

Seniors in the Coming Year

December 15, 2020

Continued FINRA Focus

If regulatory developments in 2020 are any indication, FINRA's efforts to protect senior customers from financial exploitation and vulnerability will continue in 2021 and beyond.

As part of its retrospective review of its rules and administrative process designed to help protect senior customers, in late fall 2020 FINRA proposed amendments to Rule 2165 and revised its Sanction Guidelines in ways designed to further protect senior customers.

FINRA Rule 2165

When a firm reasonably believes that financial exploitation of a "specified adult" has occurred, is occurring, has been attempted, or will be attempted, Rule 2165 permits a firm to place a temporary hold of up to 25 business days on disbursements of funds or securities from the account of a specified adult customer. In addition to seniors, "specified adults" includes other adults who have mental or physical impairments that may render them unable to protect their interests.

Through its examinations of firms and retrospective review of Rule 2165, FINRA discovered that firms often were not able to resolve matters in 25 business days, particularly when a matter was under consideration by a state adult protective services agency or a court. FINRA also observed that Rule 2165 permits holds on disbursements, but not on transactions in securities, when financial exploitation is suspected.

Accordingly, in Regulatory Notice 20-34, FINRA proposed amending Rule 2165 as follows:

- To provide firms more time to resolve matters and for state regulators and law enforcement to conduct thorough investigations, the proposed amended rule would permit a temporary hold for an additional 30 days if the firm has reported the matter to a state agency or a court of competent jurisdiction.

- To address concern over allowing securities transactions, the proposed amended rule would permit firms to place temporary holds on transactions in securities, which is consistent with several state laws that permit temporary holds on transactions.

FINRA considered other possible amendments to Rule 2165 without proposing changes to the rule. For example, it did not propose to extend Rule 2165 to situations where a firm has a reasonable belief that the customer has cognitive decline or diminished capacity but there is no evidence of financial exploitation. Instead, FINRA set forth in Regulatory Notice 20-34 information it learned from firms, including red flags of diminished capacity or cognitive decline.

The comment period ended on December 4, 2020.

Sanction Guidelines

In related changes resulting from FINRA's retrospective review, FINRA's National Adjudicatory Council (NAC) amended the section of FINRA's Sanction Guidelines dealing with Principal Considerations in Determining Sanctions to be consistent with FINRA Rule 2165. Specifically, the NAC:

- Expanded Principal Consideration No. 19 to include whether the customer had a mental or physical impairment that rendered him or her unable to protect his or her own interests, and
- Added new Principal Consideration No. 20 to consider whether the customer was age 65 or older.

Authored By



Ann Began Furman

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