

Chapman Client Alert

November 4, 2016

Current Issues Relevant to Our Clients

FINRA Proposes Rule Changes Designed to Protect Seniors and Other Vulnerable Adults from Financial Exploitation

The Financial Industry Regulatory Authority, Inc. (“*FINRA*”) recently filed proposed rule changes with the Securities and Exchange Commission (the “*SEC*”) to (i) amend FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name and contact information for a trusted contact person for a customer’s account and (ii) adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults) which would 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 those customers. FINRA believes these proposed changes will provide members with a way to quickly respond to situations in which they have a reasonable basis to believe that financial exploitation of seniors and other vulnerable adults has occurred or will be attempted. The proposed rule changes address many of the concerns noted by commenters in response to the proposal that was previously published for comment by FINRA. The text of the rule changes is available [here](#) and a copy of the filing with the SEC is available [here](#).

Proposed Amendments to Rule 4512: Identification of Trusted Contact Person

The proposed amendments would require members to make a reasonable effort to obtain the name and contact information for a trusted contact person, who must be 18 years or older, upon the opening of a non-institutional customer’s account. The proposed amendments would not prohibit a member from opening or maintaining an account if the customer fails to identify a trusted contact person as long as the member makes a reasonable effort to obtain a name and contact information. For accounts in existence prior to the effective date of the proposed amendments, a member is not proposed to be required to attempt to obtain the name and contact information for a trusted contact person until such member updates the information for the account either in the course of ordinary business or as otherwise required by applicable laws or rules.

The proposed amendments would also require that a member disclose in writing at the time of the account opening 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 exploitations, 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 proposed Rule 2165. For any account in existence prior to the effective date of the proposed amendments, a member would need to provide this disclosure when updating the information for the account.

Proposed Rule 2165: Temporary Holds on Disbursement of Funds or Securities

The proposed rule would permit a member that reasonably believes that financial exploitation may be occurring to place a temporary hold on the disbursement of funds or securities from the account of a specified adult customer. A specified adult is defined as either (i) a natural person age 65 or older or (ii) a natural person, age 18 or older, who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. The proposed rule would create the ability, but not an obligation to withhold a disbursement of funds or securities where financial exploitation may be occurring. Supplementary material to the proposed rule is proposed to explicitly state that the rule provides members with a safe harbor from certain FINRA Rules (specifically 2010, 2150 and 11870) when members exercise discretion in placing temporary holds on disbursements of funds or securities from the accounts of specified adults under the circumstances denoted in the rule.

The proposed rule would require that a 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. The proposed rule would require that any such person be an associated person of the member who serves in a supervisory, compliance or legal capacity for the member. If a member does place a temporary hold, the rule would require the member to immediately initiate an internal review of the facts and circumstances that caused the member

to reasonably believe that financial exploitation of the specified adult occurred, is occurring, has been attempted or will be attempted. In addition, the member would need to provide either an oral or written notification of the hold and the reason for the hold to all parties authorized to transact business on the account no later than two business days after the date that the member first placed the hold.

What's Next?

Comments may be submitted to the SEC by mail, email or electronically at <http://www.sec.gov/rules/sro.shtml>. All submissions should refer to File Number SR-FINRA-2016-039 and must be submitted on or before 21 days from the

proposal's publication in the Federal Register. If the rule changes are approved, FINRA will announce the effective date in a Regulatory Notice to be published no later than 60 days following approval by the SEC and the effective date is expected to be no later than 180 days following such publication. Firms should consider what changes would need to be made to existing practices and policies if the FINRA rule changes are adopted as proposed.

For More Information

To discuss any topic covered in this Client Alert, please contact a member of the Investment Management Group or visit us online at chapman.com.

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