

Frequently Asked Questions Regarding FINRA Rules Relating to Financial Exploitation of Senior Investors

In February 2017, 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 (“trusted contact”) for a customer’s account.¹ New Rule 2165 and the amendments to Rule 4512 become effective February 5, 2018.²

Placement of Temporary Holds

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

No. Rule 2165 provides a safe harbor for 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.

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 Rule 2165 could apply to the disbursement of the proceeds where the customer is a specified adult and there is reasonable belief of financial exploitation.

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?

FINRA has stated that, where a questionable disbursement involves less than all assets in an account, a member should not place a blanket hold on the entire account. Each disbursement should be analyzed separately. In addition, FINRA noted that where a disbursement at issue involves all of the assets of the account (e.g., 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., regular bill payments). FINRA understands that some members intend, for operational reasons, to place a temporary hold or restrictions on an entire account when they have a reasonable belief of financial exploitation regarding a disbursement or disbursements from the account, but also intend to permit legitimate disbursements from the account in these circumstances. FINRA believes that placing a temporary hold or restrictions on an entire account but allowing legitimate disbursements from the account is consistent with Rule 2165 and members may proceed in such a manner as long as they have procedures reasonably designed to permit legitimate disbursements. FINRA emphasizes that a member may not avail itself of the Rule 2165 safe harbor if it blocks disbursements where there is not a reasonable belief of financial exploitation regarding such disbursements.

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. Rule 2165 provides a safe harbor for a member to place a temporary hold on a disbursement of funds or securities from the account of a specified adult where there is a reasonable belief of financial exploitation. Accordingly, a member may place a temporary hold on a request to disburse funds or securities from an account to another account at the member (e.g., where a member receives a request to move funds from a customer’s account to his friend’s account at the member but the member reasonably believes that the customer is being financially exploited).

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?

Rule 2165 allows a member to extend a temporary hold upon a state agency's request to do so. The state agency would not have to issue a formal order. In addition, Rule 2165 does not require a member to report a state agency's request to FINRA. However, the member would need to maintain a record of the state agency's request.

Trusted Contact

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

The trusted contact is intended to be a resource for the member in administering the customer's account, protecting assets and responding to possible financial exploitation. To this end, Rule 4512(a)(1)(F) requires that the trusted contact be a natural person age 18 or older.³ FINRA would not expect a member to verify the age of a designated trusted contact. Other than age, Rule 4512 does not restrict any natural persons from being named as trusted contacts. For example, Rule 4512 does not prohibit joint accountholders, trustees, individuals with powers of attorney and other natural persons authorized to transact business on an account from being designated as trusted contacts.

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. Rule 4512(a)(1)(F) provides that the trusted-contact provision "shall not apply to an institutional account." Accordingly, the trusted-contact provision applies to any account that does not meet the definition of an "institutional account" in Rule 4512(c), including accounts of non-natural persons that do not meet the definition.

Consistent with Supplementary Material .06(b) to Rule 4512, a member may open or maintain an account where a customer, whether a natural person or a non-natural person, does not provide trusted-contact information.

Because the trusted contact is intended to be a resource for the member, Rule 4512 permits contacting the trusted contact and disclosing information about the customer's account beyond Rule 2165 or suspected financial exploitation. Specifically, consistent with Supplementary Material .06(a) to Rule 4512, 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. As the SEC noted in its approval order, moreover, a member's communications made pursuant to the trusted-contact provision would be consistent with Regulation S-P. Although the trusted-contact provision perhaps is most relevant when dealing with a customer who is a natural person, members may find that trusted contact information also is useful in other contexts, such as when servicing trusts and small businesses.

Nonetheless, FINRA understands that some members have concerns regarding how Rule 4512(a)(1)(F) applies to a non-natural person account with authorized agent(s) on the account. For an account of a non-natural person non-institutional account (e.g., a corporation, partnership or trust that is not an "institutional account" under Rule 4512(c)), a member may treat any authorized agent (e.g., an officer, partner or trustee) on the account as a trusted contact so long as the member provides the customer with the disclosure required by Supplementary Material .06(a) to Rule 4512.

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

No. Supplementary Material .06(b) to Rule 4512 states that "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." Accordingly, a member is required to make reasonable efforts to obtain the trusted contact name and contact information.

However, if the customer declines to provide the information or fails to respond to the member's efforts to obtain the information, the member can open or maintain the customer's account. Asking a customer to provide the name and contact information for a trusted contact (e.g., in an account opening form) constitutes reasonable efforts to obtain the information and satisfies the Rule 4512 requirements.

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?

Consistent with the current requirements of Rule 4512(b), 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. Such an update could include, for example, the required periodic update for accounts subject to Rule 17a-3 under the Securities Exchange Act of 1934 (Exchange Act) as stated below or a communication in which the member, for its own business reasons, proactively seeks to update customer account information, whichever is earlier. A member is not required to create a special process for the sole purpose of seeking to collect such information or to attempt to obtain it whenever the member communicates with a customer (e.g., when an individual registered representative updates account information for a single customer account that is not part of a larger firm effort to update such information).

Following the initial effort, Rule 4512 requires members to seek to update the trusted-contact information for those accounts subject to the requirements in Exchange Act Rule 17a-3. Specifically, Supplementary Material .06(c) to Rule 4512 provides that with respect to any account subject to the requirements of Exchange Act 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 consistent with the requirements in Exchange Act Rule 17a-3(a)(17).

With regard to updating the contact information for other accounts that are not subject to the requirements in Exchange Act Rule 17a-3, 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. For purposes of Rule 4512, where a customer has more than one account, a member may seek to obtain the trusted contact information for the accounts collectively (e.g., in one update letter for all of the accounts), provided that each of the affected accounts is clearly identified to the customer. Because the trusted-contact requirement applies at the account level, a customer with more than one account may provide a single trusted contact for all accounts or different trusted contacts for different accounts.

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 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. Furthermore, 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). Members may also choose to provide this disclosure when updating the information

for a customer's account in other circumstances (e.g., when updating the information for accounts where the customer previously declined to provide the trusted contact).

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, 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. 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. 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). 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.⁴

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.

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).

2 See Regulatory Notice 17-11 (March 2017).

3 A customer, for example, could designate as a trusted contact a lawyer who is 18 years or older and who is associated with a law firm, but could not designate the law firm as a trusted contact.

4 To aid members in complying with the amendments to Rule 4512 and new Rule 2165, FINRA has posted on its website revised versions of the New Account Application Template that include an example of the disclosure. The Template is a voluntary model brokerage account form that is provided as a resource to members when they design or update their new account forms. See <http://www.finra.org/industry/new-account-application-template>.