

**MEMO# 30982**

December 15, 2017

# **Texas Publishes Form for Financial Firms to Use to Report Suspected Financial Abuse**

[30982]

December 15, 2017 TO: ICI Members

Broker/Dealer Advisory Committee

Transfer Agent Advisory Committee SUBJECTS: Investment Advisers

State Issues

Transfer Agency RE: Texas Publishes Form for Financial Firms to Use to Report Suspected Financial Abuse

Effective September 1, 2017, Section 45 was added to the Texas Securities Act.<sup>[1]</sup> This section requires a broker-dealer or investment adviser “who has cause to believe” that a vulnerable adult<sup>[2]</sup> is being financially exploited to notify the Texas Securities Commissioner within five days of such suspected exploitation.<sup>[3]</sup> The Texas State Securities Board has announced the adoption of a form that financial firms may use to facilitate such reporting. The form is available at: [https://www.ssb.texas.gov/sites/default/files/ReportOfFinancialExploitation\\_Form\\_Nov2017.pdf](https://www.ssb.texas.gov/sites/default/files/ReportOfFinancialExploitation_Form_Nov2017.pdf). While the report of suspected exploitation is required, use of this new form to make such report is optional.

Section 45 additionally requires each broker-dealer and investment adviser registered in Texas to “adopt internal policies, programs, plans, or procedures for securities professionals” to conduct an assessment of the suspected exploitation and make the required notification.<sup>[4]</sup> Note that, unlike FINRA Rule 2165, Financial Exploitation of Specified Adults, which enables FINRA members to protect vulnerable adults from financial exploitation, Section 45 requires all broker-dealers and investment advisers to adopt such internal policies and procedures, not just those that want to rely on the FINRA rule.

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## endnotes

[1] Section 45 is available at: <https://www.ssb.texas.gov/texas-securities-act-2017#Sec-45>.

[2] The term “vulnerable adult” is defined in Section 280.001 of the Texas Finance Code to mean an elderly person or a person with a specified disability.

[3] In addition to requiring reporting of the suspected exploitation, Section 45 authorizes a broker-dealer or investment adviser to place a hold on any transaction that may involve such exploitation. *Cf.* FINRA Rule 2165, which authorizes a broker-dealer to delay disbursing the proceeds from a transaction that involves suspected abuse but does not permit the broker-dealer to delay effecting the transaction.

[4] Because FINRA does not require all broker-dealers to have such policies and procedures, Section 15(i) of the Securities Exchange Act of 1934, as amended by the National Securities Markets Improvement Act of 1996, may preempt Texas’s authority to require all broker-dealers to have such policies and procedures.

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