Customer Accounts and Transactions 8.00

Introduction

Prior to the opening and subsequent approval of a customer account, it is the responsibility of the Firm's registered representatives to make all reasonable efforts to obtain all required information from the customer. The following information details some of the requirements as they relate to the different types of customer accounts.

8.01 Customer Accounts

It is the responsibility of a designated supervisor to ensure that all new account applications are properly completed by the customer and signed by the registered representative of the account. The designated supervisor should also review each new account application to ensure proper completion of required customer information before issuing an approval. The following is a list of some of the requirements for customer account information as set forth in *Rule 3110(c).*

Accounts Opened After January 1, 1991

The Firm is required to maintain the following information for accounts opened after Jan. 1, 1991.

- customer's name and residence;
- whether customer is of legal age;
- signature of the member or partner, officer, or manager who accepts the account; and
- if the customer is a corporation, partnership, or other legal entity, the names of any persons authorized to transact business on behalf of the entity;

Note: FINRA Rule 4512 requires firms to maintain certain information relating to customer accounts. The new rule is based on existing requirements in NASD Rule 3110(c), with several changes. The new rule requires firms to maintain the name of the associated person, if any, responsible for the account, rather than requiring firms to maintain the signature of the registered representative introducing the account. Where a member firm designates multiple individuals as being responsible for an account, the firm is required to maintain each of their names and a record indicating the scope of their responsibilities with respect to the account. For purposes of the rule, it is the member firm's obligation to determine whether a particular individual is responsible for the account based on the scope of the individual's activities with respect to that account. (Ref. Notice 11-19)

The new rule continues to require a firm to maintain the signature of a partner, officer or manager of the firm with respect to an account, but it clarifies that the purpose of this signature is to denote that the account has been accepted in accordance with the firm's policies and procedures for acceptance of accounts. The signature also serves to validate the identity of the named associated person, if any. The rule does not require a partner, officer or manager to provide any particular representations. Further, this signature requirement may be satisfied through the use of electronic means. In this regard, FINRA will consider a valid electronic signature to be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), the guidance issued by the SEC relating to the E-Sign Act and the guidance provided by FINRA through its interpretive letters, which address electronic approval processes generally. (Ref. Notice 11-19)

The SEC approved: (1) the adoption of new FINRA Rule 2165 (Financial Exploitation of Specified Adults) to permit members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers; and (2) amendments to FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer's account.

Trusted Contact Person—Amendments to Rule 4512

The amendments to Rule 4512 require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer's account or when updating account information for a non-institutional account in existence prior to the effective date of the amendments (existing account). The amendments also require that, at the time of account opening, a member disclose in writing (which may be electronic) to the customer that the member or an associated person is authorized to contact the trusted contact person 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 permitted by Rule 2165.

A member could contact a trusted contact person to address possible financial exploitation of the customer before placing a temporary hold on a disbursement. In addition, pursuant to Rule 2165, when information about a trusted contact person is available, a member must notify the trusted contact person orally or in writing, which may be electronic, if the member has placed a temporary hold on a disbursement of funds or securities from a customer's account, unless the member reasonably believes that the trusted contact person is engaged in the financial exploitation. (Regulatory Notice17-11; Effective Date: February 5, 2018)

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 a non-institutional customer's account or when updating account information for a non-institutional account in existence prior to the effective date of the amendments (existing account). The trusted contact person is intended to be a resource for the member in administering the customer's account, protecting assets and responding to possible financial exploitation. Member firms are not prohibited from opening and maintaining an account if a customer fails to identify a trusted contact person as long as the member firm makes reasonable efforts to obtain the information (Regulatory Notice 19-27; Effective Date: Aug. 9, 2019)

Temporary Hold on Disbursement of Funds or Securities—New Rule 2165

Rule 2165 permits, under FINRA rules, a member that reasonably believes that financial exploitation has occurred, is occurring, has been attempted or will be attempted to place a temporary hold on the disbursement of funds or securities from the account of a "specified adult" customer. The rule creates no obligation to withhold a disbursement of funds or securities in such circumstances. In this regard, Supplementary Material to Rule 2165 explicitly states that the rule provides members and their associated persons with a safe harbor from FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) and 11870 (Customer Account Transfer Contracts) 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 the rule. The Supplementary Material further states that the rule does not require members to place temporary holds on disbursements of funds or securities from the account of a specified adult. (Regulatory Notice17-11; Effective Date: February 5, 2018)

Rule Safeguards

Rule 2165 also includes important safeguards that apply equally to holds on disbursements and transactions that are designed to ensure that there is not a misapplication of the rule, including the requirements that:

- a member firm must have a reasonable belief that financial exploitation of a specified adult has occurred, is occurring, has been attempted, or will be attempted;
- a member firm provide notification of the hold and the reason for the hold to all parties authorized to transact business on the account (including the customer) and the customer's trusted contact person no later than two business days after the date that the member firm first placed the hold;
- a member firm that places a hold pursuant to the rule immediately initiate 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;
- in addition to the general supervisory and recordkeeping requirements of FINRA rules, a member firm relying on Rule 2165 establish and maintain written supervisory procedures reasonably designed to achieve compliance with the specific requirements of the rule, including, but not limited to, procedures related to the identification, escalation and reporting of matters related to the financial exploitation of specified adults;
- any request for a hold be escalated to a supervisor, compliance department or legal department rather than allowing an associated person handling an account to independently place a hold;
- a member firm relying on the rule develop and document training policies or programs reasonably designed to ensure that associated persons comply with the requirements of the rule; and
- a member firm relying on the rule retain records related to compliance with the rule, which shall be readily available to FINRA, upon request. Ref. FINRA Regulatory Notice 22-05; Effective March 17, 2022.

Length of Time of Temporary Holds

Rule 2165 allows a member firm to place a temporary hold on a specified customer's account for up to 25 business days if the criteria in the rule are satisfied. The rule also provides that this period may be extended by a state agency or a court. (Regulatory Notice 19-27; Effective Date: Aug. 9, 2019)

Amendments to Rule 2165

Transactions in Securities

While placing a hold pursuant to Rule 2165 stops funds or securities from leaving a customer's account, prior to the amendments, the rule did not apply to transactions in securities.

While some state laws permit placing holds on transactions, FINRA amended Rule 2165 to create the first uniform national standard for placing holds on securities transactions related to suspected financial exploitation. Under the safe harbor approach, a member firm is

permitted, but not required, to place a temporary hold on a transaction when there is a reasonable belief that the customer is being financially exploited.

Hold Period

FINRA recognizes that placing or extending a temporary hold is a serious step for a member and the affected customer. Prior to the amendments, Rule 2165 allowed a member firm to place a temporary hold on a specified adult customer's account for up to 25 business days if the criteria in the rule are satisfied. More specifically, the temporary hold authorized by Rule 2165 would expire not later than 15 business days after the date that the member first placed the temporary hold, unless otherwise terminated or extended by a state regulator or agency or a court of competent jurisdiction (state authority). In addition, provided that the member firm's internal review of the facts and circumstances supports its reasonable belief that the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted, the rule permits the member to extend the temporary hold for an additional 10 business days, unless otherwise terminated or extended by a state authority.

To provide member firms with additional time to resolve matters and for state authorities to conduct thorough investigations, FINRA amended Rule 2165 to permit extending a temporary hold on a disbursement of funds or securities or a transaction in securities for an additional 30 business days if the member firm has reported the matter to a state authority. As a result, member firms would be able to maintain a disbursement or transaction hold up to a maximum of 55 business days where the rule's criteria are satisfied (including the external reporting to a state authority), unless otherwise terminated or extended by a state authority.

In addition, Rule 2165(d) requires members to retain records related to compliance with the rule, which shall be readily available to FINRA, upon request. To evidence compliance with Rule 2165 in placing or extending a temporary hold, a member firm is required to retain records of the reason and support for any extension of a temporary hold, including information regarding any communications with or by a state authority. Ref. FINRA Regulatory Notice 22-05; Effective March 17, 2022.

The definition of "specified adult" in Rule 2165 covers those investors who are particularly susceptible to financial exploitation such as:

- a natural person age 65 and older or
- 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.

The rule has a broad definition of "financial exploitation." Specifically, financial exploitation would include:

- the wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities; or

- any act or omission taken 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.

Implementation Strategy

In the event the Firm reasonably believes that financial exploitation has occurred, is occurring, has been attempted or will be attempted, it will take the following steps:

- The Firm will make reasonable efforts to attempt to resolve a matter with a customer before placing a temporary hold
- The Firm will consider placing a temporary hold on a suspicious disbursement(s) but not on other, non-suspicious disbursements.)Rule 2165 does not apply to transactions in securities)
- The Firm will immediately initiate an internal review of the facts and circumstances that caused the member to reasonably believe that financial exploitation of the specified adult has occurred
- The Firm will provide notification of the hold and the reason for the hold to the trusted contact person and all parties authorized to transact business on the account, including, but not limited to, the customer, no later than two (2) business days after the date that the member first placed the hold
- The Firm retain records evidencing the notification
- If the detection occurs in another way, the Firm may choose to notify and discuss the suspected financial exploitation with the customer's registered representative, unless the Firm suspects that the registered representative is involved in the financial exploitation
- The temporary hold authorized by Rule 2165 would expire not later than 15 business days after the date that the Firm first placed the temporary hold on the disbursement of funds or securities, unless otherwise terminated or extended by an order of a state regulator or agency or court of competent jurisdiction
- Provided that the Firm's internal review of the facts and circumstances supports its reasonable belief that the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted, the rule permits the member to extend the temporary hold for an additional 10 business days, unless otherwise terminated or extended by an order of a state regulator or agency or court of competent jurisdiction
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- The Firm will maintain necessary records required by the rule including but not limited to: (1) requests 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 the rule; and (5) the internal review of the facts and circumstances supporting the member's reasonable belief that the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted. (Regulatory Notice17-11; Effective Date: February 5, 2018)

A Registered Person Being Named a Beneficiary, Executor, or Trustee or Holding a Power of Attorney or Similar Position

FINRA adopted a new rule to limit any associated person of a member firm who is registered with FINRA (each a “registered person”) from being named a beneficiary, executor or trustee, or to have a power of attorney or similar position of trust for or on behalf of a customer. New FINRA Rule 3241 (Registered Person Being Named a Customer’s Beneficiary or Holding a Position of Trust for a Customer) protects investors by requiring all member firms to affirmatively address registered persons being named beneficiaries or holding positions of trusts for customers. The rule requires the member firm with which the registered person is associated, upon receiving required written notice from the registered person, to review and approve or disapprove the registered person assuming such status or acting in such capacity. The rule does not apply where the customer is a member of the registered person’s “immediate family.” Rule 3241 becomes effective February 15, 2021.

New Rule 3241

To further address potential conflicts of interest that can result in registered persons exploiting or taking advantage of being named beneficiaries or holding positions of trust for personal monetary gain, FINRA has adopted new Rule 3241 to create a uniform, national standard to govern registered persons holding positions of trust. This new national standard better protects investors and provides consistency across member firms’ policies and procedures. Rule 3241 provides that a registered person must decline:

1. being named a beneficiary of a customer’s estate or receiving a bequest from a customer’s estate upon learning of such status unless the registered person provides written notice upon learning of such status and receives written approval from the member firm prior to being named a beneficiary of a customer’s estate or receiving a bequest from a customer’s estate; and

2. being named as an executor or trustee or holding a power of attorney or similar position for or on behalf of a customer unless:

    a. upon learning of such status, the registered person provides written notice and receives written approval from the member firm prior to acting in such capacity or receiving any fees, assets or other benefit in relation to acting in such capacity; and

    b. the registered person does not derive financial gain from acting in such capacity other than from fees or other charges that are reasonable and customary for acting in such capacity.

Also see Section 8.02 Review of Customer Accounts for further information.

(Ref. FINRA Regulatory Notice 20-38; October 29, 2020; Compliance Date February 15, 2021)

New Account Information

New account forms may include the following basic information prior to opening the account:

- Full name(s) or title of the new customer;

- Date of birth, for an individual;

- Permanent mailing address;

    a.) For an individual, residential or business street address. If no street address exists or is available, an APO or FPO box number or the residential or

business street address of a next of kin or another contact individual.

b.) For a non-individual (corporation, trust, etc.) a principal place of business, local office, or other physical location.

- Social Security or Tax Identification Number;
- Proof of Identification;

a.) an unexpired government-issued photo identification such as a driver's license or passport;

b.) Identification number for non-U.S. person which may include a taxpayer ID number; passport number and country of issuance; alien identification card number; or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photo or similar safeguard.

- Customer's personal or business information:

a.) occupation;

b.) employer;

c.) investment objective or objectives;

d.) citizenship of customer or location, if a corporation;

e.) the customer's approximate annual income and approximate net worth;

f.) marital status;

g.) telephone number;

h.) relationship of Representative to the new customer;

i.) length of time customer has been known to person opening account;

j.) tax status

k.) any additional information that may be required as to the credit reference and an indication of whether credit references have been checked;

l.) whether the new customer Is affiliated with or employed by a stock exchange or member firm of an exchange or FINRA, and, if so, the name of such employer;

NOTE: See Firm's Account Information form and clearing firm Brokerage Account Application for specific information.

Open-end Investment Company Accounts

For each account, other than an institutional account, and accounts in which investments are limited to transactions in open-end investment company shares that are not recommended by the member or its associated persons, each member shall also make reasonable efforts to obtain,

prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account:

- customer's tax identification or Social Security number;
- occupation of customer and name and address of employer; and
- whether customer is an associated person of another member

Discretionary Accounts

For discretionary accounts, in addition to compliance with rules pertaining to accounts opened after Jan. 1, 1999 and open-end investment company accounts, and *Rule 2510(b)*, the Firm shall:

- obtain the signature of each person authorized to exercise discretion in the account;
- record the date such discretion is granted; and
- record the age or approximate age of the customer in connection with exempted securities other than municipals.

With respect to a discretionary account maintained by a member firm, FINRA Rule 4512 requires firms to obtain the manual dated signature of each named, natural person authorized to exercise discretion in the account. For retention purposes, firms may choose to maintain and preserve the signature record on electronic storage media consistent with SEA Rule 17a-4(f). FINRA Rule 4512 no longer requires firms to record the date discretion was granted, or to record the age or approximate age of the customer in connection with exempted securities. FINRA Rule 4512 also clarifies that: (1) the requirements of the rule do not apply to investment discretion granted by a customer as to the price at which or the time to execute an order given by the customer for the purchase or sale of a definite dollar amount or quantity of a specified security; and (2) nothing in the rule shall be construed as allowing member firms to maintain discretionary accounts or exercise discretion in such accounts except to the extent permitted under the federal securities laws. (Ref. Notice 11-19)

Note: The Firm currently does not allow registered representatives to have discretionary authority on customer accounts.

UTMA and UGMA Accounts

In order to know the essential facts about the UTMA/UGMA Account customer as required by Rule 2090, and to fulfill requirements under Rule 3110, member firms with UTMA/UGMA Account customers should have a supervisory system and procedures in place that are reasonably designed to:

- address the termination of the custodianship upon the beneficiary reaching the relevant age; and
- verify whether the custodian has authority to manage assets in the UTMA/UGMA Account after the beneficiary reaches the relevant age.

FINRA expects member firms to take into account the relevant age when establishing an UTMA/UGMA Account and take steps to track or monitor when the beneficiary reaches the relevant age.

Unless the custodianship has been extended or the custodian has been granted continuing authority over the assets in the UTMA/UGMA Account (*e.g.,* through a power of attorney), generally the custodian does not have authority over the assets in the UTMA/UGMA Account after the beneficiary reaches the relevant age. Accordingly, FINRA expects member firms to take steps to verify whether the custodian has authority to manage assets in the UTMA/UGMA Account after the beneficiary reaches the relevant age, such as communicating with the custodian and any assigned registered representative in advance of the beneficiary reaching the relevant age. (Ref. Regulatory Notice 20-07; February 27, 2020)

Potential Conflicts of Interest

Notwithstanding the provisions of *Rule 2510*, or any other provisions of law, a transaction in securities issued by the Firm, or any of its affiliates (if applicable), or by a company with which the Firm has a conflict of interest shall not be executed in a discretionary account without the prior specific written approval of the customer.

Excessive Transactions

The Firm shall not effect any purchase or sale transactions which are considered excessive in size or frequency for any customer's account in which the Firm or its employees are vested with any discretionary power.

Prior Written Authorization

The Firm will not exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the Firm, as evidenced in writing by the Firm's appropriately designated principal in accordance with FINRA Rule 3110.

Transaction Approval

The Firm's designated principal shall promptly approve in writing each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources and character of the account.

Note: Rule 2510 shall not apply to discretion as to the price or time when an order was given by a customer for the purchase or sale of a definite amount of a specified security, or bulk exchanges at net asset value of money market mutual funds ("funds") utilizing negative response letters.

One-Day Limit on Time/Price Discretionary Authority

Rule 2510(d)(1) allows broker/dealers to exercise time and price discretion on orders for the purchase or sale of a definite amount of a specified security without prior written authorization from the customer or prior written approval by the firm. However, the duration of this discretionary authority is limited to the day it is granted, absent written authorization to the contrary. In addition, any exercise of time and price discretion must be reflected on the customer order ticket. Customers who wish to grant more extensive

discretionary authority to their registered representatives may do so pursuant to a fully executed trading authorization.

Note: Rule 2510's one-day limitation does not apply to time and price discretion exercised for orders effected with or for an institutional account, as that term is defined in Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. ►►

Implementation Strategy

The designated supervisor will monitor transactions where the Firm is permitted to exercise time and price discretion on orders for the purchase or sale of a definite amount of a specified security without prior written authorization from the customer or prior written approval by the Firm. When reviewing such transactions, the designated supervisor will check to confirm that each order where time and price discretion is applied is limited to the day in which it was granted, and that the time and price discretion is properly reflected on the customer order ticket. Each order ticket and/or corresponding trade blotter will be properly initialed and dated as evidence and review and approval.

When a third party who is not the principal or named person on the account gives instructions regarding orders, disposition of funds, or other actions involving an account, the Firm must have a signed trading authorization for such third party. The authorization must be signed by the principal of the account and the third party, giving the third party authority to act on behalf of the principal. An example of a third-party account is an account for a wife whose husband will give instructions regarding his wife's account. The signed trading authorization must be received before accepting instructions from the third party.

The Third Party Trading Authorization form requires disclosure if the third party is an employee of a broker/dealer or financial institution. If this is the case, the third party may not exercise discretion over an account of the Firm unless the Firm has obtained the prior approval of the third party's employer.

Margin Accounts

The Firm may open a margin account, as specified in Reg. T, for or on behalf of a non-institutional customer. The Firm shall, with a frequency of not less than once a calendar year, deliver in written or electronic form, and in a separate document, a margin disclosure statement.

Margin Disclosure

FINRA Rule 2264 (formerly NASD Rule 2341) requiring members to deliver to non-institutional customers a specified disclosure statement that discusses the operation of margin accounts and the risks associated with trading on margin. Each broker/dealer is required to deliver the margin disclosure statement to the customer prior to or at the opening of a margin account. *Rule 2264* also requires that the margin disclosure statement or an abbreviated version of the statement be provided to margin customers on an annual basis.

The annual disclosure statement may be delivered within or as part of other account documentation, and is not required to be provided in a separate document. In lieu of providing the disclosures, the Firm may provide to the customer an alternative disclosure statement, provided that the alternative disclosures shall be substantially similar to the disclosures specified above.

NTM 02-35, requires the posting of certain investor disclosure statements on FINRA member firm Web sites. Specifically, the FINRA has amended *FINRA Rule 2264*

*(formerly NASD Rule 2341) (*Margin Disclosure Statement) to require broker/dealer firms that permit customers to open accounts online or to engage in transactions in securities online to post the margin disclosure statement on their Web sites. The disclosure statements must be displayed on the Web site in a "clear and conspicuous manner," or in a clearly identified location that is readily accessible to investors.

Note: Please see the Margin Disclosure Statement as provided by the Firm's designated clearing firm (NFS) for further details.

Initial Margin Requirements

For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in an account, which shall be at least the greater of:

- The amount as specified in Regulation T (Reg. T); or
- The amount specified in *Rule 2520(c)(3);* or
- Any greater amount as the FINRA may require for specific securities; or
- Equity of at least $2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account). The minimum equity requirement for a "pattern day trader" is $25,000.

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided it is in compliance with Regulation T and after such withdrawal the equity in the account is at least the greater of $2,000 ($25,000 in the case of a "pattern day trader") or an amount sufficient to meet the maintenance margin requirements of this Rule.

The minimum regulatory requirements for margin which must be maintained in all customer accounts, except for cash accounts subject to other provisions of *Rule 2520*, shall be as follows:

- 25% of the current market value of all securities "long" in the account; and
- $2.50 per share or 100% of the current market value, whichever amount is greater, of each stock "short" in the account selling at less than $5.00 per share; and
- $5.00 per share or 30% of the current market value, whichever amount is greater, of each stock "short" in the account selling at $5.00 per share or above; and
- 5% of the principal amount or 30% of the current market value, whichever amount is greater, of each bond "short" in the account.

Daily Record of Required Margin

FINRA adopted Incorporated NYSE Rule 432(a) (Daily Record of Required Margin) as FINRA Rule 4220 in substantially the same form. The rule sets forth the requirements for daily recordkeeping of initial and maintenance margin calls that are issued pursuant to Regulation T and the margin rules. (Ref. Notice 10-45; effective December 2, 2010)

Required Submissions of Requests for Extension of Time Under Reg T and SEA Rule 15c3-3)

FINRA adopted NASD Rule 3160 (Extensions of Time Under Regulation T and SEC Rule 15c3-3) as FINRA Rule 4230. FINRA added a provision to FINRA Rule 4230 to clarify that for the months when no broker-dealer for which a clearing firm clears exceeds the extension-of-time ratio criteria specified by FINRA (currently set at 2 percent), the clearing firm must submit a report indicating such. (Ref. Notice 10-45; effective December 2, 2010)

Special Requirements for Pattern Day Traders

The term "pattern day trader" means any customer who executes four or more day trades within five business days. However, if the number of day trades is 6% or less of total trades for the five business day period, the customer will not be considered a pattern day trader and the special requirements under Rule 2520(f)(8)(B)(iv) will not apply. In the event that the organization at which a customer seeks to open an account or to resume day trading knows or has a reasonable basis to believe that the customer will engage in pattern day trading, then the special requirements under paragraph (f)(8)(B)(iv) of this Rule will apply.

The term "day-trading buying power" means the equity in a customer's account at the close of business of the previous day, less any maintenance margin requirement as prescribed in paragraph (c) of this Rule, multiplied by four for equity securities. ►►

Implementation Strategy

The designated supervisor will ensure that whenever day trading occurs in one of the Firm’s customer margin accounts, the special maintenance margin required for the day trades in equity securities shall be 25% of the cost of all the day trades made during the day. For non-equity securities, the special maintenance margin shall be as required pursuant to the other provisions of this Rule. Alternatively, when two or more day trades occur on the same day in the same customer's account, the margin required may be computed utilizing the highest (dollar amount) open position during that day. To utilize the highest open position computation method, a record showing the "time and tick" of each trade must be maintained to document the sequence in which each day trade was completed. Minimum Equity Requirement for Pattern Day Traders--The minimum equity required for the accounts of customers deemed to be pattern day traders shall be $25,000. This minimum equity must be deposited in the account before such customer may continue day trading and must be maintained in the customer's account at all times.

Pattern day traders cannot trade in excess of their day-trading buying power. In the event a pattern day trader exceeds its day-trading buying power, which creates a special maintenance margin deficiency, the Firm will take the following actions:

- The account will be margined based on the cost of all the day trades made during the day;
- The customer's day-trading buying power will be limited to the equity in the customer's account at the close of business of the previous day, less the maintenance margin required in paragraph (c) of this Rule, multiplied by two for equity securities, and
- "time and tick" (i.e., calculating margin using each trade in the sequence that it is executed, using the highest open position during the day) may not be used.

Any pattern day traders who fail to meet their special maintenance margin calls as required within five business days from the date the margin deficiency occurs will be permitted to execute transactions only on a cash available basis for 90

days or until the special maintenance margin call is met. Additionally, pattern day traders are restricted from using the guaranteed account provision. Funds deposited into a pattern day trader's account to meet the minimum equity or maintenance margin requirements cannot be withdrawn for a minimum of two business days following the close of business on the day of deposit. When the equity in a customer's account is not sufficient, additional cash or securities must be received into the account to meet any deficiency within five business days of the trade date.

Changes in Account Name or Designation

Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a broker/dealer or a person(s) designated under the provisions of NASD rules. Such person must, prior to giving his/her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be recorded and preserved for a period of not less than three years, the first two years in an easily accessible place in accordance with SEC Rule 17a-4. (NTM 04-71; Effective Jan. 31, 2005)

FINRA Rule 4515, which is modeled after NASD Rule 3110(j) and NYSE Rule 410, requires that, before a customer order is executed, the account name or designation must be placed upon the order form or other similar record for the transaction and it addresses the approval and documentation procedures for changes in such account name or designation. FINRA Rule 4515 clarifies that with respect to any change in account name or designation that takes place prior to execution of the trade, the essential facts the principal relied on in approving such change must be documented in writing *prior to execution*. Firms may use electronic means to satisfy the approval and documentation requirements of FINRA Rule 4515, consistent with the guidance above regarding the use of electronic means to denote acceptance of accounts under FINRA Rule 4512.

Additionally, FINRA Rule 4515.01, which is generally based on NYSE Rule Interpretation 410/02, provides that when accepting orders from investment advisers, the member firm may allow such investment advisers to make allocations on their orders for customers on whose behalf the investment advisers submit the orders, as long as the firm receives specific account designations or customer names from such investment advisers by noon of the *next* business day *following* the trading session. FINRA Rule 4515.01 is not limited to block orders, but it only applies where there is more than one customer for any particular order. Moreover, the provision extends to investment advisers that are registered under the Investment Advisers Act or that, but for Investment Advisers Act Section 203(b) or 203A, would be required to register under the Investment Advisers Act. The provision does not extend to accounts handled by individual registered representatives of firms who otherwise exercise discretionary authority over accounts pursuant to NASD Rule 2510. (Ref. Notice 11-19) ►►

Implementation Strategy

The designated supervisor will review each request for change in such account name(s) (including related accounts) or designation(s) (including error accounts), and render a decision based on relevant facts and circumstances surrounding the request. In the event that the designated supervisor approves a change in account name or designation, such approval will be in writing on the order or other similar record as documentary evidence.

Signing of Customer Name to Documents

Any document which requires the signature of the customer, including, but not limited to, customer agreements, trading authorizations, stock powers, third party check requests, letters of authorization to transfer funds or securities or to change addresses of an account, must be signed by the customer personally.

No Representative, sales assistant, secretary or operations employee or other Associated Person may sign the customer's name to any document even if the customer gives oral authority to do so. The actual signature of the customer on the relevant document is our only effective way to establish his knowledge and responsibility for the contents thereof.

8.02 Review of Customer Accounts

Several factors involve the general review of customer accounts and customer account activity. Two aspects involving general account review are updating customer accounts when material changes occur, and reviewing customer account information for unacceptable criteria. The following information details the Firm's procedures on updating customer accounts and the periodic review of unacceptable accounts.

Account Updates

All registered representatives of the Firm are responsible for updating any customer account information when a material change in such information has occurred. The process of updating customer accounts should also occur for those accounts opened *before* January 1, 1991, to include all required information as set forth in *NASD Rule 3110(c).* A material change can be any change in a customer's financial position, investment objectives, or any other information of relevance to the customer, account, and/or investment. The Firm will document and maintain all material changes in customer information by requesting the completion of a new customer account form for proper recording and accuracy of information. The updating of customer account information can be accomplished by sending a letter requesting an update to any changes in existing account information involving the customer. ►►

Implementation Strategy

All updates involving customer accounts will be reviewed by the designated principal as necessary. The Firm will document and maintain all material changes in customer information by requesting the completion of a new customer account form for proper recording and accuracy of information. The designated supervisor shall initial and date each document as updates occur.

Customer Account Statements

FINRA Rule 2340 requires general securities firms to include in monthly account statements a statement advising each customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm. Where the customer's account receives services from both an introducing and clearing firm, the advisory should state that the reports should be made to both firms. This statement should also advise customers that any oral communications should be re-confirmed in writing to further protect the customer's rights, including rights under SIPA. Where account statements are delivered electronically, this statement may also be delivered electronically, provided it is on the same screen as the account statement, and the customer is not required to use a "click-through process" to bring it up on the screen. This statement will emphasize to customers the importance of promptly reporting, in writing, any suspected inaccuracy or discrepancy in their accounts and will remind customers of the importance of creating the written documentation that could prove helpful in the event of a SIPC liquidation to further evidence an assertion that the broker-dealer's records are incorrect

The statement required by Rule 2340, as amended, does not impose any limitation whatsoever on a customer's right to raise concerns regarding inaccuracies or discrepancies in his or her account at any time, either in writing or orally, and to bring these concerns to his or her brokerage and/or clearing firm or, in the course of a liquidation proceeding, to SIPC. Further, although firms that issue account statements are required by this amendment to advise customers to "promptly" report their concerns to their firm(s) and reconfirm any conversations with their firms in writing, Rule 2340 does not impose any time limit during which customers may report inaccuracies in their accounts.

As a reminder, SEC interpretation requires firms to include in each account statement the name and telephone number of a responsible individual at the clearing firm whom a customer can contact with inquiries regarding his or her account. In addition, the SEC, in approving the rule change, noted that it would be more beneficial for firms to include on account statements both introducing and clearing firm contact information sufficient to allow investors to timely report unauthorized transactions or other account discrepancies to both firms (if the firms are different). (Ref. NTM 06-72; Effective May 31, 2007)

Implementation Strategy

In the event that the Firm maintains a clearing arrangement, the designated supervisor will correspond with the designated clearing firm to ensure that each customer account statement sent to a customer includes the name and telephone number of a responsible individual at the clearing firm whom a customer can contact with inquiries regarding his or her account.

Disclosure of SIPC Information to Customers

On May 10, 2007, the Securities and Exchange Commission (SEC) approved NASD Rule 2342 setting forth requirements for providing Securities Investor Protection Corporation (SIPC) information to customers. New Rule 2342, which requires all members, except those members that (1) pursuant to Section 3(a)(2)(A)(i) through (iii) of SIPA are excluded from membership in SIPC and that are not SIPC members, or (2) those members whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such members also must provide SIPC's Web site address *(www.sipc.org)* and telephone number (202) 371-8300). In addition, such members must provide customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms (Ref. NTM 07-29; Effective Nov. 6, 2007; Notice 09-33; issued June 2009) ►►

Implementation Strategy

The Firm's designated clearing firm will send the initial and annual customer notifications on behalf of the Firm.

Unacceptable Accounts

In accordance with the Firm's policy, the term "unacceptable account" can be defined as any new account that is in the name of a minor (under 18 years of age) or any name other than the legal owner of the account. In the event that a registered representative receives a request to open such an account, the registered representative should understand that any such activity is prohibited by the Firm and must be immediately reported to an appropriately designated principal for further review.

New FINRA Rule Regarding Limitation on Registered Persons Being Named a Customer's Beneficiary or Holding a Position of Trust for or on behalf of a Customer

FINRA adopted a new rule to limit any associated person of a member firm who is registered with FINRA (each a "registered person") from being named a beneficiary, executor or trustee, or to have a power of attorney or similar position of trust for or on behalf of a customer. New FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer) protects investors by requiring all member firms to affirmatively address registered persons being named beneficiaries or holding positions of trusts for customers. The rule requires the member firm with which the registered person is associated, upon receiving required written notice from the registered person, to review and approve or disapprove the registered person assuming such status or acting in such capacity. The rule does not apply where the customer is a member of the registered person's "immediate family." Rule 3241 becomes effective February 15, 2021.

New Rule 3241

To further address potential conflicts of interest that can result in registered persons exploiting or taking advantage of being named beneficiaries or holding positions of trust for personal monetary gain, FINRA has adopted new Rule 3241 to create a uniform, national standard to govern registered persons holding positions of trust. This new national standard better protects investors and provides consistency across member firms' policies and procedures. Rule 3241 provides that a registered person must decline:

1. being named a beneficiary of a customer's estate or receiving a bequest from a customer's estate upon learning of such status unless the registered person provides written notice upon learning of such status and receives written approval from the member firm prior to being named a beneficiary of a customer's estate or receiving a bequest from a customer's estate; and

2. being named as an executor or trustee or holding a power of attorney or similar position for or on behalf of a customer unless:

    a. upon learning of such status, the registered person provides written notice and receives written approval from the member firm prior to acting in such capacity or receiving any fees, assets or other benefit in relation to acting in such capacity; and

    b. the registered person does not derive financial gain from acting in such capacity other than from fees or other charges that are reasonable and customary for acting in such capacity.

The rule does not apply where the customer is a member of the registered person's immediate family. The rule also does not affect the applicability of other rules (*e.g.*, FINRA Rule 2150 regarding improper use of customer securities or funds). FINRA will assess registered persons' and firms' conduct pursuant to Rule 3241 to determine the effectiveness of the rule in addressing potential conflicts of interest and evaluate whether additional rulemaking or other action is appropriate.

Knowledge

A registered person being named as a beneficiary or to a position of trust without his or her knowledge would not violate the rule; however, the registered person must act consistent with the rule upon learning that he or she was named as a beneficiary or to a position of trust. The rule applies when the registered person learns of his or her status as a customer's beneficiary or a position of trust for or on behalf of a customer.

A registered person may decline being named as a beneficiary or to a position of trust and decline receipt of any assets or other benefit from the customer's estate so as not to violate the rule. For example, if a customer named her registered person as her beneficiary without the beneficiary's knowledge, the rule would not apply and the registered person would not be in violation of the rule. However, when the registered person becomes aware of being so named (*e.g.*, when the registered person is notified that he or she is to receive a bequest from the customer's estate), the requirements of the rule would apply and the registered person must act consistent with the rule (*i.e.*, by declining the bequest unless he or she provides written notice to and receives written approval from the member firm)

Firm Notice and Approval

To provide flexibility to member firms, the rule does not prescribe any specific form of written notice and instead permits a member firm to specify the required form of written notice for its registered persons. Upon receipt of the written notice, the rule requires the member firm to:

1. perform a reasonable assessment of the risks created by the registered person's assuming such status or acting in such capacity, including, but not limited to, an evaluation of whether it will interfere with or otherwise compromise the registered person's responsibilities to the customer; and

2. make a reasonable determination of whether to approve the registered person's assuming such status or acting in such capacity, to approve it subject to specific conditions or limitations, or to disapprove it.

If the member firm imposes conditions or limitations on its approval, the member firm is required to reasonably supervise the registered person's compliance with the conditions or limitations. Moreover, where a registered person is knowingly named a beneficiary, executor or trustee, or holds a power of attorney or a similar position for or on behalf of a customer account *at the member firm* with which the registered person is associated and the member firm has approved the registered person assuming such status or position, the member firm must supervise the account in accordance with FINRA Rule 3110 (Supervision), including the longstanding obligation to follow up on "red flags" indicating problematic activity. As to this latter point, with the notification and assessment of a registered person being named as a beneficiary or to a position of trust in relation to a customer account *at the member firm*, there is inherently more information from which red flags may surface. If a registered person is approved to hold (and receive compensation for) a position of trust for a customer *away from the member firm*, the requirements of both Rule 3241 and Rule 3270 regarding outside business activities would apply to the activities away from the firm.

The rule requires a member firm to establish and maintain written procedures to comply with the rule's requirements. The rule also requires member firms to preserve the written notice and approval for at least three years after the date that the beneficiary status or position of trust has terminated or the bequest received or for at least three years, whichever is earlier, after the registered person's association with the firm has terminated.

Reasonable Assessment and Determination

FINRA expects that a member firm's reasonable assessment of the risks created by the registered person's assuming such status or acting in such capacity would take into consideration several factors, such as:

1. any potential conflicts of interest in the registered person being named a beneficiary or holding the position of trust;
2. the length and type of relationship between the customer and registered person;
3. the customer's age;

4. the size of any bequest relative to the size of a customer's estate;
5. whether the registered representative has received other bequests or been named a beneficiary on other customer accounts;
6. whether, based on the facts and circumstances observed in the member's business relationship with the customer, the customer has a mental or physical impairment that renders the customer unable to protect his or her own interests;
7. any indicia of improper activity or conduct with respect to the customer or the customer's account (*e.g.,* excessive trading); and
8. any indicia of customer vulnerability or undue influence of the registered person over the customer.

This list is not intended to be an exhaustive list of factors that a member firm may consider as part of its assessment. Moreover, while a listed factor may not be applicable to a particular situation, the factors that a member firm considers should allow for a reasonable assessment of the associated risks so that the member firm can make a reasonable determination of whether to approve or disapprove the registered person assuming a status or acting in a capacity.

For example, a registered person's request to hold a position of trust for an elderly customer who had no relationship with the representative prior to the initiation of the broker-customer relationship is likely to present different risks than a registered person's request to hold a position of trust for a longstanding friend. FINRA does not expect a registered person's assertion that a customer has no viable alternative person to be named a beneficiary or to serve in a position of trust to be dispositive in the member firm's assessment.

The rule does not prohibit a registered person being named a beneficiary of or receiving a bequest from a customer's estate. However, given the potential conflicts of interest, under the rule a member firm would need to carefully assess a registered person's request to be named a beneficiary of or receive a bequest from a customer's estate, and reasonably determine that the registered person assuming such status does not present a risk of financial exploitation (*e.g.*, a registered person receiving a bequest from a customer who has been a godparent since childhood or a customer who has been a friend since childhood) that the rule is designed to address.

If possible, as part of the reasonable assessment of the risks, FINRA expects a member firm to discuss the potential beneficiary status or position of trust with the customer as part of its reasonable determination of whether to approve the registered person assuming the status or acting in the capacity.

Scope of Rule

To address attempted circumvention of the restrictions (*e.g.*, by closing or transferring a customer's account), the rule defines "customer" to include any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member firm. Member firms have flexibility to reasonably design their supervisory systems to achieve compliance with the rule (*e.g.*, by using training, certifications or other measures). In addition, as discussed below, the rule applies where a registered person associates with a new member firm even though the registered person had been named as a beneficiary or to a position of trust prior to joining the firm.

A registered person who does not have customer accounts assigned to him or her is not subject to the rule. In addition, a registered person instructing or asking a customer to name another person to be a beneficiary of the customer's estate or to receive a bequest from the customer's estate presents similar conflict of interest concerns as the registered person being so named. Accordingly, the rule does not allow a registered person to instruct or ask a customer to name another person, such as the registered person's spouse or child, to be a beneficiary of the customer's estate or to receive a bequest from the customer's estate.

Beneficiary Status and Positions of Trust Prior to Association With Member Firm

As is true of many professions, registered persons occasionally move between member firms. If a registered person was named as a beneficiary or to a position of trust prior to the registered person's association with the member firm, the rule requires the registered person, within 30 calendar days of becoming so associated, to provide notice to and receive approval from the member consistent with the rule to maintain the beneficiary status or position of trust.

Pre-Existing Beneficiary Status and Positions of Trust

Potential conflicts of interest also exist when the beneficiary status or position of trust was entered into prior to the existence of a broker-customer relationship, such as where the customer was not a customer of the registered person at the time at which the registered person was named beneficiary or to a position of trust. These situations also have the potential that investment and other financial decisions will benefit the registered person as the customer's beneficiary or holder of a position of trust rather than the customer. Therefore, the rule requires the registered person and member firm to act consistent with the rule for any existing beneficiary status or position of trust prior to the initiation of the broker-customer relationship. (Ref. FINRA Regulatory Notice 20-38; October 29, 2020; Compliance Date February 15, 2021)

Implementation Strategy

If the Firm's registered persons are named as a beneficiary, executor or trustee, or holds a power of attorney or a similar position for any of customers of record, the Firm will ensure that (i) the Firm receives written notification from the registered person in advance; (ii) the customer is a member of the registered person's "immediate family;" or (iii) where there is a close and longstanding friendship or relationship, that may be akin to, but not actually, a familial relationship, where the registered person was named as a beneficiary, executor or trustee, or holds a power of attorney or similar position or is entitled to receive a bequest from a customer's estate. The Firm will confirm whether any of the Firm's registered persons are named as a beneficiary, executor or trustee, or holds a power of attorney or a similar position for any of customers of record (or any change in status) through the use of separate request/disclosure forms and/or through Annual and/or periodic Compliance Certifications to be completed by each registered person.

Obligation to Supervise for Digital Signature Forgery and Falsification

FINRA has received an increasing number of reports regarding registered representatives and associated persons (representatives) forging or falsifying customer signatures, and in some cases signatures of colleagues or supervisors, through third-party digital signature platforms. As such, member firms that allow digital signatures must have adequate controls to detect possible instances of signature forgery or falsification.

Signing someone else's name to a document violates FINRA rules when it is a forgery or falsification. Forgery occurs when one person signs or affixes, or causes to be signed or affixed, another person's name or initials on a document without the other person's prior permission. Falsification occurs when a person creates a document or entry in a firm's system that creates a false appearance by including altered or untrue information. Forgery and falsification are violations of FINRA Rule 2010, which requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

Where the forged or falsified document is a book or record the member firm maintains, the associated person also separately violates FINRA Rule 4511. FINRA Rule 4511 requires members to "make and preserve books and records as required under the FINRA rules, the

Exchange Act and the applicable Exchange Act rules." Inherent in the obligation to make and preserve books and records is the requirement that they be accurate.

In addition, FINRA Rule 3110(a) requires each member to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. As noted above, FINRA Rule 2010 prohibits associated persons from forging or falsifying documents, and FINRA Rule 4511 requires members to make and preserve accurate books and records. A firm's duty of supervision also includes the responsibility to identify and respond to "red flags" or suspicious activity that suggest misconduct may be occurring. (Ref. FINRA Regulatory Notice 22-18; August 3, 2022)

Implementation Strategy

In the event the Firm permits the use of third-party digital signature platforms, the designated supervisor will review customer account records including but limited to account opening documents and updates, account activity letters, discretionary trading authorizations, wire instructions and other customer transaction documents to detect possible red flags related to digital signature forgery and/or falsification.

Digital Signature Audit Trail Reviews

- Customer signatures that originated from email addresses associated with their representative or other email addresses that were inconsistent with customer email address the Firm maintains on file;
- Any discrepancy between the location of the user (e.g., the individual affixing the customer's digital signature) and the customer's residence;
- IP addresses for the representative and customer signatures on a document were the same

Email Correspondence Reviews

- Documents that are sent to a non-customer email address(es), including the representative's personal email address of that of their assistant, a representative's firm assigned email address, or an address associated with a representative's approved outside business activity.
- Customer email address that is changed to the representative's email address, or unrelated customers having the same email address;

Administrative Staff Inquiries

- Reports of representatives directing other staff members to manipulate the digital signature process;

Customer Authentication Reviews

- Representative access to and/or use of passwords or other answers used with verification questions as part of the authentication process for when obtaining digital signatures.

Any detection of red flags will be immediately reported to the CCO or Compliance Department for further review and investigation.

Holding of Customer Mail

A firm may hold mail for a customer who will not be receiving mail at his or her usual address, provided that:

1. the firm receives written instructions from the customer that include the time period during which the firm is requested to hold the customer's mail. If the requested time period included

in the instructions is longer than three consecutive months (including any aggregation of time periods from prior requests), the customer's instructions must include an acceptable reason for the request (e.g., safety or security concerns). Convenience is not an acceptable reason for holding mail longer than three months;

2. the firm informs the customer in writing of any alternate methods, such as email or access through the firm's website, that the customer may use to receive or monitor account activity and information; and obtains the customer's confirmation of the receipt of such information; and
3. the firm verifies at reasonable intervals that the customer's instructions still apply. ►►

Implementation Strategy

Not applicable. The Firm does NOT hold mail for a customer who will not be receiving mail at his or her usual address.

8.03 Transfer Of Customer Accounts

Accounts Transfers in the Context of Employment Dispute

In accordance with *NTM 02-07*, on February 11, 2002, the FINRA adopted *Interpretive Material 2110-7*, which provides that it is inconsistent with just and equitable principles of trade for a firm or person associated with a firm to 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, provided that 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.

The Firm recognizes that any unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade. FINRA Regulation believes that obtaining court orders to prevent customers from following a registered representative to a different firm is similar to the unfair practice of delaying transfers.

> *Note: The Interpretive Material does not affect the operation of Rule 11870 (governing customer account transfers), nor does it affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Firms are not prevented from pursuing other remedies they may have arising from employment disputes with former registered representatives. The Interpretive Material is limited to restricting a member from interfering with a customer's right to transfer his or her account, once the customer has asked the firm to move the account.*

Fraudulent Account Transfers through ACATS

National Securities Clearing Corporation (NSCC) Rule 50 established ACATS and sets forth the responsibilities of NSCC and the members that use ACATS. Among other things, the rule establishes the account transfer process and the attendant duties and obligations, and performance timeframes.

Complementing ACATS is FINRA Rule 11870 (Customer Account Transfer Contracts), which governs the process by which customers can request a transfer of their securities account assets from one FINRA member firm to another and includes timeframes that align with those in NSCC Rule 50. In particular, FINRA Rule 11870 provides that within one business day of receiving the transfer instruction, the member firm carrying the customer's account (carrying member) must either validate (or accept) or take exception to (or reject) the Transfer Instruction Form (TIF) for reasons specified in the rule. In addition, the rule

states that the carrying member must complete the transfer within three business days following the validation of the TIF.

Customers who wish to transfer securities account assets from the carrying member to another firm must open an account at the new firm that is expecting to receive the customer's account assets (receiving member). The account transfer process begins when the receiving member receives the customer's authorized TIF; the receiving member then initiates the account transfer through ACATS. Typically, a TIF includes the customer's name, date, the account type and account numbers at the receiving member and carrying member, and other personal identifiable information about the customer (*e.g.,* tax identification number or Social Security number).

ACATS fraud is related to the growing threat of new accounts being opened online or through mobile applications using stolen or synthetic identities. In connection with the COVID-19 pandemic, FINRA previously advised member firms that bad actors may be "targeting firms offering online account opening services and perhaps especially, firms that recently started offering such services" by using stolen or synthetic identities to establish new accounts at member firms as a way to "divert congressional stimulus funds, unemployment payments or to engage in automated clearing house (ACH) fraud." Similarly, with ACATS fraud, bad actors may be taking advantage of the efficiencies of the account transfer process offered through ACATS to fraudulently transfer assets out of an existing account of a legitimate customer whose identity is stolen to a new account the bad actor established at another broker-dealer using the stolen identity. (Ref. FINRA Regulatory Notice 22-21; October 6, 2022)

Implementation Strategy

In the event that the Firm receives a request to transfer securities account assets from the Firm to another broker-dealer via ACATS, the designated supervisor will ensure that the Firm is maintaining all necessary customer account information is in compliance with FINRA Rules 2090 (Know Your Customer) and 4512 (Customer Account Information) in addition to processing of customer account transfers through ACATS in compliance with FINRA Rule 11870 (Customer Account Transfer Contracts). To the extent applicable, the customer's identity will be verified. In the event that suspicious activity is detected, the designated supervisor will file Suspicious Activity Report (SAR) with the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). (also see the Firm's AML Procedures for CIP requirements and SAR filings)

In addition to filing any required SARs through the BSA E-Filing system, the Firm will also report potential fraud to one or more of the following channels:

- FINRA using the Regulatory Tip Form found on FINRA.org;
- SEC's tips, complaints, and referral system (TCRs) or by phone at (202) 551-4790;
- the Federal Bureau of Investigation's tip line at 800-CALLFBI (225-5324) or a local FBI office;
- the Internet Crime Compliant Center (IC3) (particularly if a firm is trying to recall a wire transfer to a destination outside the United States); and
- local state securities regulators

ACATS "Receiver Delete" Functionality for Nontransferable Assets (Alternative Investments)

FINRA Rule 11870 (Customer Account Transfer Contracts), governs the process by which customers can request a transfer of their securities account assets from one broker-dealer firm to another broker-dealer firm and includes timeframes that align with those in ACATS. Most customer account assets move between broker-dealers through ACATS. In general, transfers involving assets such as cash, stocks and bonds of domestic companies, and listed options, are readily transferable through ACATS. Both firms involved in a customer's transfer request are required to "expedite and coordinate activities with respect to" such transfer.

Specifically, Rule 11870 applies when a customer whose account is carried by a member (the carrying member) wishes to transfer securities account assets, in whole or in part (*i.e.*, in specifically designated part), to the receiving member. If both the receiving member and the carrying member are NSCC members and eligible to use ACATS, and the customer gives the receiving member authorized instructions, the rule requires them to use ACATS to accomplish the account transfer (unless the customer has instructed the transfer to occur outside of ACATS). To meet the fundamental responsibility to expedite and coordinate activities under Rule 11870, it is important for firms to adhere to ACATS protocols and performance timeframes to facilitate account transfers in accordance with the rule.

Rule 11870 recognizes that certain assets ("nontransferable assets") (as defined in Rule 11870(c)(1)(D)(ii)) in a customer's account may be incapable of being transferred from the carrying member to the receiving member. A customer authorizing a transfer of securities account assets must be informed (or must affirm or authorize) through inclusion in a transfer instruction that, among other terms, the customer will be contacted in writing by the carrying member or the receiving member with respect to the disposition of nontransferable assets (other than proprietary money market fund assets, if any), indicated on an instruction to transfer specifically designated assets.

Nontransferable assets in a customer's account may include "an asset that is a product of a third party (*e.g.*, mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account." If the list of positions to be transferred provided by the carrying member includes such a nontransferable asset, the receiving member must designate that asset as nontransferable. Prior to making such designation, the receiving member must provide the customer with a list of the specific assets that are a product of a third party with which the receiving member does not maintain the relationship or arrangement necessary to receive or carry the asset for the customer's account and request, , further instructions from the customer with respect to the disposition of such assets. The request should, where applicable, provide the customer with the following alternative methods for the disposition of the specified nontransferable assets:

- Liquidation, with a specific indication of any redemption or other liquidation-related fees that may result from such liquidation and that those fees may be deducted from the money balance due the customer. The indication must also refer the customer to the fund prospectus or to their registered representative at the carrying member for specific details regarding any such fees.
- Retention by the carrying member for the customer's benefit.
- Shipment, physically and directly, in the customer's name to the customer.
- Transfer to the third party that is the original source of the product, for credit to an account opened by the customer with that third party.

ACATS provides a "receiver delete" function that a receiving member may use to designate an asset as a nontransferable asset and remove it from the list of assets to be transferred. This function had been limited to assets identified by the carrying member as mutual funds (MFNM or MFMM) or annuities (ANNU) and are assets that the receiving member cannot accept. The enhancement to ACATS, which is underway and is expected to become operational in the fourth quarter of 2022, will expand the scope of this function so that receiving members can also apply the receiver delete function to assets identified by the carrying member as alternative investments (ALT). (Ref. FINRA Regulatory Notice 22-19; August 8, 2022)

Implementation Strategy

In the event that the Firm is a receiving member of a request to transfer securities account assets from an outside broker-dealer to the Firm via ACATS, the following steps will be taken:

1. The Firm (as the receiving member) will check to confirm whether the Firm maintains a relationship or arrangement to receive/carry the asset for the customer's account.
2. If the list of positions to be transferred provided by the carrying member includes such a nontransferable asset, the receiving member must designate that asset as nontransferable.
3. The Firm (as the receiving member) will provide the customer with a list of the specific assets that are a product of a third party with which the Firm does not maintain the relationship or arrangement necessary to receive or carry the asset for the customer's account and request, , further instructions from the customer with respect to the disposition of such assets.
4. The request should, where applicable, provide the customer with the following alternative methods for the disposition of the specified nontransferable assets:
   a. Liquidation, with a specific indication of any redemption or other liquidation-related fees that may result from such liquidation and that those fees may be deducted from the money balance due the customer. The indication must also refer the customer to the fund prospectus or to their registered representative at the carrying member for specific details regarding any fees.
   b. Retention by the carrying member for the customer's benefit.
   c. Shipment, physically and directly, in the customer's name to the customer.
   d. Transfer to the third party that is the original source of the product, for credit to an account opened by the customer with that third party.
5. The Firm (as the receiving member) may use the “receiver delete” function to designate an asset as a nontransferable asset and remove it from the list of assets to be transferred. Nontransferable assets will now include alternative investments (ALT) in addition to mutual funds (MFNM or MFMM) or annuities (ANNU) as assets that the receiving member cannot accept.

8.04 Customer Transactions

Know Your Customer

The know-your-customer and suitability obligations are critical to ensuring investor protection and promoting fair dealing with customers and ethical sales practices. In accordance with Regulatory Notice 11-02, and as part of the process of developing the consolidated FINRA rulebook, FINRA proposed and the SEC approved FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability). The new rules retain the core features of these important obligations and at the same time strengthen, streamline and clarify them.

In general, new FINRA Rule 2090 (Know Your Customer) is modeled after former NYSE Rule 405(1) and requires firms to use “reasonable diligence,” in regard to the opening and maintenance of every account, to know the “essential facts” concerning every customer. The rule explains that “essential facts” are “those required to (a) effectively service the customer’s account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules.” The know-your-customer obligation arises at the beginning of the customer-broker relationship and does not depend on whether the broker has made a recommendation. Unlike former NYSE Rule 405, the new rule does not specifically address orders, supervision or account opening—areas that are explicitly covered by other rules.

Note: Rule 2090 generally requires a member firm to know the names of any persons authorized to act on behalf of a customer and any limits on their authority that the customer establishes and communicates to the member firm. FINRA understands, however, that some member firms may decide as a business practice to accept only those customers that do not qualify the scope of

authority of persons acting on the customers' behalf in their dealings with the member firms. (Ref. Notice 11-25; May 2011)

Suitability for Customer Transactions

FINRA Rule 2111 (formerly NASD Rule 2310) requires that a firm or associated person "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile." The rule further explains that a "customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation."

The new rule continues to use a broker's "recommendation" as the triggering event for application of the rule and continues to apply a flexible "facts and circumstances" approach to determining what communications constitute such a recommendation. The new rule also applies to recommended investment strategies, clarifies the types of information that brokers must attempt to obtain and analyze, and discusses the three main suitability obligations. Finally, the new rule modifies the institutional-investor exemption in a number of important ways.

Note: The suitability rule does not require a firm to update all customer-account documentation. The rule requires that a broker seek to obtain and consider relevant customer-specific information when making a recommendation. Although a firm has a general obligation to evidence compliance with applicable FINRA rules, aside from the situation where a firm determines not to seek certain information, Rule 2111 does not include any explicit documentation requirements. The suitability rule allows firms to take a risk-based approach with respect to documenting suitability determinations. For example, the recommendation of a large-cap, value-oriented equity security generally would not require written documentation as to the recommendation. In all cases, the suitability rule applies to recommendations, but the extent to which a firm needs to evidence suitability generally depends on the complexity of the security or strategy in structure and performance and/or the risks involved. (Ref. Notice 11-25; May 2011)

Recommendations

Several guiding principles are relevant to determining whether a particular communication could be viewed as a recommendation for purposes of the suitability rule. For instance, a communication's content, context and presentation are important aspects of the inquiry. The determination of whether a "recommendation" has been made, moreover, is an objective rather than subjective inquiry. An important factor in this regard is whether—given its content, context and manner of presentation—a particular communication from a firm or associated person to a customer reasonably would be viewed as a suggestion that the customer take action or refrain from taking action regarding a security or investment strategy. In addition, the more individually tailored the communication is to a particular customer or customers about a specific security or investment strategy, the more likely the communication will be viewed as a recommendation. Furthermore, a series of actions that may not constitute recommendations when viewed individually may amount to a recommendation when considered in the aggregate.

Strategies

The new rule explicitly applies to recommended investment strategies involving a security or securities. The rule emphasizes that the term "strategy" should be interpreted broadly. The rule is triggered when a firm or associated person recommends a security or strategy

regardless of whether the recommendation results in a transaction. Among other things, the term “strategy” would capture a broker’s *explicit* recommendation to hold a security or securities.

Note: The rule explicitly states that the term “strategy” should be interpreted broadly. The rule would cover a recommended investment strategy regardless of whether the recommendation results in a securities transaction or even references a specific security or securities. For instance, the rule would cover a recommendation to purchase securities using margin or liquefied home equity or to engage in day trading, irrespective of whether the recommendation results in a transaction or references particular securities. The term also would capture an explicit recommendation to hold a security or securities. While a decision to hold might be considered a passive strategy, an explicit recommendation to hold does constitute the type of advice upon which a customer can be expected to rely. An explicit recommendation to hold is tantamount to a “call to action” in the sense of a suggestion that the customer stay the course with the investment. The rule would apply, for example, when an associated person meets with a customer during a quarterly or annual investment review and explicitly advises the customer not to sell any securities in or make any changes to the account or portfolio. The rule, however, would not cover an implicit recommendation to hold. The rule, for instance, would not apply where an associated person remains silent regarding, or refrains from recommending the sale of, securities held in an account. That is true regardless of whether the associated person previously recommended the purchase of the securities, the customer purchased them without a recommendation, or the customer transferred them into the account from another firm where the same or a different associated person had handled the account. (Ref. Notice 11-25; May 2011)

Customer’s Investment Profile

The new rule includes an expanded list of explicit types of information that firms and associated persons must attempt to gather and analyze as part of a suitability analysis. The new rule essentially adds age, investment experience, time horizon, liquidity needs and risk tolerance to the existing list (other holdings, financial situation and needs, tax status and investment objectives).

Note: The essential requirement of this provision is that the member firm or associated person exercise “reasonable diligence” to ascertain the customer’s investment profile. In most instances, asking a customer for the information would constitute reasonable diligence. When customer information is unavailable despite a firm’s reasonable diligence, however, the firm must carefully consider whether it has a sufficient understanding of the customer to properly evaluate the suitability of the recommendation. While the rule lists some of the aspects of a typical investment profile, not every factor may be relevant to all situations. Indeed, a member need not seek to obtain and analyze all of the factors if it “has a reasonable basis to believe, documented with specificity, that one or more of the factors are not relevant components of a customer’s investment profile in light of the facts and circumstances of the particular case.” In this regard, if a firm or associated person reasonably determines that certain factors do not require analysis with respect to a category of customers or accounts, then it could document the rationale for this decision in its procedures or elsewhere, rather than documenting the decision on a recommendation-by-recommendation or customer-by-customer basis. For example, a firm may conclude that age is irrelevant regarding all customers that are entities or liquidity needs are irrelevant regarding all customers for whom only liquid securities will be recommended. The absence of some customer information that is not material under the circumstances generally should not affect a firm’s ability to make a recommendation. To meet its suitability obligations, a firm must obtain and analyze enough customer information to have a reasonable basis to believe the recommendation is suitable. The significance of specific types of customer information generally will depend on the facts

and circumstances of the particular case, including the nature and characteristics of the product or strategy at issue. (Ref. Notice 11-25; May 2011)

Main Suitability Obligations

- Reasonable-basis suitability requires a broker to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the firm's or associated person's familiarity with the security or investment strategy. A firm's or associated person's reasonable diligence must provide the firm or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy.
- Customer-specific suitability requires that a broker have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile. As noted above, the new rule requires a broker to attempt to obtain and analyze a broad array of customer-specific factors.
- Quantitative suitability requires a broker who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile. Factors such as turnover rate, cost-equity ratio and use of in-and-out trading in a customer's account may provide a basis for finding that the activity at issue was excessive.

The new rule makes clear that a broker must have a firm understanding of both the product and the customer. It also makes clear that the lack of such an understanding itself violates the suitability rule. (Ref. Notices 11-02, 11-25 & 12-25; effective July 9, 2012)

Note: a broker must (1) perform reasonable diligence to understand the potential risks and rewards associated with a recommended security or strategy and (2) determine whether the recommendation is suitable for at least some investors based on that understanding. A broker can violate reasonable-basis suitability under either prong of the test. That is, even if a firm's product committee has approved a product for sale, an individual broker's lack of understanding of a recommended product or strategy could violate the obligation, notwithstanding that the recommendation is suitable for some investors. (Ref. Notice 11-25; May 2011)

Amended Suitability Requirement in Response to Reg BI

FINRA Rule 2111 requires, in part, that a broker-dealer or associated person "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the firm or associated person to ascertain the customer's investment profile." The rule identifies the three main suitability obligations: reasonable-basis, customer-specific and quantitative suitability.

Reg BI's Care Obligation addresses the same conduct with respect to retail customers that is addressed by Rule 2111, but employs a best interest, rather than a suitability, standard, in addition to other key enhancements. Absent action by FINRA, a broker-dealer would be required to comply with both Reg BI and Rule 2111 regarding recommendations to retail customers. In such circumstances, compliance with Reg BI would result in compliance with Rule 2111 because a broker-dealer that meets the best interest standard would necessarily meet the suitability standard. To provide clarity on which standard applies and to avoid unnecessary duplication,

FINRA has amended Rule 2111 to state that it will not apply to recommendations subject to Reg BI. (Ref. Regulatory Notice 20-18; June 19, 2020)

Suitability for Penny Stock Transactions

Transactions which involve a non-Nasdaq, non-exchange equity security trading for less than five dollars per share may be subject to the provisions of *SEC Rules 15g-1 through 15g-9*, and those Rules should be reviewed to determine if an executed customer suitability agreement is required.

Suitability for Institutional Transactions

Before making any recommendations to institutional customers, the Firm is required to evaluate the extent of its obligation for determining suitability for institutional customers. During this process, it is the responsibility of the Firm to determine whether the institutional customer is capable of independently evaluating its investment risks, as well as its ability to exercise independent judgment in evaluating the Firm's recommendation.

The following is a summary of some of the factors in the ability to evaluate risk:

- Understanding of the investment product's economic features;
- Complexity and specialization of the investment product;
- The use of financial consultants and/or advisors;
- Independent evaluation of market effects on investment product; and
- General and specific investment experience.

When making an independent judgment in evaluating an investment recommendation, other factors may include the use of written or oral agreement between the Firm and institutional customer, and the use of in-depth market analyses from other broker/dealers.

FINRA Rule 2111(b) provides an exemption to customer-specific suitability for recommendations to institutional customers under certain circumstances. The new exemption harmonizes the definition of institutional customer in the suitability rule with the more common definition of "institutional account" in NASD Rule 3110(c)(4). Beyond the definitional requirements, the exemption's main focus is whether the broker has a reasonable basis to believe the customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies, and whether the institutional customer affirmatively acknowledges that it is exercising independent judgment. (Ref. Notices 11-02, 11-25 & 12-25; effective July 9, 2012) ►►

Implementation Strategy

The designated principal will review each customer's new account form for suitability for each transaction. All relevant customer account information and documentation will be properly evidenced as indication of review.

8.05 Review of Customer Transactions

Daily Review of Transactions

The designated supervisor is responsible for reviewing all orders under their immediate supervision. The Firm requires that each designated principal review and initial each order ticket or trade blotter for proper documentation and maintenance of review process.

Periodic Review of Transactions

The designated supervisor is responsible for reviewing customer account activity on a periodic basis. This can be accomplished by reviewing exception reports or any other internal documentation that records customer account activity. ►►

Implementation Strategy

The designated principal will periodically review a sample of customer transactional information (e.g. exception reports). All relevant information and documentation will be initialed as evidence of review.

Restrictions on Solicitations

It is the Firm's policy that registered persons may NOT solicit transactions that may be included on any of the Firm's restrictive lists, or any securities purchased under SEC Rule 144.

Trade Errors

It is the Firm's policy that any trade related errors regarding customer transactions will be immediately reported to the Firm and/or designated supervisor for review and correction. The designated supervisor in charge of reviewing and correcting the trade will be responsible for documenting the details of the error.

Cancels and Rebills

It is the Firm's policy that any trade cancels and rebills regarding customer transactions will be immediately reported to the designated supervisor for review and approval. The details of each trade will be documented.

8.06 Order Audit Trail System (OATS) Requirements

Effective September 1, 2021, FINRA is amending its rulebook to eliminate the Order Audit Trail System (OATS) rules in the FINRA Rule 7400 Series and FINRA Rule 4554 (Alternative Trading Systems — Recording and Reporting Requirements of Order and Execution Information for NMS Stocks) (collectively referred to as the "OATS Rules"). FINRA has determined that the accuracy and reliability of the Consolidated Audit Trail (CAT) meet the standards approved by the SEC and has determined to retire OATS as of September 1, 2021. (Ref. FINRA Regulatory Notice 21-21; June 17, 2021)

8.07 Order Entry and Execution Practices ("Trade Shredding")

On February 24, 2006, the Securities and Exchange Commission (SEC) approved FINRA Rule 5290 (formerly NASD Rule 3380), Order Entry and Execution Practices, which prohibits conduct known as "trade shredding." The term "Trade shredding" is used to describe the practice of splitting customer orders for securities into multiple smaller orders (*e.g.*, a 1,000 share order is split into ten 100-share orders) for the primary purpose of maximizing payments or rebates to the member.

Specifically, under the new rule, members and associated persons are prohibited from splitting any order into multiple smaller orders for execution, or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a "monetary or in-kind payment" (e.g. any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member

or associated person) to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions. (NTM 06-19; Effective May 26, 2006) ►►

Implementation Strategy

The designated supervisor will review available customer orders to ensure that such transactions are not being split into multiple smaller orders for the purpose of maximizing payments to the Firm. In the event that the designated supervisor discovers what appears to be the practice of "trade shredding," the designated supervisor will investigate the incident and cancel and correct any such orders in an effort to resolve the matter.

8.08 Fraudulent Account Openings & Money Transfers (During COVID-19 Pandemic)

Firms should be aware that fraudsters are targeting firms offering online account opening and, perhaps especially, firms that recently started offering such services. These fraudsters may be taking advantage of the pandemic to use stolen or synthetic identities to establish accounts to divert congressional stimulus funds, unemployment payments or to engage in automated clearing house (ACH) fraud.

Common Characteristics of Scams

The specific tactics fraudsters use may vary involve some combination of the following steps:

- *Establishing the Account:* Using stolen or synthetic customer identity information to establish a new brokerage account;
- *Funding the Account:* Funding the newly established brokerage account by:
  - using stolen bank account information (routing and account numbers) to transfer money from the customer's bank account to the newly established brokerage account;
  - effecting smaller dollar transfers via ACH or other online payment methods from the customer's bank account; or
  - diverting other customer funds directly to the fraudster's account (*e.g.*, diverting unemployment benefits); and
- *Exfiltrating Funds:* Rapidly moving deposited funds out of the brokerage account by, for example:
  - making ATM withdrawals or purchases on debit cards for the brokerage account; or
  - linking the brokerage account to a third-party bank account or an account at another financial institution that provides pre-paid debit card products and services and then transferring funds to that account.

Selected Firm Practices

Member firms may implement the following practices to address risks relating to fraudulent account openings and money transfers:

- **Customer Identification Program**—Firms that permitted the opening of accounts through electronic means used *both* documentary and non-documentary methods to verify the identity of customers, including.

- **Monitoring for Fraud During Account Opening—**Firms used the following methods at the time of account opening to identify potential fraud:
  - limiting automated approval of multiple accounts opened by a single customer;
  - reviewing account application fields—such as telephone number, address, email address, bank routing numbers and account numbers—for repetition or commonalities among multiple applications, but with different customer names or identifiers; and
  - using technology to detect indicators of automated scripted attacks in the digital account application process (*e.g.*, extremely rapid completion of account applications).

Although some firms use micro-deposits as a mean to verify accounts, FINRA notes that other firms are concerned that fraudsters can undermine the utility of this verification method by using social engineering attacks to take over customer accounts at institutions across the financial services industry. As a result, these firms carefully watch for rapid withdrawals from accounts that were verified using micro-deposits.

- **Bank Account Verification and Restrictions on Fund Transfers**—Firms confirmed customers' identities with banks and restricted fund transfers in certain situations by, for example:
  - reviewing the IP address of transfer requests made online or through a mobile device to determine if the request was made from a location that is consistent with the customer's home address or locations from which the firm has previously received legitimate customer communications;
  - verifying that the identity on the source account for fund transfers matches the customer's identity at the broker-dealer;
  - confirming that the identity of the destination bank account for cash transfers matches the customer's identity at the broker-dealer;
  - prohibiting the rapid transfer of recently deposited customer funds from customers' brokerage accounts to third party bank accounts (where some firms used risk criteria—*e.g.*, the amount of the transfer in dollar terms—to trigger reviews of transfer requests) by requiring a holding period (which allowed time for the filing of an ACH fraud report by the originating bank);
  - implementing a process for customers to obtain exceptions to these restrictions, which required them to complete additional steps to verify their account information, the transfer amount and their identity (such as through the use of third-party providers that leverage customers' credit bureau or other information); and
  - creating notifications for changes to bank account information that were sent to the customer via email, text message or instant message—as well as their official street address of record—informing them about the newly established linked bank account and asking them to call the firm if they have any questions.

- **Ongoing Monitoring of Accounts**—Firms continued to evaluate existing accounts for fraud risks where the accounts:
  - were inactive, unfunded and soon to be restricted or closed; and
  - had losses related to credit extensions and were about to be placed into collections or write-off categories.

- **Collaborating with Clearing Firms**—understanding the allocation of responsibilities between clearing and introducing firms for handling ACH transactions and implemented policies and procedures to meet those responsibilities effectively, including:
  - Defining how instructions related to ACH requests should be conveyed; and
  - understanding the responsible staff at the introducing firm who were authorized to transmit instructions to the clearing firm.

- **Suspicious Activity Report (SAR) Filing Requirements**—Firms confirmed that ACH fraud was covered by their SAR procedures and reported them to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). (Ref. Regulatory Notice 20-13; May 5, 2020)

Implementation Strategy

The Firm uses some of the following processes to prevent fraud related to account openings and money transfers:

- **Customer Identification Program**—if the Firm permits the opening of accounts through electronic means it may use *both* documentary and non-documentary methods to verify the identity of customers, including.

- **Monitoring for Fraud During Account Opening—**at the time of account opening, the Firm will limit automated approval of multiple accounts opened by a single customer; and/or review account application fields—such as telephone number, address, email address, bank routing numbers and account numbers—for repetition or commonalities among multiple applications, but with different customer names or identifier.
- **Bank Account Verification and Restrictions on Fund Transfers**—the Firm will confirm customers' identities with banks and restricted fund transfers in certain situations.
- **Ongoing Monitoring of Accounts**—evaluate existing accounts for fraud risks where the accounts were inactive, unfunded and soon to be restricted or closed; and had losses related to credit extensions and were about to be placed into collections or write-off categories.
- **Collaborating with Clearing Firms**—If applicable, the Firm will define how instructions related to ACH requests should be conveyed; and identify the responsible Firm staff who were authorized to transmit instructions to the clearing firm.
- **Suspicious Activity Report (SAR) Filing Requirements**—the Firm will confirm that ACH fraud was covered by their SAR procedures and report them to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN).