

Account Authorization Records

SEC Approves Amendments to FINRA Rule 4512 to Permit the Use of Electronic Signatures for Discretionary Accounts

Effective Date: May 6, 2019

Summary

The Securities and Exchange Commission (SEC) approved a proposed rule change to amend FINRA Rule 4512 (Customer Account Information) to permit the use of electronic signatures for discretionary accounts and to clarify the scope of the rule.¹ These changes become effective on May 6, 2019.

The text of the amended rule is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

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Background and Discussion

For discretionary accounts, FINRA Rule 4512(a)(3) currently requires member firms to maintain a record of the dated, manual (or “wet”) signature of each named, natural person authorized to exercise discretion in such accounts. To comply with the current requirement, most firms print a paper copy of the account record and require that the authorized individual physically sign it. They then convert the paper record to an electronic record for retention on electronic storage media consistent with Rule 17a-4(f) under the Securities Exchange Act of 1934 (SEA).

April 16, 2019

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management

Key Topics

- ▶ Account Authorization
- ▶ Discretionary Authority
- ▶ Electronic Signatures
- ▶ Recordkeeping

Referenced Rules & Notices

- ▶ E-Sign Act
- ▶ FINRA Rule 4512
- ▶ SEA Rule 17a-3
- ▶ SEA Rule 17a-4

Given technological advances relating to electronic signatures, including authentication and security, FINRA has amended Rule 4512(a)(3) to permit the use of electronic signatures. The rule change is consistent with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), which facilitates the use of electronic signatures. The rule change is also consistent with the requirements of SEA Rule 17a-3(a)(17)(ii) relating to discretionary accounts,² which does not prescribe the type of signature that must be obtained from an authorized individual. While FINRA Rule 4512(a)(3) would continue to require member firms to obtain the signature of the authorized individual, it would provide firms the option of obtaining either a manual or an electronic signature.

For purposes of compliance with amended Rule 4512(a)(3), a valid electronic signature would be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the E-Sign Act, the guidance issued by the SEC relating to the E-Sign Act,³ and the guidance provided by FINRA staff through interpretive letters.⁴

FINRA has also amended Rule 4512(a)(3) to clarify that the rule is limited to discretionary accounts maintained by member firms for which associated persons of such firms are authorized to exercise discretion. Specifically, the amended rule provides that for a discretionary account maintained by a member firm, the firm must maintain a record of the dated signature of each named, associated person of the firm authorized to exercise discretion in the account. This change will eliminate any potential confusion regarding the scope of the rule and aid members' compliance efforts.

Endnotes

1. See Securities Exchange Act Release No. 85282 (March 11, 2019), 84 FR 9573 (March 15, 2019) (Order Approving File No. SR-FINRA-2018-040).
2. 17 CFR 240.17a-3(a)(17)(ii).
3. See Securities Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001) (Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f)).
4. See, e.g., Letter from Nancy Libin, NASD, to Jeffrey W. Kilduff, O'Melveny & Myers, LLP, dated July 5, 2001, www.finra.org/industry/interpretive-letters/july-5-2001-1200am.

Attachment A

Below is the amended rule text. New language is underlined; deletions are in brackets.

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4500. BOOKS, RECORDS AND REPORTS

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4512. Customer Account Information

(a) Each member shall maintain the following information:

(1) through (2) No Change.

(3) for discretionary accounts maintained by a member, in addition to compliance with subparagraph (1) and, to the extent applicable, subparagraph (2) above, and NASD Rule 2510(b), the member shall maintain a record of the dated, [manual] signature of each named, [natural] associated person of the member authorized to exercise discretion in the account. This recordkeeping requirement shall not apply to investment discretion granted by a customer as to the price at which or the time to execute an order given by a customer for the purchase or sale of a definite dollar amount or quantity of a specified security. Nothing in this Rule shall be construed as allowing members to maintain discretionary accounts or exercise discretion in such accounts except to the extent permitted under the federal securities laws.

(b) through (c) No Change.

• • • **Supplementary Material:** -----

.01 through **.06** No Change.

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