

## Trusted Contacts

### FINRA Shares Practices for Obtaining Customers' Trusted Contacts

#### Summary

Member firms are required to make reasonable efforts to obtain the name of and contact information for a trusted contact for a non-institutional customer's account. This *Notice* summarizes member firms' regulatory obligations, discusses the benefits of trusted contacts in administering customers' accounts, highlights customer education resources and shares effective practices member firms use.

This *Notice* does not create new legal or regulatory requirements or new interpretations of existing requirements, nor does it relieve firms of any existing obligations under federal securities laws and regulations. Member firms may consider the information in this *Notice* in developing new, or modifying existing, practices that are reasonably designed to achieve compliance with relevant regulatory obligations based on the member firm's size and business model.

Questions regarding this *Notice* should be directed to:

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#### Background and Discussion

##### FINRA Rule 4512 (Customer Account Information)

Rule 4512 requires member firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of all non-institutional customer accounts.<sup>1</sup> The trusted contact is intended to be a resource for the member firm in a host of situations (e.g., helping to update contact information when a customer becomes unavailable, offering assistance when concerns arise over possible diminished capacity or other health issues, protecting assets and responding to possible financial exploitation).<sup>2</sup> Although the trusted contact can be a critical aid to the firm and the customer, the trusted

December 15, 2022

#### Notice Type

- ▶ Guidance

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Senior Management

#### Key Topics

- ▶ Customer Accounts
- ▶ Financial Exploitation
- ▶ Senior Investors
- ▶ Temporary Holds
- ▶ Trusted Contact

#### Referenced Rules & Notices

- ▶ FINRA Rule 2165
- ▶ FINRA Rule 4512
- ▶ Regulation S-P
- ▶ Regulatory Notice 17-11

contact does not have any authority over the customer's account, cannot make trading decisions for the account and does not act as a power of attorney by virtue of being named a trusted contact.

Member firms may open and maintain an account even if a customer fails to identify a trusted contact, provided the member firm makes reasonable efforts to obtain this information.<sup>3</sup> However, FINRA strongly encourages member firms and their customers to give serious consideration to the importance of naming a trusted contact.

### Disclosure

Rule 4512 describes the circumstances in which member firms and their associated persons are authorized to contact the trusted contact and disclose information about the customer account. Specifically, at the time of account opening, a member firm must disclose in writing (which may be electronic) to the customer that the firm or an associated person is authorized to contact the trusted contact and disclose information about the customer's account to address possible financial exploitation; to confirm the specifics of the customer's current contact information, health status, or the identity of any legal guardian, executor, trustee or holder of a power of attorney; or as otherwise addressed in FINRA Rule 2165 (Financial Exploitation of Specified Adults).<sup>4</sup>

Member firms also may choose to provide this disclosure when updating the information for a customer's account in other circumstances (*e.g.*, when updating the information for accounts where the customer previously declined to provide the trusted contact). In obtaining the trusted contact information, a member firm may rely on an oral conversation with the customer that the firm then documents, provided that the written disclosure requirement is satisfied.<sup>5</sup>

Communications with a trusted contact consistent with Rules 2165 and 4512 are permissible under Regulation S-P.<sup>6</sup>

### Benefits of Trusted Contacts

Trusted contacts can benefit member firms and customers in a number of ways. For example:

- ▶ Requesting that customers name trusted contacts can be an opportunity for firms and associated persons to engage in beneficial conversations with customers about scams and financial exploitation.
- ▶ A member firm can contact a trusted contact to address potential financial exploitation of the customer before placing a temporary hold on a disbursement or securities transaction.

- ▶ A member firm can contact a trusted contact to inquire about the customer's current contact information (e.g., in circumstances where the firm has been unable to contact the customer because the customer changed phone numbers, moved without updating their contact information, went on an extended trip or was displaced by a natural disaster).
- ▶ A member firm can contact a trusted contact to inquire about the customer's health status (e.g., a customer is known to be ill or infirm and the firm has been unable to contact the customer).
- ▶ A member firm can reach out to a trusted contact if it suspects that the customer may be suffering from Alzheimer's disease, dementia or other forms of diminished capacity.

### Customer Education

Customer education about what a trusted contact can and cannot do is an important part of obtaining trusted contact information. For example, educational efforts can help avoid a misperception that naming a trusted contact gives the person authority over the customer's account or is equivalent to giving the person a power of attorney for the customer's account.

In 2021, in a combined effort to provide additional protection for investors, FINRA, the North American Securities Administrators Association (NASAA) and SEC's Office of Investor Education and Advocacy (SEC) collaborated on a campaign to urge investors to provide their financial firms with a trusted contact. This campaign featured:

- ▶ a [webpage](#) that provides details on how a trusted contact can help customers when the firm cannot reach them—whether because of travel, a natural disaster, a health issue or when the firm is concerned about potential fraud;
- ▶ a colorful [infographic](#) that reminds customers that firms may reach out to trusted contacts only in limited circumstances; and
- ▶ a [video](#) that explains what a trusted contact is (and is not) and why it is important that customers provide one to their firm.

Firms are encouraged to share campaign resources with customers, and customers are encouraged to review the materials, ask questions and contact their firm to name a trusted contact.<sup>7</sup>

## Effective Practices

FINRA is sharing a non-exhaustive list of effective practices member firms use to obtain this important information.<sup>8</sup>

### ▶ Firm Priority

- ▶ Emphasizing to firm employees—from supervisors to registered representatives and call center personnel—the importance of collecting trusted contacts.
- ▶ Using innovative practices, such as creating target goals for collecting trusted contacts and internally publicizing results among branch offices or regions, providing added incentive among firm personnel to attempt to collect this vital information.
- ▶ Promoting effective ways of asking for trusted contacts<sup>9</sup> and seeking feedback from associated persons on techniques that they have successfully used that have not already been publicized across the organization.
- ▶ Incorporating a field for the trusted contact information in the customer's online profile viewed by his or her financial professional, which acts as a periodic reminder to ask that the customer provide or update the information.

### ▶ Education

- ▶ Preparing and using customer-facing educational materials (*e.g.*, the campaign materials prepared by FINRA, NASAA and SEC).
- ▶ Communicating with associated persons and supervisors about how trusted contacts have been helpful in different situations at the member firm.
- ▶ Offering to the customer a range of real-world examples of how a trusted contact has been or may be helpful, from circumstances involving suspicions of financial exploitation to circumstances where a member firm was unable to contact a customer who lived in an area affected by a natural disaster.
- ▶ Discussing the benefits of trusted contacts during one-on-one conversations between a financial professional and the customer.

### ▶ Requesting Trusted Contact Information

- ▶ Requiring an affirmative answer in the account opening agreement (*i.e.*, that the customer either provide the trusted contact information or affirmatively decline to provide the information), prompting the customer to consider adding a trusted contact rather than being able to ignore the question altogether.

- ▶ Preparing a script or talking points for firm staff to use in requesting the trusted contact information and explaining what the trusted contact can and cannot do.
- ▶ Preparing and using a separate form for customers to seek to obtain the trusted contact information.
- ▶ Incorporating into the periodic review of a customer's account a request that the customer provide (or update previously provided) trusted contract information.
- ▶ Incorporating a prompt into the customer's online access webpage reminding the customer to provide the trusted contact information.

These practices have proved useful in encouraging customers to provide trusted contacts, which in turn supports firms' efforts to better protect their customers.

## Endnotes

1. FINRA Rule 4512(a)(1)(F) and Supplementary Material .06 to Rule 4512. The trusted contact-related amendments to Rule 4512 became effective February 5, 2018. See [Regulatory Notice 17-11](#) (March 2017). See also Securities Exchange Act Release No. 79964 (Feb. 3, 2017), 82 FR 10059 (Feb. 9, 2017) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2016-039) (Approval Order). Rule 4512 also describes member firms' obligations regarding non-institutional accounts opened prior to the amendment's effective date. See Rule 4512(b) and Supplementary Material .06 to Rule 4512.
2. A member firm may use its discretion in relying on any information provided by the trusted contact. A member firm may elect to notify an individual that he or she was named as a trusted contact; however, the rule does not require notification.
3. See Supplementary Material .06(b) to Rule 4512. Asking a customer to provide the name and contact information for a trusted contact ordinarily would constitute reasonable efforts to obtain the information and would satisfy the rule's requirements.
4. See Rule 4512(a)(1)(F) and Supplementary Material .06(a) to Rule 4512. Rule 2165 permits members to place temporary holds on securities transactions and disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers. If a member firm places a temporary hold, Rule 2165 requires that the firm provide notification of the hold and the reason for the hold to the trusted contact and all parties authorized to transact business on the account, including, but not limited to, the customer, no later than two business days after the date that the firm first placed the hold. A firm is not required to provide notification to the trusted contact or a party authorized to transact business on an account, respectively, if the trusted contact or party is unavailable or the firm reasonably believes that the trusted contact or party has engaged, is engaged, or will engage in the financial exploitation of the specified adult.
5. See Securities Exchange Act Release No. 79215 (Nov. 1, 2016), 81 FR 78238 (Nov. 7, 2016) (Notice of Filing of File No. SR-FINRA-2016-039).
6. In approving the amendments to Rule 4512 and Rule 2165, the SEC confirmed that a member firm's disclosures to a trusted contact pursuant to Rules 4512(a)(1)(F) and 2165 would be consistent with Regulation S-P because such disclosures would be made with the customer's consent or authorization, to protect against fraud or unauthorized transactions, or to comply with federal, state, or local laws, rules and other applicable legal requirements. See Approval Order, *supra* note 1, at 10068 and n.159.
7. In March 2020, the SEC and FINRA also collaborated on an Investor Bulletin that helps customers understand the purpose of designating a trusted contact for brokerage accounts and encourages customers to designate a trusted contact. The Investor Bulletin is available on the SEC's [website](#). In addition, in April 2018, FINRA published a [similar article](#) providing information on the trusted contact-related amendments to Rule 4512 and Rule 2165 for investors and member firms and made a [downloadable print version](#) available.

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8. The [2022 Report on FINRA's Examination and Risk Monitoring Program](#) also provides trusted contact-related exam findings and effective practices.
9. *See id.* In November 2020, moreover, the Ontario Securities Commission published [Staff Notice 11-790: Protecting Aging Investors through Behavioural Insights](#), which shares techniques that dealers and advisers can use to encourage older clients to provide information for investor security measures, including naming a trusted contact.