

2165. Financial Exploitation of Specified Adults

This version of the rule (or interpretive material) does not become effective until Feb 5 2018.

(a) Definitions

- (1) For purposes of this Rule, the term “Specified Adult” shall mean: (A) a natural person age 65 and older; or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.
- (2) For purposes of this Rule, the term “Account” shall mean any account of a member for which a Specified Adult has the authority to transact business.
- (3) For purposes of this Rule, the term “Trusted Contact Person” shall mean the person who may be contacted about the Specified Adult's Account in accordance with [Rule 4512](#).
- (4) For purposes of this Rule, the term “financial exploitation” means:
 - (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.

(b) Temporary Hold on Disbursements

- (1) A member may place a temporary hold on a disbursement of funds or securities from the Account of a Specified Adult if:
 - (A) The member reasonably believes that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted; and
 - (B) The member, not later than two business days after the date that the member first placed the temporary hold on the disbursement of funds or securities, provides notification orally or in writing, which may be electronic, of the temporary hold and the reason for the temporary hold to:
 - (i) all parties authorized to transact business on the Account, unless a party is unavailable or the member reasonably believes that the party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and
 - (ii) the Trusted Contact Person(s), unless the Trusted Contact Person is unavailable or the member reasonably believes that the Trusted Contact Person(s) has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and
 - (C) The member immediately initiates an internal review of the facts and circumstances that caused the member to reasonably believe that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted.
- (2) The temporary hold authorized by this Rule will expire not later than 15 business days after the date that the member first placed the temporary hold on the disbursement of funds or securities, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, or extended pursuant to paragraph (b)(3) of this Rule.
- (3) Provided that the member's internal review of the facts and circumstances under paragraph (b)(1)(C) of this Rule supports the member's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted, the temporary hold authorized by this Rule may be extended by the member for no longer than 10 business days following the date authorized by paragraph (b)(2) of this Rule, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.

(c) Supervision

- (1) In addition to the general supervisory and recordkeeping requirements of Rules [3110](#), [3120](#), [3130](#), [3150](#), and [Rule 4510](#) Series, a member relying on this Rule shall establish and maintain written supervisory procedures reasonably designed to achieve compliance with this Rule, including, but not limited to, procedures related to the identification, escalation and reporting of matters related to the financial exploitation of Specified Adults.
- (2) A member's written supervisory procedures also shall identify the title of each person authorized to place, terminate or extend a temporary hold on behalf of the member pursuant to this Rule. Any such person shall be an associated person of the member who serves in a supervisory, compliance or legal capacity for the member.

(d) Record Retention

Members shall retain records related to compliance with this Rule, which shall be readily available to FINRA, upon request. The retained records shall 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 on a disbursement; (3) the name and title of the associated person that authorized the temporary hold on a disbursement; (4) notification(s) to the relevant parties pursuant to paragraph (b)(1)(B) of this Rule; and (5) the internal review of the facts and circumstances pursuant to paragraph (b)(1)(C) of this Rule.

••• Supplementary Material: -----

.01 Applicability of Rule. This Rule provides members and their associated persons with a safe harbor from FINRA Rules [2010](#), [2150](#) and [11870](#) when members exercise discretion in placing temporary holds on disbursements of funds or securities from the Accounts of Specified Adults consistent with the requirements of this Rule. This Rule does not require members to place temporary holds on disbursements of funds or securities from the Accounts of Specified Adults.

.02 Training. A member relying on this Rule must develop and document training policies or programs reasonably designed to ensure that associated persons comply with the requirements of this Rule.

.03 Reasonable Belief of Mental or Physical Impairment. A member's reasonable belief that a natural person age 18 and older has a mental or physical impairment that renders the individual unable to protect his or her own interests may be based on the facts and circumstances observed in the member's business relationship with the natural person.