either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.⁹ Members are required to provide this disclosure even if a customer fails to identify a trusted contact.¹⁰

The trusted contact person is intended to be a resource for the member in administering the customer's account, protecting assets and responding to possible financial exploitation. A member may use its discretion in relying on any information provided by the trusted contact person. A member may elect to notify an individual that he or she was named as a trusted contact person; however, the rule does not require such notification.

Members and customers may benefit from the trusted contact information in many different settings. For example, consistent with the disclosure, if a member has been unable to contact a customer after multiple attempts, a member could contact a trusted contact person to inquire about the customer's current contact information. Or if a customer is known to be ill or infirm and the member has been unable to contact the customer after multiple attempts, the member could contact a trusted contact person to inquire about the customer's health status. A member also could reach out to a trusted contact person if it suspects that the customer may be suffering from Alzheimer's disease, dementia or other forms of diminished capacity. A member could contact a trusted contact person to address possible financial exploitation of the customer before placing a temporary hold on a disbursement. In addition, as discussed below, pursuant to Rule

2165, when information about a trusted contact person is available, a member must notify the trusted contact person orally or in writing, which may be electronic, if the member has placed a temporary hold on a disbursement of funds or securities from a customer's account, unless the member reasonably believes that the trusted contact person is engaged in the financial exploitation.

Temporary Hold on Disbursement of Funds or Securities—New Rule 2165

Rule 2165 permits, under FINRA rules, a member that reasonably believes that financial exploitation has occurred, is occurring, has been attempted or will be attempted to place a temporary hold on the disbursement of funds or securities from the account of a "specified adult" customer.¹¹ The rule creates no obligation to withhold a disbursement of funds or securities in such circumstances. In this regard, Supplementary Material to Rule 2165 explicitly states that the rule provides members and their associated persons with a safe harbor from FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) and 11870 (Customer Account Transfer Contracts) when members exercise discretion in placing temporary holds on disbursements of funds or securities from the accounts of specified adults consistent with the requirements of the rule. The Supplementary Material further states that the rule does not require members to place temporary holds on disbursements of funds or securities from the account of a specified adult.¹²

The definition of "specified adult" in Rule 2165 covers those investors who are particularly susceptible to financial exploitation.¹³ A "specified adult" is (A) a natural person age 65 and older or (B) 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 interests. Supplementary Material to Rule 2165 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 person.¹⁴ The rule defines the term "account" to include any account of a member for which a specified adult has the authority to transact business.¹⁵

The rule has a broad definition of "financial exploitation." Specifically, financial exploitation would include: (A) the wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities; or (B) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or any other authority, regarding a specified adult, to: (i) obtain control, through deception, intimidation or undue influence, over the specified adult's money, assets or property; or (ii) convert the specified adult's money, assets or property.

Rule 2165 permits, under FINRA rules, a member to place a temporary hold on a disbursement of funds or securities from the account of a specified adult if the member reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted.¹⁶ A temporary hold pursuant to the rule may be placed on a particular suspicious disbursement(s) but not on other, non-suspicious disbursements.¹⁷ Rule 2165 does not apply to transactions in securities. For example, Rule 2165 would not apply to a customer's order to sell his shares of a stock. However, if a customer requested that the proceeds of a sale of shares of a stock be disbursed out of his account at the member, then the rule could apply to the disbursement of the proceeds where the customer is a "specified adult" and there is reasonable belief of financial exploitation.¹⁸

If a member places a temporary hold, Rule 2165 requires that the member immediately initiate an internal review of the facts and circumstances that caused the member to reasonably believe that financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted.¹⁹ In addition, the rule requires the member to provide notification of the hold and the reason for the hold to the trusted contact person and all parties authorized to transact business on the account, including, but not limited to, the customer, no later than two business days after the date that the member first placed the hold.²⁰ A member is not required to provide notification to the trusted contact person or a party authorized to transact business on an account, respectively, if the trusted contact person or party is unavailable or the member reasonably believes that the trusted contact person or party has engaged, is engaged, or will engage in the financial exploitation of the specified adult.²¹ While oral or written (including electronic) notification is permitted under the rule, a member would be required to retain records evidencing the notification.²²

Unless a member reasonably believes that doing so would cause further harm to a specified adult, FINRA encourages the member to attempt to resolve a matter with a customer before placing a temporary hold. If a temporary hold is not placed, the rule does not require notifying the trusted contact person. However, once a member places a temporary hold on a disbursement, the rule requires the member to notify the trusted contact person unless the trusted contact person is unavailable or the member reasonably believes that the trusted contact person has engaged, is engaged, or will engage in the financial exploitation of the specified adult. Furthermore, Rule 2165 does not preclude a member from terminating a temporary hold after communicating with either the customer or trusted contact person. A customer's objection to a temporary hold or information obtained during an exchange with the customer or trusted contact person may be used in determining whether a hold should be placed or lifted. While not dispositive, members should weigh a customer's or trusted contact person's objection against other information in determining whether a hold should be placed or lifted.

While the rule does not require notifying the customer's registered representative of suspected financial exploitation, a customer's registered representative may be the first person to detect potential financial exploitation. If the detection occurs in another way, a member may choose to notify and discuss the suspected financial exploitation with the customer's registered representative, unless the member suspects that the registered representative is involved in the financial exploitation.

The temporary hold authorized by Rule 2165 would expire not later than 15 business days after the date that the member first placed the temporary hold on the disbursement of funds or securities, unless otherwise terminated or extended by an order of a state regulator or agency or court of competent jurisdiction.²³ In addition, provided that the member's internal review of the facts and circumstances supports its reasonable belief that the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted, the rule permits the member to extend the temporary hold for an additional 10 business days, unless otherwise terminated or extended by an order of a state regulator or agency or court of competent jurisdiction.²⁴

Rule 2165 requires members to retain records related to compliance with the rule, which shall be readily available to FINRA upon request. Retained records required by the rule are records of: (1) requests 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 pursuant to the rule; and (5) the internal review of the facts and circumstances supporting the member's reasonable belief that the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted.²⁵

In addition, Rule 2165 requires a member that anticipates using a temporary hold to establish and maintain written supervisory procedures reasonably designed to achieve compliance with the rule, including procedures on the identification, escalation and reporting of matters related to financial exploitation of specified adults.²⁶ The rule requires that the member's written supervisory procedures identify the title of each person authorized to place, terminate or extend a temporary hold on behalf of the member pursuant to the rule and that any such person be an associated person of the member who serves in a supervisory, compliance or legal capacity for the member.²⁷ The rule also requires a member that anticipates placing a temporary hold pursuant to the rule to develop and document training policies or programs reasonably designed to ensure that associated persons comply with the requirements of the rule.²⁸

Endnotes

1. See Securities Exchange Act Release No. 79964 (Feb. 3, 2017), 82 FR 10059 (Feb. 9, 2017) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2016-039) (Approval Order).
2. See FINRA Investor Education Foundation, *Financial Fraud and Fraud Susceptibility in the United States: Research Report from a 2012 National Survey (2013)* (which found that U.S. adults age 65 and older are more likely to be targeted for financial fraud, including investment scams, and more likely to lose money once targeted); *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders* (June 2011) (discussing the increasing prevalence of elder financial abuse and noting the many forms of vulnerability that "make elders more susceptible to [financial] abuse," including, among others, poor physical or mental health, lack of mobility, and isolation). See also [National Senior Investor Initiative: A Coordinated Series of Examinations, SEC's Office of Compliance Inspections and Examinations and FINRA](#) (Apr. 15, 2015) (noting the increase in persons aged 65 and older living in the United States and the concentration of wealth in those persons during a time of downward yield pressure on conservative income-producing investments); [Protecting Elderly Investors from Financial Exploitation: Questions to Consider](#) (Feb. 5, 2015) (noting that one of the greatest risk factors for diminished capacity is age).
3. See [FINRA Launches Toll-Free FINRA Securities Helpline for Seniors](#) (Apr. 20, 2015) and [Report on the FINRA Securities Helpline for Seniors](#) (Dec. 2015).
4. While the amendments do not specify what contact information should be obtained, FINRA believes that a mailing address, phone number and email address for the trusted contact person may be the most useful to members.
5. The trusted contact person must be age 18 or older. See Rule 4512(a)(1)(F).
6. Consistent with the current requirements of Rule 4512, a member would not need to attempt to obtain the name of and contact information for a trusted contact person for accounts in existence prior to the effective date of the amendments (existing accounts) until such time as the member updates the information for the account either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules. See Rule 4512(b). With respect to any account subject to the requirements of Securities Exchange Act (SEA) Rule 17a-3(a)(17) to periodically update customer records, a member is required to make reasonable efforts to obtain or, if previously obtained, to update where appropriate the name of and contact information for a trusted contact person consistent with the requirements in SEA Rule 17a-3(a)(17). See Supplementary Material .06(c) to Rule 4512. See also SEA Rule 17a-3(a)(17)(i)(A) and (i)(D).

With regard to updating the contact information once provided for other accounts that are not subject to the requirements in SEA Rule 17a-3, a member should consider asking the customer to review and update the name of and contact information for a trusted contact person on a periodic basis or when there is a reason to believe that there has been a change in the customer's situation.

Members should note as well that a customer's request to change his or her trusted contact person may be a possible red flag of financial exploitation. For example, a senior customer instructing his registered representative to change his trusted contact person from an immediate family member to a previously unknown third party may be a red flag of financial exploitation.

7. See Supplementary Material .06(b) to Rule 4512.
8. As the SEC's Approval Order confirms, members' disclosures to trusted contact persons pursuant to Rules 4512(a)(1)(F) and 2165 would be consistent with Regulation S-P because such disclosures would be made with customers' consent or authorization, to protect against fraud or unauthorized transactions, or to comply with federal, state, or local laws, rules and other applicable legal requirements. See Approval Order, *supra* note 1, at 10068 and n.159.
9. See Supplementary Material .06(a) to Rule 4512.
10. Among other things, such disclosure may assist a customer in making an informed decision about whether to provide the trusted contact person information.
11. See Rule 2165(b)(1). Members also must consider any obligations under FINRA Rule 3310 (Anti-Money Laundering Compliance Program) and the reporting of suspicious transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder.

In addition, during the rulemaking process some commenters asked whether Rule 2165 complied with the requirements of Section 22(e) of the Investment Company Act of 1940. FINRA noted that most mutual fund customer accounts are serviced and record-kept by intermediaries. In the small proportion of circumstances where

mutual fund customers purchase shares directly from the mutual fund, the customer's account may be maintained by a mutual fund's principal underwriter. The SEC's Approval Order confirms that, in general, a broker-dealer's delay of a disbursement of mutual fund redemption proceeds to its customers in reliance on Rule 2165 and based on a reasonable belief of financial exploitation of the customer would not be imputed to the mutual fund, including where the broker-dealer is the fund's principal underwriter. See Approval Order, *supra* note 1, at 10066. However, 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 Rule 2165. *Id.*

12. See Supplementary Material .01 to Rule 2165.
13. See *supra* note 2.
14. See Supplementary Material .03 to Rule 2165. FINRA notes that a member may not ignore contrary evidence in making a determination based on the facts and circumstances observed in the member's business relationship with the natural person (*e.g.*, a court order).
15. More than one financial institution may be providing services in some arrangements and business models. In such arrangements, the financial institution that has a reasonable belief that financial exploitation is occurring may not hold the assets that are subject to the disbursement request. For example, with respect to introducing and clearing firm arrangements, an introducing firm may make the determination that placing a temporary hold pursuant to the proposed rule change is appropriate. The clearing firm may then place the temporary hold at

- the direction of and in reasonable reliance on the information provided by the introducing firm. FINRA recognizes that members making a determination or recommendation to place a hold on a disbursement may not be in the position to place the actual hold on the funds or securities.
16. See Rule 2165(b)(1)(A).
 17. FINRA recognizes that a single disbursement could involve all of the assets in an account. For purposes of Rule 2165, moreover, FINRA would consider disbursements to include ACATS transfers but, as with any temporary hold, a member would need to have a reasonable belief of financial exploitation in order to place a temporary hold on the processing of an ACATS transfer request pursuant to the rule. FINRA reminds members of the application of FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) to the extent that there is not a reasonable belief of financial exploitation. Furthermore, in the case of a temporary hold on an ACATS transfer request, the member must permit disbursements from the account where there is not a reasonable belief of financial exploitation regarding such disbursements (e.g., a customer's regular bill payments). FINRA also re-emphasizes that where a questionable disbursement involves less than all assets in an account, a member may not place a blanket hold on the entire account. Each disbursement must be analyzed separately. In addition, taking into account a member's size and business, FINRA would closely examine a member that places an outsized number of holds on customer accounts to determine whether there was any wrongdoing on the part of the member.
 18. While Rule 2165 does not apply to transactions, FINRA may consider extending the safe harbor to transactions in securities in future rulemaking.
 19. See Rule 2165(b)(1)(C).
 20. See Rule 2165(b)(1)(B). FINRA understands that a member may not necessarily be able to speak with or otherwise get a response from such persons within the two-business-day period. FINRA would consider, for example, a member's mailing a letter, sending an email, or placing a telephone call and leaving a message with appropriate person(s) within the two-business-day period to constitute notification for purposes of Rule 2165.
 21. FINRA would consider the lack of an identified trusted contact person, the inability to contact the trusted contact person, or a person's refusal to act as a trusted contact person to mean that the trusted contact person was not available. Furthermore, FINRA would consider the inability to contact a party authorized to transact business on an account to mean that the party was not available.
 22. See Rule 2165(d).
 23. See Rule 2165(b)(2).
 24. See Rule 2165(b)(3).
 25. See Rule 2165(d).
 26. See Rule 2165(c)(1).
 27. See Rule 2165(c)(2). This provision is intended to ensure that a member's decision to place a temporary hold is elevated to an associated person with appropriate authority.
 28. See Supplementary Material .02 to Rule 2165.

Attachment A

New and Amended Rule Text

New language is underlined; deletions are in brackets.

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Text of New FINRA Rule

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2100. TRANSACTIONS WITH CUSTOMERS

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2165. Financial Exploitation of Specified Adults

(a) Definitions

(1) For purposes of this Rule, the term “Specified Adult” shall mean: (A) a natural person age 65 and older; or (B) 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 interests.

(2) For purposes of this Rule, the term “Account” shall mean any account of a member for which a Specified Adult has the authority to transact business.

(3) For purposes of this Rule, the term “Trusted Contact Person” shall mean the person who may be contacted about the Specified Adult’s Account in accordance with Rule 4512.

(4) For purposes of this Rule, the term “financial exploitation” means:

(A) the wrongful or unauthorized taking, withholding, appropriation, or use of a Specified Adult’s funds or securities; or

(B) any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a Specified Adult, to:

(i) obtain control, through deception, intimidation or undue influence, over the Specified Adult’s money, assets or property; or

(ii) convert the Specified Adult’s money, assets or property.

(b) Temporary Hold on Disbursements

(1) A member may place a temporary hold on a disbursement of funds or securities from the Account of a Specified Adult if:

(A) The member reasonably believes that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted; and

(B) The 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 reason for the temporary hold to:

(i) all parties authorized to transact business on the Account, unless a party is unavailable or the member reasonably believes that the party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and

(ii) the Trusted Contact Person(s), unless the Trusted Contact Person is unavailable or the member reasonably believes that the Trusted Contact Person(s) has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and

(C) The 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.

(2) The temporary hold authorized by this Rule will expire not later than 15 business days after the date that the member first placed the temporary hold on the disbursement of funds or securities, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, or extended pursuant to paragraph (b)(3) of this Rule.

(3) Provided that the member's internal review of the facts and circumstances under paragraph (b)(1)(C) of this Rule supports the member'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 authorized by this Rule may be extended by the member for no longer than 10 business days following the date authorized by paragraph (b)(2) of this Rule, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.

(c) Supervision

(1) In addition to the general supervisory and recordkeeping requirements of Rules 3110, 3120, 3130, 3150, and Rule 4510 Series, a member relying on this Rule shall establish and maintain written supervisory procedures reasonably designed to achieve compliance with this Rule, including, but not limited to, procedures related to the identification, escalation and reporting of matters related to the financial exploitation of Specified Adults.

(2) A member's written supervisory procedures also shall identify the title of each person authorized to place, terminate or extend a temporary hold on behalf of the member pursuant to this Rule. Any such person shall be an associated person of the member who serves in a supervisory, compliance or legal capacity for the member.

(d) Record Retention

Members shall retain records related to compliance with this Rule, which shall be readily available to FINRA, upon request. The retained records shall include records of: (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 pursuant to paragraph (b)(1)(B) of this Rule; and (5) the internal review of the facts and circumstances pursuant to paragraph (b)(1)(C) of this Rule.

• • • Supplementary Material: -----

.01 Applicability of Rule. This Rule provides members and their associated persons with a safe harbor from FINRA Rules 2010, 2150 and 11870 when members exercise discretion in placing temporary holds on disbursements of funds or securities from the Accounts of Specified Adults consistent with the requirements of this Rule. This Rule does not require members to place temporary holds on disbursements of funds or securities from the Accounts of Specified Adults.

.02 Training. A member relying on this Rule must develop and document training policies or programs reasonably designed to ensure that associated persons comply with the requirements of this Rule.

.03 Reasonable Belief of Mental or Physical Impairment. 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.

Amendment to FINRA Rule

4500. BOOKS, RECORDS AND REPORTS

4512. Customer Account Information

(a) Each member shall maintain the following information:

(1) for each account:

(A) through (C) No Change.

(D) signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member's policies and procedures for acceptance of accounts; [and]

(E) if the customer is a corporation, partnership or other legal entity, the names of any persons authorized to transact business on behalf of the entity; and

(F) subject to Supplementary Material .06, name of and contact information for a trusted contact person age 18 or older who may be contacted about the customer's account; provided, however, that this requirement shall not apply to an institutional account.

(2) through (3) No Change.

(b) through (c) No Change.

••• **Supplementary Material:** -----

.01 through .05 No Change.

.06 Trusted Contact Person

(a) With respect to paragraph (a)(1)(F) of this Rule, at the time of account opening a member shall disclose in writing, which may be electronic, to the customer that the member or an associated person of the member is authorized to contact the trusted contact person and disclose information about the customer's account to address possible financial exploitation, to 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 Rule 2165. With respect to any account that was opened pursuant to a prior FINRA rule, a member shall provide this disclosure in writing, which may be electronic, when updating the information for the account pursuant to paragraph (b) of this Rule either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.

(b) The absence of the name of or contact information for a trusted contact person shall not prevent a member from opening or maintaining an account for a customer, provided that the member makes reasonable efforts to obtain the name of and contact information for a trusted contact person.

(c) With respect to any account subject to the requirements of SEA Rule 17a-3(a)(17) to periodically update customer records, a member shall make reasonable efforts to obtain or, if previously obtained, to update where appropriate the name of and contact information for a trusted contact person consistent with the requirements of SEA Rule 17a-3(a)(17).

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