

market price for a debt security is established by referring to the dealer's contemporaneous cost as incurred, or contemporaneous proceeds as obtained, consistent with FINRA pricing rules. (See, e.g., Rule 5310).

(2) When the dealer is *selling* the security to a customer, countervailing evidence of the prevailing market price may be considered only where the dealer made no *contemporaneous purchases* in the security or can show that in the particular circumstances the dealer's *contemporaneous cost* is not indicative of the prevailing market price. When the dealer is *buying* the security from a customer, countervailing evidence of the prevailing market price may be considered only where the dealer made no *contemporaneous sales* in the security or can show that in the particular circumstances the dealer's *contemporaneous proceeds* are not indicative of the prevailing market price.

(3) A dealer's cost is considered contemporaneous if the transaction occurs close enough in time to the subject transaction that it would reasonably be expected to reflect the current market price for the security. (Where a mark-down is being calculated, a dealer's proceeds would be considered contemporaneous if the transaction from which the proceeds result occurs close enough in time to the subject transaction that such proceeds would reasonably be expected to reflect the current market price for the security.)

(4) A dealer that effects a transaction in debt securities with a customer and identifies the prevailing market price using a measure other than the dealer's own contemporaneous cost (or, in a mark-down, the dealer's own proceeds) must be prepared to provide evidence that is sufficient to overcome the presumption that the dealer's contemporaneous cost (or, the dealer's proceeds) provides the best measure of the prevailing market price. A dealer may be able to show that its contemporaneous cost is (or proceeds are) not indicative of prevailing market price, and thus overcome the presumption, in instances where (i) interest rates changed after the dealer's contemporaneous transaction to a degree that such change would reasonably cause a change in debt securities pricing; (ii) the credit quality of the debt security changed significantly after the dealer's contemporaneous transaction; or (iii) news was issued or otherwise distributed and known to the marketplace that had an effect on the perceived value of the debt security after the dealer's contemporaneous transaction.

(5) In instances where the dealer has established that the dealer's cost is (or, in a mark-down, proceeds are) no longer contemporaneous, or where the dealer has presented evidence that is sufficient to overcome the presumption that the dealer's contemporaneous cost (or proceeds) provides the best measure of the prevailing market price, such as those instances described in (b)(4)(i), (ii) and (iii), a member must consider, in the order listed, the following types of pricing information to determine prevailing market price:

(A) Prices of any contemporaneous inter-dealer transactions in the security in question;

(B) In the absence of transactions described in (A), prices of contemporaneous dealer purchases (sales) in the security in question from (to) institutional accounts with which any dealer regularly effects transactions in the same security; or

(C) In the absence of transactions described in (A) and (B), for actively traded securities, contemporaneous bid (offer) quotations for the security in question made through an inter-dealer mechanism, through which transactions generally occur at the displayed quotations.

(A member may consider a succeeding category of pricing information only when the prior category does not generate relevant pricing information (e.g., a member may consider pricing information under (B) only after the member has determined, after applying (A), that there are no contemporaneous inter-dealer transactions in the same security). In reviewing the pricing information available within each category, the relative weight, for purposes of identifying prevailing market price, of such information (*i.e.*, either a particular transaction price, or, in (C) above, a particular quotation) depends on the facts and circumstances of the comparison transaction or quotation (*i.e.*, such as whether the dealer in the comparison transaction was on the same side of the market as the dealer is in the subject transaction and timeliness of the information).

(6) In the event that, in particular circumstances, the above factors are not available, other factors that may be taken into consideration for the purpose of establishing the price from which a customer mark-up (mark-down) may be calculated, include but are not limited to:

- Prices of contemporaneous inter-dealer transactions in a "similar" security, as defined below, or prices of contemporaneous dealer purchase (sale) transactions in a "similar" security with institutional accounts with which any dealer regularly effects transactions in the "similar" security with respect to customer mark-ups (mark-downs);
- Yields calculated from prices of contemporaneous inter-dealer transactions in "similar" securities;
- Yields calculated from prices of contemporaneous dealer purchase (sale) transactions with institutional accounts with which any dealer regularly effects transactions in "similar" securities with respect to customer mark-ups (mark-downs); and
- Yields calculated from validated contemporaneous inter-dealer bid (offer) quotations in "similar" securities for customer mark-ups (mark-downs).

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The relative weight, for purposes of identifying prevailing market price, of the pricing information obtained from the factors set forth above depends on the facts and circumstances surrounding the comparison transaction (*i.e.*, whether the dealer in the comparison transaction was on the same side of the market as the dealer is in the subject transaction, timeliness of the information, and, with respect to the final factor listed above, the relative spread of the quotations in the similar security to the quotations in the subject security).

(7) Finally, if information concerning the prevailing market price of the subject security cannot be obtained by applying any of the above factors, FINRA or its members may consider as a factor in assessing the prevailing market price of a debt security the prices or yields derived from economic models (*e.g.*, discounted cash flow models) that take into account measures such as credit quality, interest rates, industry sector, time to maturity, call provisions and any other embedded options, coupon rate, and face value; and consider all applicable pricing terms and conventions (*e.g.*, coupon frequency and accrual methods). Such models currently may be in use by bond dealers or may be specifically developed by regulators for surveillance purposes.

(8) Because the ultimate evidentiary issue is the prevailing market price, isolated transactions or isolated quotations generally will have little or no weight or relevance in establishing prevailing market price. For example, in considering yields of "similar" securities, except in extraordinary circumstances, members may not rely exclusively on isolated transactions or a limited number of transactions that are not fairly representative of the yields of transactions in "similar" securities taken as a whole.

(9) "Customer," for purposes of Rule 2121, Supplementary Material .01 to Rule 2121 and this Supplementary Material .02, shall not include a qualified institutional buyer ("QIB") as defined in Rule 144A under the Securities Act of 1933 that is purchasing or selling a non-investment grade debt security when the dealer has determined, after considering the factors set forth in Rule 2111(b), that the QIB has the capacity to evaluate independently the investment risk and in fact is exercising independent judgment in deciding to enter into the transaction. For purposes of Rule 2121, Supplementary Material .01 to Rule 2121 and this Supplementary Material .02, "non-investment grade debt security" means a debt security that: (i) if rated by only one nationally recognized statistical rating organization ("NRSRO"), is rated lower than one of the four highest generic rating categories; (ii) if rated by more than one NRSRO, is rated lower than one of the four highest generic rating categories by any of the NRSROs; or (iii) if unrated, either was analyzed as a non-investment grade debt security by the dealer and the dealer retains credit evaluation documentation and demonstrates to FINRA (using credit evaluation or other demonstrable criteria) that the credit quality of the security is, in fact, equivalent to a non-investment grade debt security, or was initially offered and sold and continues to be offered and sold pursuant to an exemption from registration under the Securities Act of 1933.

(c) "Similar" Securities

(1) A "similar" security should be sufficiently similar to the subject security that it would serve as a reasonable alternative investment to the investor. At a minimum, the security or securities should be sufficiently similar that a market yield for the subject security can be fairly estimated from the yields of the "similar" security or securities. Where a security has several components, appropriate consideration may also be given to the prices or yields of the various components of the security.

(2) The degree to which a security is "similar," as that term is used in this Supplementary Material .02, to the subject security may be determined by factors that include but are not limited to the following:

(A) Credit quality considerations, such as whether the security is issued by the same or similar entity, bears the same or similar credit rating, or is supported by a similarly strong guarantee or collateral as the subject security (to the extent securities of other issuers are designated as "similar" securities, significant recent information of either issuer that is not yet incorporated in credit ratings should be considered (*e.g.*, changes to ratings outlooks));

(B) The extent to which the spread (*i.e.*, the spread over U.S. Treasury securities of a similar duration) at which the "similar" security trades is comparable to the spread at which the subject security trades;

(C) General structural characteristics and provisions of the issue, such as coupon, maturity, duration, complexity or uniqueness of the structure, callability, the likelihood that the security will be called, tendered or exchanged, and other embedded options, as compared with the characteristics of the subject security; and

(D) Technical factors such as the size of the issue, the float and recent turnover of the issue, and legal restrictions on transferability as compared with the subject security.

(3) When a debt security's value and pricing is based substantially on, and is highly dependent on, the particular circumstances of the issuer, including creditworthiness and the ability and willingness of the issuer to meet the specific obligations of the security, in most cases other securities will not be sufficiently similar, and therefore, other securities may not be used to establish the prevailing market price.

¹ The Interpretation does not apply to transactions in municipal securities. Single terms in parentheses within sentences, such as the terms "(sale)" and "(to)" in the phrase, "contemporaneous dealer purchase (sale) transactions with institutional accounts," refer to scenarios where a member is charging a customer a mark-down.

Amended by SR-FINRA-2014-023 eff. May 9, 2014.
Amended by SR-NASD-2006-005 eff. June 13, 2008.
Amended by SR-NASD-2003-141 eff. July 5, 2007.
Amended by SR-NASD-98-86 eff. Nov. 19, 1998.
Adopted eff. Oct. 31, 1943, see SEC Release No. 3574 (June 1, 1944) and SEC Release No. 3623 (Nov. 25, 1944).

Selected Notices to Members: 75-65, 89-20, 91-69, 92-16, 93-81, 94-62, 07-28, 08-36.

[← 2120. COMMISSIONS, MARK UPS AND CHARGES](#)

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[2122. CHARGES FOR SERVICES PERFORMED →](#)

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2122. Charges for Services Performed

Charges, if any, for services performed, including, but not limited to, miscellaneous services such as collection of monies due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safe-keeping or custody of securities, and other services shall be reasonable and not unfairly discriminatory among customers.

Amended by SR-FINRA-2014-049 eff. Nov. 21, 2014.

[2121. FAIR PRICES AND COMMISSIONS](#)

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[2124. NET TRANSACTIONS WITH CUSTOMERS](#)

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2124. Net Transactions with Customers

The Rule

Notices

(a) Prior to executing a transaction for or with a customer on a "net" basis as defined in paragraph (e) below, a member must provide disclosure to and obtain consent from the customer as provided in this Rule.

(b) With respect to non-institutional customers, the member must obtain the customer's written consent on an order-by-order basis prior to executing a transaction for or with the customer on a "net" basis and such consent must evidence the customer's understanding of the terms and conditions of the order.

(c) With respect to institutional customers, a member must obtain the customer's consent prior to executing a transaction for or with the customer on a "net" basis in accordance with one of the following methods:

(1) a negative consent letter that clearly discloses to the institutional customer in writing the terms and conditions for handling the customer order(s) and provides the institutional customer with a meaningful opportunity to object to the execution of transactions on a net basis. If the customer does not object, then the member may reasonably conclude that the institutional customer has consented to the member trading on a "net" basis with the customer and the member may rely on such letter for all or a portion of the customer's orders (as instructed by the customer) pursuant to this Rule;

(2) oral disclosure to and consent from the customer on an order-by-order basis. Such oral disclosure and consent must clearly explain the terms and conditions for handling the customer order and provide the institutional customer with a meaningful opportunity to object to the execution of the transaction on a net basis. The member also must document, on an order-by-order basis, the customer's understanding of the terms and conditions of the order and the customer's consent; or

(3) written consent on an order-by-order basis prior to executing a transaction for or with the customer on a "net" basis and such consent must evidence the customer's understanding of the terms and conditions of the order.

(d) For those customers that have granted trading discretion to a fiduciary (e.g. an investment adviser), a member is permitted to obtain the consent required under this Rule from the fiduciary. If the fiduciary meets the definition of "institutional customer" in paragraph (e), the member may meet the disclosure and consent requirements under this Rule in the same manner permitted for institutional customers.

(e) For purposes of this Rule:

(1) "institutional customer" shall mean a customer whose account qualifies as an "institutional account" under Rule 4512(c); and

(2) "net" transaction shall mean a principal transaction in which a market maker, after having received an order to buy (sell) an equity security, purchases (sells) the equity security at one price (from (to) another broker-dealer or another customer) and then sells to (buys from) the customer at a different price.

(f) Members must retain and preserve all documentation relating to consent obtained pursuant to this Rule in accordance with Rule 4511.

Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
 Amended by SR-FINRA-2009-036 eff. Dec. 14, 2009.
 Adopted by SR-NASD-2004-135 eff. Oct. 2, 2006.

Selected Notices: 06-47, 09-60.

[2122. CHARGES FOR SERVICES PERFORMED](#)

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[2130. APPROVAL PROCEDURES FOR DAY-TRADING ACCOUNTS](#)

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> FINRA RULES > 2000. DUTIES AND CONFLICTS > 2100. TRANSACTIONS WITH CUSTOMERS

2130. Approval Procedures for Day-Trading Accounts

The Rule

Notices

(a) No member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer, unless, prior to opening the account, the member has furnished to the customer the risk disclosure statement set forth in Rule 2270 and has:

(1) approved the customer's account for a day-trading strategy in accordance with the procedures set forth in paragraph (b) and prepared a record setting forth the basis on which the member has approved the customer's account; or

(2) received from the customer a written agreement that the customer does not intend to use the account for the purpose of engaging in a day-trading strategy, except that the member may not rely on such agreement if the member knows that the customer intends to use the account for the purpose of engaging in a day-trading strategy.

(b) In order to approve a customer's account for a day-trading strategy, a member shall have reasonable grounds for believing that the day-trading strategy is appropriate for the customer. In making this determination, the member shall exercise reasonable diligence to ascertain the essential facts relative to the customer, including:

(1) Investment objectives;

(2) Investment and trading experience and knowledge (e.g., number of years, size, frequency and type of transactions);

(3) Financial situation, including: estimated annual income from all sources, estimated net worth (exclusive of family residence), and estimated liquid net worth (cash, securities, other);

(4) Tax status;

(5) Employment status (name of employer, self-employed or retired);

(6) Marital status and number of dependents; and

(7) Age.

(c) If a member that is promoting a day-trading strategy opens an account for a non-institutional customer in reliance on a written agreement from the customer pursuant to paragraph (a)(2) and, following the opening of the account, knows that the customer is using the account for a day-trading strategy, then the member shall be required to approve the customer's account for a day-trading strategy in accordance with paragraph (a) (1) as soon as practicable, but in no event later than 10 days following the date that such member knows that the customer is using the account for such a strategy.

(d) Any record or written statement prepared or obtained by a member pursuant to this Rule shall be preserved in accordance with Rule 4511.

(e) For purposes of this Rule, the following terms shall have the meanings specified below:

(1) "Day-trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

(2) "Non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 4512(c).

••• Supplementary Material: -----

.01 Promoting a Day-Trading Strategy.

(a) A member shall be deemed to be "promoting a day-trading strategy" if it affirmatively endorses a "day-trading strategy," as defined in paragraph (e) of this Rule, through advertising, its Web site, trading seminars or direct outreach programs. For example, a member generally shall be deemed to be "promoting a day-trading strategy" if its retail communications address the benefits of day trading, rapid-fire trading, or momentum trading, or encourage persons to trade or profit like a professional trader. A member also shall be deemed to be "promoting a day-

trading strategy" if it promotes its day-trading services through a third party. Moreover, the fact that many of a member's customers are engaging in a day-trading strategy will be relevant in determining whether a member has promoted itself in this way.

(b) A member shall not be deemed to be "promoting a day-trading strategy" solely by its engaging in the following activities: (1) promoting efficient execution services or lower execution costs based on multiple trades; (2) providing general investment research or advertising the high quality or prompt availability of such general research; and (3) having a Web site that provides general financial information or news or that allows the multiple entry of intra-day purchases and sales of the same securities.

.02 Review by FINRA's Advertising Regulation Department. A member may submit its retail communications to FINRA's Advertising Regulation Department for review and guidance on whether the content of the retail communications constitutes "promoting a day-trading strategy" for purposes of this Rule.

.03 Additional Rules Regarding Day Trading. Members should be aware that, in addition to general rules that may apply, FINRA has additional rules that specifically address day trading. See, e.g., Rule 2270 (Day-Trading Risk Disclosure Statement); Rule 4210(f)(8)(B) (Margin Requirements) regarding special margin requirements for day trading.

Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
Amended by SR-FINRA-2009-059 eff. Feb. 15, 2010.
Adopted by SR-NASD-99-41 eff. Oct. 16, 2000.

Selected Notices: 00-62, 09-72.

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2140. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes

The Rule

Notices

No member or person associated with a member shall interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative where the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this Rule shall affect the operation of Rule 11870.

Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.

Amended by SR-FINRA-2008-052 eff. June 15, 2009.

Adopted by SR-NASD-2001-095 eff. Dec. 21, 2001.

Selected Notices: 02-07, 09-20.

[2130. APPROVAL PROCEDURES FOR DAY-TRADING ACCOUNTS](#)

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[2150. IMPROPER USE OF CUSTOMERS' SECURITIES OR FUNDS; PROHIBITION AGAINST GUARANTEES AND SHARING IN ACCOUNTS](#)

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2150. Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts

The Rule

Notices

(a) Improper Use

No member or person associated with a member shall make improper use of a customer's securities or funds.

(b) Prohibition Against Guarantees

No member or person associated with a member shall guarantee a customer against loss in connection with any securities transaction or in any securities account of such customer.

(c) Sharing in Accounts; Extent Permissible

(1)(A) Except as provided in paragraph (c)(2), no member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member; provided, however, that a member or person associated with a member may share in the profits or losses in such an account if:

(i) such person associated with a member obtains prior written authorization from the member employing the associated person;

(ii) such member or person associated with a member obtains prior written authorization from the customer; and

(iii) such member or person associated with a member shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.

(B) Exempt from the direct proportionate share limitation of paragraph (c)(1)(A)(iii) are accounts of the immediate family of such member or person associated with a member. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member or person associated with a member otherwise contributes directly or indirectly.

(2) Notwithstanding the prohibition of paragraph (c)(1), a member or person associated with a member that is acting as an investment adviser may receive compensation based on a share in profits or gains in an account if:

(A) such person associated with a member seeking such compensation obtains prior written authorization from the member employing the associated person;

(B) such member or person associated with a member seeking such compensation obtains prior written authorization from the customer; and

(C) all of the conditions in Rule 205-3 of the Investment Advisers Act (as the same may be amended from time to time) are satisfied.

••• Supplementary Material: -----

.01 Inapplicability of Rule to Certain Guarantees. For purposes of paragraph (b) of this Rule, a "guarantee" that is extended to all holders of a particular security by an issuer as part of that security generally would not be subject to the prohibition against guarantees.

.02 Permissible Reimbursement by Member of Certain Losses. Nothing in this Rule shall preclude a member, but not an associated person of the member, from determining on an after-the-fact basis, to reimburse a customer for transaction losses; provided, however, that the member shall comply with all reporting requirements that may be applicable to such payment. For example, if the payment can reasonably be construed as a settlement, the member shall report the payment as a settlement under the applicable reporting requirement(s). In addition, nothing in this Rule shall preclude a member, but not an associated person of the member, from correcting a bona fide error. This Supplementary Material .02 does not apply to an associated person of a member because of the concern that any such payment may conceal individual misconduct.

.03 Record Retention. For purposes of paragraph (c) of this Rule, members shall preserve the required written authorization(s) for at least six years after the date the account is closed.

.04 Applicability of Other Rules to Sharing Arrangements. Members and associated persons should be aware that participation in a sharing arrangement permitted under paragraph (c) of this Rule does not affect the applicability of other FINRA rules, including paragraph (b) of this Rule, FINRA Rules 3210, 3270 and 3280 to such sharing arrangement.

Amended by SR-FINRA-2017-004 eff. April 3, 2017.
Amended by SR-FINRA-2015-030 eff. Sept. 21, 2015.
Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
Amended by SR-FINRA-2009-014 eff. Dec. 14, 2009.
Amended by SR-NASD-2002-180 eff. May 12, 2003.
Amended by SR-NASD-99-42 eff. April 21, 2001.
Amended by SR-NASD-87-9 eff. May 23, 1988.
Amended by SR-NASD-84-33 eff. Feb. 7, 1985.

Selected Notices: 83-74, 86-74, 88-55, 01-24, 03-21, 09-60.

◀ 2140. INTERFERING WITH THE TRANSFER OF CUSTOMER ACCOUNTS IN THE
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2165. FINANCIAL EXPLOITATION OF SPECIFIED ADULTS ▶

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2165. Financial Exploitation of Specified Adults

The Rule

Notices

(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 or Transactions

(1) A member may place a temporary hold on a disbursement of funds or securities from the Account of a Specified Adult or a transaction in securities in 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 or the transaction in 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 or the transaction in 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, or extended pursuant to paragraph (b)(4) of this Rule.

(4) 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 and the member has reported or provided notification of the member's reasonable belief to a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, the temporary hold authorized by this Rule may be extended by the member for no longer than 30 business days following the date authorized by paragraph (b)(3) 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 or transaction 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 or transaction; (3) the name and title of the associated person that authorized the temporary hold on a disbursement or transaction; (4) notification(s) to the relevant parties pursuant to paragraph (b)(1)(B) of this Rule; (5) the internal review of the facts and circumstances pursuant to paragraph (b)(1)(C) of this Rule; and (6) the reason and support for any extension of a temporary hold, including information regarding any communications with or by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.

••• 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 or transactions in securities in 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 or transactions in securities in 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.

Amended by SR-FINRA-2021-016 eff. March 17, 2022.

Adopted by SR-FINRA-2016-039 eff. Feb. 5, 2018.

Selected Notice: [17-11](#), [22-05](#).

◀ [2150. IMPROPER USE OF CUSTOMERS' SECURITIES OR FUNDS; PROHIBITION AGAINST GUARANTEES AND SHARING IN ACCOUNTS](#)

UP

[2200. COMMUNICATIONS AND DISCLOSURES](#) ▶

VERSIONS

Mar 17, 2022 onwards

FINRA IS A REGISTERED TRADEMARK OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

2210. Communications with the Public

[The Rule](#)[Notices](#)

(a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) "Communications" consist of correspondence, retail communications and institutional communications.

(2) "Correspondence" means any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

(3) "Institutional communication" means any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications.

(4) "Institutional investor" means any:

(A) person described in Rule 4512(c), regardless of whether the person has an account with a member;

(B) governmental entity or subdivision thereof;

(C) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans;

(D) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans;

(E) member or registered person of such a member; and

(F) person acting solely on behalf of any such institutional investor.

No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail investor.

(5) "Retail communication" means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.

(6) "Retail investor" means any person other than an institutional investor, regardless of whether the person has an account with a member.

(7) "Covered investment fund research report" has the meaning given that term in paragraph (c)(3) of Securities Act Rule 139b.

(b) Approval, Review and Recordkeeping

(1) Retail Communications

(A) An appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department ("Department").

(B) The requirements of paragraph (b)(1)(A) may be met by a Supervisory Analyst approved pursuant to Rule 1220(a)(14) with respect to: (i) research reports on debt and equity securities as described in Rules 2241(a)(11) and 2242(a)(3); (ii) retail communications as described in Rules 2241(a)(11)(A) and 2242(a)(3)(A); and (iii) other research communications, provided that the Supervisory Analyst has technical expertise in the particular product area. A Supervisory Analyst may not approve a retail communication that requires a separate registration unless the Supervisory Analyst also has such other registration.

(C) The requirements of paragraph (b)(1)(A) shall not apply with regard to any retail communication if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this subparagraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(D) The requirements of paragraph (b)(1)(A) shall not apply with regard to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to Rules 3110(b) and 3110.06 through .09:

(i) any retail communication that is excepted from the definition of "research report" pursuant to Rule 2241(a)(11)(A) or "debt research report" under Rule 2242(a)(3)(A), unless the communication makes any financial or investment recommendation;

(ii) any retail communication that is posted on an online interactive electronic forum; and

(iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

(E) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (b)(1)(A) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(F) Notwithstanding any other provision of this Rule, an appropriately qualified principal must approve a communication prior to a member filing the communication with the Department.

(2) Correspondence

All correspondence is subject to the supervision and review requirements of Rules 3110(b) and 3110.06 through .09.

(3) Institutional Communications

Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

(4) Recordkeeping

(A) Members must maintain all retail communications and institutional communications for the retention period required by SEA Rule 17a-4(b) and in a format and media that comply with SEA Rule 17a-4. The records must include:

(i) a copy of the communication and the dates of first and (if applicable) last use of such communication;

(ii) the name of any registered principal who approved the communication and the date that approval was given;

(iii) in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;

(iv) information concerning the source of any statistical table, chart, graph or other illustration used in the communication;

(v) for any retail communication for which principal approval is not required pursuant to paragraph (b)(1)(C), the name of the member that filed the retail communication with the Department, and a copy of the corresponding review letter from the Department; and

(vi) for any retail communication that includes or incorporates a performance ranking or performance comparison of a registered investment company, a copy of the ranking or performance used in the retail communication.

(B) Members must maintain all correspondence in accordance with the record-keeping requirements of Rules 3110.09 and 4511.

(c) Filing Requirements and Review Procedures

(1) Requirement for Certain Members to File Retail Communications Prior to First Use

(A) For a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). To the extent any retail communication that is subject to this filing requirement is a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), the member may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

(B) Notwithstanding the foregoing provisions, if the Department determines that a member has departed from the standards of this Rule, it may require that such member file all communications, or the portion of such member's communications that is related to any specific types or classes of securities or services, with the Department at least 10 business days prior to first use. The Department will notify the member in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this subparagraph will take effect 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

(2) Requirement to File Certain Retail Communications Prior to First Use

At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following retail communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Retail communications concerning security futures. The requirements of this paragraph (c)(2)(B) shall not be applicable to:

(i) retail communications concerning security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such retail communications; and

(ii) retail communications in which the only reference to security futures is contained in a listing of the services of a member.

(3) Requirement to File Certain Retail Communications

Within 10 business days of first use or publication, a member must file the following communications with the Department:

(A) Retail communications that promote or recommend a specific registered investment company or family of registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) not included within the requirements of paragraphs(c)(1) or (c)(2).

(B) Retail communications concerning public direct participation programs (as defined in Rule 2310).

(C) Retail communications concerning collateralized mortgage obligations registered under the Securities Act.

(D) Retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency, not included within the requirements of paragraphs (c)(1), (c)(2) or subparagraphs (A) through (C) of paragraph (c)(3).

(4) Filing of Television or Video Retail Communications

If a member has filed a draft version or "story board" of a television or video retail communication pursuant to a filing requirement, then the member also must file the final filmed version within 10 business days of first use or broadcast.

(5) Date of First Use and Approval Information

A member must provide with each filing the actual or anticipated date of first use, the name, title and Central Registration Depository (CRD®) number of the registered principal who approved the retail communication, and the date that the approval was given.

(6) Spot-Check Procedures

In addition to the foregoing requirements, each member's written (including electronic) communications may be subject to a spot-check procedure. Upon written request from the Department, each member must submit the material requested in a spot-check procedure within