

UTMA and UGMA Accounts

FINRA Reminds Member Firms of Their Responsibilities for Supervising UTMA and UGMA Accounts

Summary

This *Notice* addresses the characteristics of Uniform Transfers to Minors Act (UTMA) and Uniform Gifts to Minors Act (UGMA) accounts (collectively referred to herein as “UTMA/UGMA Accounts”) and the responsibilities of member firms to supervise UTMA/UGMA Accounts.

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Background and Discussion

UTMA/UGMA Accounts are custodial accounts that allow for the transfer of funds, securities and other assets to minors without the need for a formal trust. UGMA and UTMA are model laws developed and approved by the Uniform Law Commission. All states have adopted some version of either UGMA or UTMA through their state legislatures to allow for the establishment of UTMA/UGMA Accounts. While the specific requirements for UTMA/UGMA Accounts vary from state to state, the accounts share common characteristics. Generally, when UTMA/UGMA Accounts are established, the donor appoints a custodian,¹ designates a minor beneficiary and deposits assets into the account. Depositing assets into an UTMA/UGMA Account represents an irrevocable transfer from the donor to the beneficiary.

The custodian is responsible for managing the assets in the UTMA/UGMA Account, including executing transactions and withdrawing or transferring funds, for the benefit of the beneficiary (*i.e.*, the custodianship) until the custodianship terminates.² The custodianship generally terminates when the beneficiary reaches the age of majority, reaches an alternative age of termination set forth in the relevant state statute or dies. Some states also permit extending the custodianship to a higher specified age by the donor when establishing the custodianship³ or by the custodian,⁴ provided that the beneficiary receives notification of his or her right to compel distribution of the assets upon reaching a specified age.

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Notice Type

- ▶ Reminder

Suggested Routing

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

Key Topics

- ▶ Know Your Customer
- ▶ Supervision
- ▶ UGMA Accounts
- ▶ UTMA Accounts

Referenced Rules & Notices

- ▶ FINRA Rule 2090
- ▶ FINRA Rule 3110

Member Firms' Responsibilities Regarding UTMA/UGMA Accounts

FINRA Rule 2090 (Know Your Customer) requires member firms and their associated persons to use reasonable diligence to determine the “essential facts” about every customer and “the authority of each person acting on behalf of such customer.” Facts “essential” to “knowing the customer” 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.⁵

FINRA [Regulatory Notice 11-02](#) states that a member firm must “know its customers not only at account opening but also throughout the life of its relationship with customers in order to, among other things, effectively service and supervise the customers’ accounts,” and that a firm should “verify the ‘essential facts’ about a customer ... at intervals reasonably calculated to prevent and detect any mishandling of a customer’s account that might result from the customer’s change in circumstances.”⁶

FINRA Rule 3110 (Supervision) requires that each member firm establish and maintain a supervisory system that is reasonably designed to achieve compliance with the applicable securities laws and regulations, and FINRA rules. Accordingly, a member firm is required to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with its continuing obligation to know the essential facts of all customers, including UTMA/UGMA Account customers.

The custodian is responsible for managing the assets in the UTMA/UGMA Account until the custodianship terminates. The termination of the custodianship—due to the beneficiary’s reaching the relevant age or dying—represents an important change in the customer relationship and is an essential fact about the UTMA/UGMA Account customer that member firms and their associated persons should know pursuant to the requirements of Rule 2090. Failure to have a reasonably designed supervisory system in place pursuant to Rule 3110 that takes into account the termination of the custodianship, and the changed authority resulting from that termination, may result in a mishandling of the UTMA/UGMA Account.

Supervisory Measures

FINRA's examination program has found member firms that have effective supervisory systems and procedures for UTMA/UGMA Accounts.⁷ However, FINRA has also found that some member firms permitted customers to open UTMA/UGMA Accounts, yet failed to have reasonably designed systems and procedures to supervise UTMA/UGMA Accounts, including reasonable diligence procedures to determine the authority over those accounts in and around the time the beneficiary reaches the relevant age.⁸ In addition, some member firms permitted custodians to effect transactions and withdraw or transfer funds from UTMA/UGMA Accounts months or years after the custodianship terminated, and ignored red flags of the activity (*e.g.*, customer complaints).⁹

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.

Member firms have flexibility in designing the supervisory system and procedures based on size and business model, but 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.

FINRA has observed member firms with effective supervisory systems and procedures for UTMA/UGMA Accounts, including:

- ▶ **Tracking custodianship termination** – Having a system for recording UTMA/UGMA Account beneficiaries' ages and maintaining automated tools to track when a beneficiary reaches the age at which the custodianship terminates.
- ▶ **Notifying registered representatives** – Providing assigned registered representatives with automated alerts at certain times (*e.g.*, 30 to 90 days) before a beneficiary reaches the relevant age and requiring the registered representatives to communicate with the custodian about the upcoming transfer of custodial property.
- ▶ **Notifying custodians** – Providing notifications or other communications to custodians to advise them that beneficiaries were approaching the relevant age for custodianship termination and discussing what would happen after that date.
- ▶ **Verifying authority** – Verifying whether the custodian had the authority to manage assets in the UTMA/UGMA Account after the beneficiary reached the relevant age and, if not, having a system in place that prohibits the custodian from managing assets in the UTMA/UGMA Account.
- ▶ **Account documentation** – Having a system that incorporates the date of termination of the custodianship in the UTMA/UGMA Account titles and retitling UTMA/UGMA Accounts or creating new accounts in the name of the beneficiary after the custodianship terminates.

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. Failure to so verify may result in improperly permitting the custodian to manage assets in the UTMA/UGMA Account.

Endnotes

1. Member firms are reminded that a custodian for an UTMA/UGMA Account has a different role and responsibilities as compared to a broker-dealer that is responsible for safeguarding customer assets pursuant to the securities laws. For example, if a parent (donor) donates assets to a child in an UTMA/UGMA Account, the parent (rather than the broker-dealer who is opening the account to hold the assets) may be the “custodian” of the UTMA/UGMA Account as that term is used in this context, and the child is the beneficiary.
2. UTMA and the relevant state statutes generally refer to the “termination” of the custodianship. *See, e.g.*, Section 20 of UTMA and Mass. Gen. Laws ch. 201A, § 20. Section 20 (Termination of Custodianship) of UTMA states “[t]he custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor’s estate upon the earlier of: (1) the minor’s attainment of 21 years of age with respect to custodial property transferred under Section 4 or 5; (2) the minor’s attainment of [majority under the laws of this State other than this [Act]] [age 18 or other statutory age of majority of Enacting State] with respect to custodial property transferred under Section 6 or 7; or (3) the minor’s death.”
3. *See* Fla. Stat. § 710.123.
4. *See* Wyo. Stat. § 34-13-139.
5. *See* Supplementary Material .01 to Rule 2090.
6. *See* [FINRA Regulatory Notice 11-02](#) (January 2011) (SEC Approves Consolidated FINRA Rules Governing Know-Your-Customer and Suitability Obligations).
7. *See* [2019 Report on Examination Findings and Observations](#).
8. *See* FINRA press release “[FINRA Sanctions Five Firms for Failing to Reasonably Supervise Custodial Accounts](#)” (December 26, 2019).
9. *See* [2019 Report on Examination Findings and Observations](#).