

## Sanction Guidelines

### The National Adjudicatory Council (NAC) Revises the Sanction Guidelines

Effective Date: Effective Immediately

#### Executive Summary

The NAC has revised the principal considerations in the *Sanction Guidelines* to expressly contemplate a customer's age or physical or mental impairment that renders the individual unable to protect his or her own interests.

The revised *Sanction Guidelines* are effective immediately and available on [FINRA's website](#).

Questions concerning this *Notice* should be directed to:

- ▶ Alan Lawhead, Vice President and Director – Appellate Group, Office of General Counsel, at (202) 728-8856 or [Alan.Lawhead@finra.org](mailto:Alan.Lawhead@finra.org); and
- ▶ Megan Rauch, Associate General Counsel, Office of General Counsel, at (202) 728-8863 or [Megan.Rauch@finra.org](mailto:Megan.Rauch@finra.org).

#### Background and Discussion

FINRA's *Sanction Guidelines* familiarize FINRA firms with some of the typical securities industry rule violations that occur and the range of disciplinary sanctions that may result from those rule violations. The goal of the *Sanction Guidelines* is to assist FINRA's adjudicators in determining the appropriate sanctions in disciplinary proceedings. The *Sanction Guidelines* do not provide predetermined or fixed sanctions for particular violations. Rather, the central idea contained in the *Sanction Guidelines* is that adjudicators start with a range of appropriate sanctions for a particular violation and consider aggravating and mitigating factors in order to arrive at an appropriate sanction for the particular circumstances. FINRA's NAC initiates periodic reviews of the *Sanction Guidelines* to ensure that the *Sanction Guidelines* reflect recent developments in the disciplinary process and comport with changes in FINRA's rules.<sup>1</sup>

October 20, 2020

#### Notice Type

- ▶ Guidance

#### Suggested Routing

- ▶ Legal
- ▶ Registered Representatives
- ▶ Senior Management

#### Key Topics

- ▶ FINRA Sanction Guidelines

#### Referenced Rules & Notices

- ▶ FINRA Rule 2165
- ▶ Regulatory Notice 17-11
- ▶ Regulatory Notice 17-13
- ▶ Regulatory Notice 19-27

## New Guidance

FINRA is conducting a retrospective review to assess the effectiveness and efficiency of its rules and administrative processes that help protect senior investors from financial exploitation.<sup>2</sup> Based on the feedback FINRA received, the NAC considered and amended the Principal Considerations in Determining Sanctions section of the FINRA *Sanction Guidelines* to expressly contemplate the customer's age or physical or mental impairment that may render the individual unable to protect his or her own interests. The amendments reflect the NAC's concerns regarding protecting customers and the NAC's explicit consideration of elder abuse as well as its general experience with imposing more stringent sanctions in cases involving senior investors or mentally impaired customers.<sup>3</sup>

The prior version of the FINRA's *Sanction Guidelines* contained 19 Principal Considerations in Determining Sanctions that adjudicators were instructed to consider in conjunction with the imposition of sanctions with respect to all violations. As amended, the *Sanction Guidelines* contains 20 Principal Considerations.

FINRA amended Principal Consideration No. 19 to explicitly include whether the customer had a mental or physical impairment that rendered him unable to protect his or her own interests.<sup>4</sup> FINRA also introduced a new Principal Consideration No. 20 to consider whether the customer is age 65 and older. The NAC choose to add whether a customer is age 65 or older to be consistent with FINRA Rule 2165 Financial Exploitation of Specified Adults.<sup>5</sup> As with other considerations in the *Sanction Guidelines*, adjudicators should take a principles-based approach to assessing if the rule violations have more impact on elderly or impaired customers, including the customer's ability to recover from sustaining financial losses.

Some principal considerations have the potential to be only aggravating or only mitigating. Principal Consideration No. 19, as amended, and Principal Consideration No. 20 have the potential to be only aggravating. Adjudicators should consider the facts and circumstances of the case and the type of violation when deciding whether the customer's age and mental or physical impairment should be considered an aggravating factor when assessing the appropriate sanction for a violation.

## Endnotes

1. The NAC is FINRA's appellate tribunal for disciplinary cases. It is a 15-member committee composed of industry and non-industry members.
2. See [Regulatory Notice 19-27](#) (FINRA Requests Comment on Rule and Issues Relating to Senior Investors).
3. See, e.g., *Dep't of Enforcement v. Orlando*, Complaint No. 2014043863001, 2020 FINRA Discip. LEXIS 1, at \*46-50 (FINRA NAC Mar. 16, 2020).
4. Principal Consideration No. 19 originally was adopted in 2017. See [Regulatory Notice 17-13](#) (FINRA's NAC Revises the Sanction Guidelines). It previously instructed adjudicators to consider "[w]hether the respondent exercised undue influence over the customer." Principal Consideration No. 19 instructs adjudicators to consider "[w]hether the respondent exercised undue influence over the customer or the customer had a mental or physical impairment that renders the person unable to protect his or her own interests."
5. See [Regulatory Notice 17-11](#) (SEC Approves Rules Relating to Financial Exploitation of Seniors). Rule 2165 defines "specified adults" as "(A) a natural person age 65 and older; or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests."