

CLIENT ALERT

# New FINRA Rules Aim to Protect Seniors and Other Vulnerable Market Participants

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## AUTHORS

**P. Georgia Bullitt** | **James Anderson** | **Brant Brown** | **Amelia Cottrell**  
**Curtis Tate**

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Effective February 5, 2018, members of the Financial Industry Regulatory Authority (FINRA) have new account obligations for non-institutional customers and are able to take new actions to protect the cash and investments of seniors.<sup>1</sup> New FINRA Rule 2165 provides members with a safe harbor to place temporary holds on the disbursement of funds or securities if the member reasonably believes that “Financial Exploitation” of its customer has or is occurring or being attempted. Amended FINRA Rule 4512 now requires members to make reasonable efforts to obtain a “Trusted Contact Person” (TCP) for all non-institutional accounts. The TCP is intended to be a resource for members in administering customers’ accounts, protecting assets, and responding to possible scams or Financial Exploitation.

## Background

Both FINRA and the Securities and Exchange Commission (SEC) have long expressed concern about schemes targeting the financial assets of seniors.<sup>2</sup>

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<sup>1</sup> See FINRA, Regulatory Notice 17-11 (March 2017). FINRA also published a set of Frequently Asked Questions in January providing additional guidance on the new provisions that are available [here](#).

<sup>2</sup> For example, in 2007 and 2008, FINRA and the SEC produced joint reports addressing issues facing senior investors, such as “Free Lunch” sales seminars. Reports available [here](#) and [here](#). In 2015, the SEC and FINRA issued another joint publication focused on their coordinated

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In 2015, FINRA took the further step of launching a securities helpline for seniors, and at the end of that year issued a report detailing the helpline and highlighting FINRA's concern with seniors' vulnerability to investment schemes such as IRS impersonators and fake claims of lottery winnings.<sup>3</sup> FINRA also expressed concern that historically low interest rates were pushing investors—including seniors—to chase yield, which creates opportunities for scams. Of note for firms, the Senior Helpline Report also provided firms with effective practices for consideration when dealing with these issues.

FINRA's interest in protecting seniors resulted in adoption of new Rule 2165 and an amendment to Rule 4512, both of which became effective February 5th. According to FINRA, these new rule provisions, which are described below, provide firms with more effective tools to address suspected Financial Exploitation of seniors and other vulnerable adults. These rule changes primarily accomplish this goal by allowing members and associated persons to: (1) place a temporary hold on disbursements of funds and securities, and (2) notify a customer's TCP when there is concern that, among other things, the customer may be the victim of Financial Exploitation.

### Overview of the Rules

#### a. Rule 2165: Financial Exploitation of Specified Adults

Rule 2165 is a new rule allowing, but not requiring, FINRA members to place a temporary hold on disbursements of funds or securities from a non-institutional account for which a "Specified Adult" has the authority to transact business.<sup>4</sup> There are two types of Specified Adults under Rule 2165: (1) a person age 65 and older, and (2) a person age 18 and older who the member reasonably believes to have a mental or physical impairment that renders the individual unable to protect his or her own interests.<sup>5</sup>

The rule, which creates a safe harbor from FINRA Rules 2010, 2150, and 11870, specifies the conditions under which it is permissible for a FINRA member to place a temporary hold on a disbursement. Importantly, the safe harbor applies only to temporary holds on disbursements from accounts; it does not apply to securities transactions. FINRA noted, however, that if the customer requests that the proceeds of a transaction be disbursed out of the account, the provision could apply to the disbursement (but not to the transaction creating the proceeds).<sup>6</sup>

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examinations of issues involving senior investors. See National Senior Investor Initiative: A Coordinated Series of Examinations, SEC's Office of Compliance Inspections and Examinations and FINRA (April 15, 2015), available [here](#).

<sup>3</sup> FINRA, Report on the FINRA Securities Helpline for Seniors™, available [here](#). (Senior Helpline Report).

<sup>4</sup> FINRA, Rule 2165(b)(1).

<sup>5</sup> FINRA, Rule 2165(a)(1).

<sup>6</sup> FINRA also made clear that if a questionable disbursement involves less than all of the assets in an account, the firm should not place a blanket hold on the entire account but must analyze each disbursement separately. See FINRA, Regulatory Notice 17-11 (March 2017).

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In order to place a temporary hold on a disbursement, the member must reasonably believe there has been Financial Exploitation of a Specified Adult. The definition of Financial Exploitation is broad under the rule, covering situations in which a third-party wrongfully tries to gain access to the assets of a Specified Adult.<sup>7</sup>

The decision to place a temporary hold on a disbursement generates a series of obligations. The member must, within two days of the hold, provide notification to all persons authorized to use the account as well as the TCP (discussed below). The notification may be oral or written and may be provided electronically. The member must also immediately conduct an internal review of the facts that led to the temporary hold. The maximum duration of any hold under Rule 2165 is generally 15 business days unless the internal review supports the initial belief of Financial Exploitation. In that case, a 10-business day extension is permitted.<sup>8</sup>

FINRA members that rely on the rule are required to have specific written supervisory procedures to comply with Rule 2165, which must include procedures related to the identification, escalation, and reporting of matters related to the Financial Exploitation of Specified Adults. Notably, the procedures must identify the title of each person authorized to place, terminate, or extend a temporary hold and limit this authority to associated persons who serve in a supervisory, compliance, or legal capacity for the member. Members must also keep records related to compliance with the rule which are available to FINRA upon request.<sup>9</sup> Finally, members relying on the rule are required to develop and document training policies or programs that are reasonably designed to ensure that associated persons are complying with the rule's requirements.<sup>10</sup>

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<sup>7</sup> Rule 2165(a)(4) defines "Financial Exploitation" as:

- (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.

<sup>8</sup> FINRA, Rule 2165(b)(1)-(3).

<sup>9</sup> FINRA, Rule 2165(c); (d). The records must 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; (3) the name and title of the associated person that authorized the temporary hold; (4) notification(s) to the relevant parties pursuant to the rule; and (5) the internal review of the facts and circumstances pursuant to the rule.

<sup>10</sup> FINRA, Rule 2165, Supplementary Material .02.

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### b. Rule 4512: The “Trusted Contact Person” Amendment

In connection with new Rule 2165, FINRA also amended Rule 4512, which deals with the maintenance of customer account information.

Rule 4512 now requires FINRA members to make reasonable efforts to obtain the name and contact information of a TCP for each non-institutional customer’s account. A TCP under the rule is any person age 18 and older who may be contacted about the customer’s account.<sup>11</sup> Importantly, Rule 4512 does not prevent a FINRA member from opening or maintaining a customer account if it does not receive information about the TCP. Instead, so long as there are “reasonable efforts” to obtain the name and contact information of a TCP, the requirements of the rule are satisfied.<sup>12</sup>

FINRA members must attempt to obtain the TCP information whenever a new non-institutional customer account is opened. For accounts in existence prior to the enactment of the TCP requirements of Rule 4512, the member can request TCP information when updating account information in the routine course of business or as required under applicable laws and rules.<sup>13</sup> Members must also provide notice to clients disclosing that the member or an associated person is authorized to contact the TCP 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.<sup>14</sup> Although firms may elect to notify an individual that he or she was named as a TCP, the rule does not require such notification.

### Conclusion

The new FINRA rule provisions create obligations for firms and also provide firms with optional additional tools to address potential Financial Exploitation of certain customers. Although the new TCP requirements are mandatory for all non-institutional customer accounts, firms should carefully consider whether and how to implement the authority to place temporary holds on disbursements in appropriate circumstances. Firms should be mindful that they must develop appropriate procedures, controls, and training around the authority to place a temporary hold on a customer disbursement. Firms that handle accounts for senior investors should also continue to consider the effective practices set forth in FINRA’s 2015 Senior Helpline Report even if they choose not to implement the authority provided in Rule 2165.

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<sup>11</sup> See FINRA, Rule 4512(a)(1)(F).

<sup>12</sup> FINRA, Rule 4516, Supplementary Material .06(b). FINRA noted that asking a customer to provide the name and contact information for a TCP ordinarily would constitute reasonable efforts to obtain the information and would satisfy the rule’s requirements. See FINRA, Regulatory Notice 17-11 (March 2017).

<sup>13</sup> FINRA, Rule 4512(b).

<sup>14</sup> FINRA, Rule 4516, Supplementary Material .06(a).

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If you have any questions regarding this client alert, please contact the following attorneys or the attorney with whom you regularly work.

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**P. Georgia Bullitt**

212 728 8250

gbullitt@willkie.com

**James Anderson**

202 303 1114

janderson@willkie.com

**Brant Brown**

202 303 1187

bkbrown@willkie.com

**Amelia Cottrell**

212 728 8281

acottrell@willkie.com

**Curtis Tate**

212 728 8925

ctate@willkie.com

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