

MEMO# 29969

June 8, 2016

Alabama Enacts Law Effective July 1, 2016 to Protect Senior Investors from Financial Exploitation

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TO: BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 16-16
BROKER/DEALER ADVISORY COMMITTEE No. 17-16
COMPLIANCE MEMBERS No. 15-16
OPERATIONS MEMBERS No. 15-16
TRANSFER AGENT ADVISORY COMMITTEE No. 22-16 RE: ALABAMA ENACTS LAW EFFECTIVE JULY 1, 2016 TO PROTECT SENIOR INVESTORS FROM FINANCIAL EXPLOITATION

Alabama has enacted the “Protection of Vulnerable Adults from Financial Exploitation Act” (the “Act”) with an effective date of July 1, 2016. [\[1\]](#) The Act requires a “qualified individual” to promptly notify the Alabama Department of Human Resources and the Alabama Securities Commission (the “Alabama Department and Commission”) whenever the individual believes that financial exploitation of a “vulnerable adult” has occurred, been attempted, or is being attempted. The Act defines “qualified individual” to include any broker-dealer or investment adviser and any of their agents or persons who serve in a supervisory, compliance, legal, or associated member capacity on their behalf. The term “vulnerable adult” means any person aged 65 or older and a “protected person” as defined under Alabama law. [\[2\]](#)

Persons who report in good faith as required by the Act or take other actions authorized under the Act are immune from any administrative or civil liability that might arise from conduct consistent with the Act. [\[3\]](#) In addition to imposing notification requirements, the Act:

- Authorizes a qualified individual to notify a “reasonably associated individual,” legal guardian, any third party previously designated by the vulnerable adult, conservator, co-trustee, successor trustee, or agent under power of attorney of the vulnerable adult regarding the suspected exploitation. Such disclosure, however, may not be made to a designated third party that is suspected of financial exploitation or other abuse of the vulnerable adult.
- Authorizes a broker-dealer or investment adviser to delay disbursement from an

account of a vulnerable adult or an account on which a vulnerable adult is a beneficiary if:

- The broker-dealer or investment adviser reasonably believes that the disbursement might result in financial exploitation of a vulnerable adult;
 - Within at least two business days, the broker-dealer or investment adviser provides written notification of the delay and the reasons therefor to (1) all parties authorized to transact business on the account unless any such party is reasonably believed to have engaged in the financial exploitation and (2) the Alabama Department and Commission; and
 - Continues its internal review of the suspected or attempted financial exploitation as necessary and reports any additional results from the review to the Alabama Department or Commission within seven days after the requested disbursement.
- Any delay in disbursement authorized pursuant to the above provisions shall expire the earlier of: (1) the broker-dealer or investment adviser determining that the disbursement will not result in financial exploitation of the vulnerable adult; (2) 15 days from the date the disbursement was originally delayed unless the Alabama Department or Commission extend the delay; [\[4\]](#) or (3) a court of competent jurisdiction intervenes.

The Act additionally requires a broker-dealer or investment adviser to provide records relating to the exploitation to state adult protective services agencies and law enforcement as part of a referral to such agency or law enforcement or upon their request. When provided, such records will not be considered to be public records.

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If members have any concerns regarding how provisions, such as those in the Alabama Act, might impact the ability of a fund to redeem mutual fund shares within seven days as required by Section 22(e) of the Investment Company Act, please bring them to my attention by phone (202-326-5825) or email (tamara@ici.org). Please note, however, that the Act's provisions only extend to broker-dealers and investment advisers and they do not authorize other persons either to delay disbursements from an account or report suspected financial exploitation.

Tamara K. Salmon
Associate General Counsel

endnotes

[\[1\]](#) The Act is available at: http://asc.alabama.gov/Act_2016-141.aspx.

[\[2\]](#) Section 38-9-2 of the Code of Alabama (1975) defines "protected person" to mean

Any person over 18 years of age subject to protection under this chapter or any

person, including, but not limited to, persons who are senile, mentally ill, developmentally disabled, or mentally retarded, or any person over 18 years of age that is mentally or physically incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others.

[3] The Act does not include any sanctions for the failure of a qualified individual to make the required report though it does expressly authorize the Alabama Securities Commissioner to adopt rules under the Act to implement its provisions.

[4] This disbursement cannot be delayed beyond an addition delay because the Act limits the total period of the delay to no more than 25 days. See Section 7(c)(2) of the Act.

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