CARLTON FIELDS

SEC Approves FINRA Efforts to Protect Seniors and Other Vulnerable Persons

April 10, 2017

The SEC recently approved an amendment to FINRA Rule 4512 that requires FINRA members to make reasonable efforts to obtain, from each customer for whom they maintain an account, specified information about a "trusted contact person." At the same time, the SEC approved new FINRA Rule 2165 that permits, but does not require, FINRA members to place temporary holds on disbursements from customer accounts if:

- the customer is at least age 65 or is a person age 18 or older with a mental or physical impairment preventing them from protecting their own interests, and
- the member reasonably believes that financial exploitation of the customer is occurring, has been attempted, or will be attempted. The rule broadly defines the term "financial exploitation," with the intention of permitting members to quickly respond and protect vulnerable customers from a wide range of abuses.

Such a temporary hold can last for no more than 15 business days plus one 10-day extension. If a hold is imposed, the broker-dealer must immediately initiate an internal review of the facts and circumstances and notify certain parties, including any trusted contact person, unless the firm reasonably believes that person is implicated in the exploitation. FINRA has stated that the new rules do not apply to variable insurance products and mutual funds that are held directly through the issuer or its transfer agent, because such securities are not held in a customer account within the meaning of the rules. Moreover, even where investment company securities are held in a member firm's customer account, if the proceeds from a customer's redemption request are paid to the customer account within seven days, placing a temporary hold on distributing the proceeds to the customer (as permitted by the new rule) would not violate the Investment Company Act requirement that redemption proceeds be paid within seven days. Although FINRA's rules cover only broker-dealers, the SEC staff's 2017 Examination Priorities Guidance states that such priorities will include:

- evaluating the ability of broker-dealers and investment advisers to identify financial exploitation of seniors, and
- evaluating such firms' supervisory program and controls relating to products and services directed at seniors.

The staff, therefore, may expect investment advisers to be considering many of the same issues concerning seniors and other potentially vulnerable investors as broker-dealers will be considering as they implement FINRA's rules.

Related Practices

Securities Transactions and Compliance
Financial Services Regulatory
FINRA Enforcement, Arbitration, and Appeals

Related Industries

Securities & Investment Companies