

Protecting Vulnerable Adults from Financial Exploitation:

A Guide for Alabama Broker-Dealer and Investment Adviser Firms

Introduction

Demographers predict that in sixteen years, the United States will be home to 72 million older persons, more than twice the number in 2000.¹ Not only will the older population in the United States increase, but accompanying this increase in number will also be an increase in the amount of wealth concentrated in this group. Statistics show that baby boomers today control more than \$13 trillion in household investable assets.² For many people, aging comes with diminished capabilities including the inability to adequately manage financial resources and a heightened susceptibility to financial exploitation. Protecting older investors has been a long-standing priority for NASAA and its members, making senior investor protection, in light of the trend of diminishing capacity and senior financial exploitation, of keen importance.³ As part of its ongoing effort to address the aging of America, NASAA formed the Senior Issues and Diminished Capacity Committee⁴ (Seniors Committee) to undertake certain initiatives aimed at addressing these issues. Information about the activities and initiatives of NASAA and the Seniors Committee can be found on the NASAA website at www.nasaa.org or at serveourseniors.org.

¹ *Dealing With Clients Facing Diminished Capacity: Financial Judgments Can Be the First To Go*, IA WATCH (March 17, 2014).

² *Protecting Senior Investors: Compliance, Supervisory and Other Practices Used By Financial Services Firms in Serving Senior Investors*, SEC (Sept 22, 2008); see also Sue Ascí, *Retirement of Boomers Will Create Market for Advisers*, INVESTMENT NEWS (Nov. 5, 2007, 10:47 AM), <http://www.investmentnews.com/apps/pbcs.dll/article?AID=/20071105/FREE/711050311/-1/INIssueAlert>.

³ See ASC Rule 830-x-3-.28, *The Use of Senior-Specific Certifications and Professional Designations*, located on our website at www.asc.alabama.gov.

⁴ In 2014, NASAA formed the Committee on Senior Issues and Diminished Capacity to address a wide range of challenges confronting senior investors, regulators and securities industry professionals.

One of the initiatives underway by NASAA's Seniors Committee is the development of guidelines for industry participants. In a similar vein, this particular guide has been prepared to provide broker-dealers and investment advisers doing business in Alabama with useful information related to the detection, reporting, and mitigation of senior financial exploitation. This guide has been adapted by the Alabama Securities Commission (ASC) and the Department of Human Resources (DHR) to complement Alabama's recently enacted Protection of Vulnerable Adults from Financial Exploitation Act, *Ala. Code* § 8-6-170 to 179 (1975) (collectively "the Act"). The Act generally requires that broker-dealers, investment advisers, and other "qualified individuals" as defined in Section 8-6-171⁵, who reasonably believe that financial exploitation of a "vulnerable adult" may have occurred, been attempted, or is being attempted, report the incident to the Alabama Securities Commission (ASC) and the Department of Human Resources (DHR). The new law also authorizes firms to delay a disbursement from an account when the requested disbursement may result in financial exploitation of a vulnerable adult, and allows notification of certain third parties. Firms that take these steps in good faith will be immune from state civil and administrative liability. Where appropriate, the guide references sections of the Act in an effort to assist in implementing its requirements and includes suggestions on how firms should develop policies and procedures.⁶

This guide, however, does not create or modify existing regulatory obligations with respect to senior investors, and it does not catalog the full range of compliance practices applicable to senior investors. Rather, it focuses on steps that firms can take to identify and respond to issues

⁵ Ala. Code § 8-6-170 to 179 applies to qualified individuals. Section 8-6-171(8) defines the term "qualified individual" as any "agent, investment adviser representative, or person who serves in a supervisory, compliance, legal, or associated member capacity of a broker-dealer or investment adviser."

⁶ This document is intended only as a guide for use by firms in developing policies and procedures addressing financial exploitation. It is not intended to convey or constitute legal advice.

that are common in working with senior investors and hopefully assist firms with utilizing new statutory tools available to address issues related to senior financial exploitation and diminished capacity. Firms are encouraged to continue to identify and implement additional practices which address particular needs of senior investors.

I. Who is Covered as a Vulnerable Adult?

Identifying which of a firm's clients qualify for protection under statutes designed to combat financial exploitation or otherwise protect seniors is critically important. The Alabama law uses the term "vulnerable adult," which has a two-part definition and serves as a trigger for the law's other provisions.

Section 8-6-171(10) defines a "Vulnerable Adult" to include both a person 65 years of age or older and a "protected person", as defined in § 38-9-2 of the Code of Alabama, which includes "[a]ny person over 18 years of age subject to protection under this chapter or any person, including, but not limited to, persons who are senile, persons with intellectual disabilities and developmental disabilities, 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."

A. Identification of Vulnerable Adult Investors

Under the Alabama statute, firms should develop policies and procedures to identify and flag the accounts of older adults for identification and monitoring in order to easily and accurately identify those clients and customers that may become victims of financial exploitation. Firms should also create internal systems that allow employees to quickly and easily identify the accounts of older clients and customers, such as watch lists or automated account tracking, as 10,000 individuals reach the age of 65 each day.

GUIDELINE: Establish policies that will assist in the identification of persons covered under applicable state laws and regulations designed to fight financial exploitation.

While the Alabama law contains a triggering age, the law also applies to adults—regardless of age—exhibiting certain mental or physical disabilities as defined in Ala. Code § 38-9-2.⁷ In order to determine whether a client or customer meets these definitions, firms should develop training programs and procedures to better equip frontline employees to recognize the signs and red flags that may qualify a client or customer for protection. It is important to note, however, that the provisions of Alabama law such as delaying disbursements or notifying third-parties, are only applicable if financial exploitation of a *vulnerable adult* is suspected. Equipping employees with the tools necessary to recognize red flags and other warning signs that may leave a customer vulnerable to financial exploitation is critical.

B. Policies, Procedures, and Training to Recognize Vulnerable Adult Investors

Firms should develop policies and procedures and training programs designed to teach their employees how to detect signs of diminished capacity, cognitive decline, and financial impairment. Financial professionals are often uniquely positioned to see the red flags of cognitive decline or other potential impairments affecting their clients and customers, and their prompt actions may prevent a client or customer from becoming the victim of financial exploitation. Detecting and recognizing the signs of cognitive impairment or diminished capacity begins with developing strong relationships with customers and clients. As part of this relationship building, firms should increase the frequency and quality of communication with their clients, as many of the red flags signaling potential cognitive issues, such as memory lapses, disorganization, arithmetic mistakes,

⁷ Title 38, Chapter 9 of the Code of Alabama governs the Protection of Aged Adults and Adults with a Disability.

conceptual confusion, and impaired judgment can be detected in routine discussions with clients and customers.⁸

Financial professionals, particularly those with an ongoing relationship with the client, are in the unique position of being able to identify early signs of diminished capacity and instances of financial exploitation. Financial professionals often notice, in their previously “sharp” clients, changes in comprehension or impairments to mathematical skills indicating diminished financial capacity that may, because of slow onset, be difficult for family members to recognize. Also, these professionals often can recognize changes in behavior or unusual financial activities that might indicate that the client is being exploited.

GUIDELINE: Develop and regularly review training programs designed to educate employees to recognize signs of diminished capacity and financial exploitation.

In an AARP survey of 160 compliance officers and 360 advisors from various financial sectors, respondents were provided with a list of behaviors that indicate a person may be experiencing cognitive decline. In the study, the AARP found that 63 percent of those surveyed indicated that they observed frequent repeating of orders or questions. Sixty-one percent indicated that they observed clients having difficulty with basic math and financial terms. Similarly, 61 percent also indicated that they observed other signs of cognitive impairment in senior investors such as memory loss, erratic behavior and difficulty processing information.

Capacity is a fluid concept that can change over time, and depends on the situation. In the context of having *financial* capacity, a good definition would be “the capacity to transact certain business, such as understanding personal financial needs and goals, understanding investment product choices, contracting for the purchase of a particular product, or giving a particular professional the discretion to manage an account.” In fact, as cognitive decline advances, it is

⁸ ABA Annual Meeting Materials, “*The Epidemic of Elder Financial Exploitation*”, Summer 2012, Vol. 36, No. 2.

financial risk taking and management of resources which are the primary cognitive abilities to be affected.

GUIDELINE: Develop special tips and strategies on how to communicate with persons experiencing diminished capacity.

Clients may be reluctant to talk about cognitive decline, but may be willing to discuss what to do with their finances in the event of a medical or other emergency. Discussions in this context provide an avenue to discuss powers of attorney and other advanced directive options. Ideally, these types of discussions would take place upon account opening, at regular intervals thereafter, and as circumstances dictate. Ongoing communication with the client is critical both to establish a baseline from which to assess any changes in behavior or cognitive decline and to recognize when protective measures may become necessary.

GUIDELINE: Provide training to frontline employees on how to ask appropriate questions regarding potential cognitive decline while still maintaining a client's sense of autonomy and dignity.

Firms can assist their advisors and other personnel, such as supervisors and compliance staff with respect to an assessment of cognitive skills by providing them with ongoing training on how to communicate with clients. Some examples include:

- Specialized training to assist with recognizing signs of cognitive impairment. This training would include frontline employees, as well as supervisors and compliance personnel.
- Developing special tips and strategies on how to communicate with persons experiencing diminished capacity. This might include tips for approaching the sensitive subject of cognitive decline. Clients may be adverse to talking about cognitive decline, but are often willing to discuss what to do with their finances in the event of a medical or other emergency. Discussing the subject of cognitive decline in these contexts may be an avenue to discussing powers of attorney and other advanced directive options.
- Training the frontline employee how to ask appropriate questions while still maintaining the client's sense of autonomy and dignity is paramount.

In addition to implementing robust communication and training programs, firms should develop policies and procedures to assist their employees in responding to investors experiencing cognitive decline. Some examples may include policies and procedures that allow:

- Placing “watches” on an account where there is a suspicion that a client may be vulnerable.
- Documenting contact with senior investors in case they have problems with lack of recall or need assistance with resolving any misunderstanding.
- Developing escalation procedures. Broker-dealer agents and investment adviser representatives should document suspected diminished capacity and escalate immediately. Policies should indicate to whom the matter should be escalated and when. Employees should be trained to do this early – at the first sign.

C. Identifying Red Flags

An integral component of a firm’s policies and procedures should be training on how to spot the signs of cognitive decline or a reduced capacity to handle financial decisions. While there is no definitive list of the signs of diminished capacity or cognitive decline, some examples of “red flags” included in prior reports and reported by various stakeholder groups include the following.

- The investor appears unable to process simple concepts, such as:
 - a decline in the ability to do simple math problems
 - difficulty in understanding important aspects of the account
 - difficulty with checkbook management
 - confusion and loss of general knowledge regarding basic financial terms and concepts such as mortgages, wills, annuities
- The investor’s behavior is erratic, including:
 - memory loss
 - difficulty speaking or communicating
 - inability to appreciate the consequences of decisions
 - disorientation with surroundings or social settings
 - uncharacteristically unkempt appearance
- The investor exhibits impaired judgment about investments or the use of money, including:
 - expressing an interest in “get rich quick” schemes
 - anxiety about the nature and extent of personal wealth
 - making decisions that are inconsistent with his or her current long-term goals or commitments
 - refusing to follow appropriate investment advice
 - failure to fulfill financial obligations such as paying bills, or even paying the same bill twice.

In developing policies, procedures, and training programs, firms may want to review existing training materials developed by state agencies. These programs typically address the threshold issue of identification of impaired capacity and can be adapted to fit the financial services business model.⁹ The materials also may provide an avenue to enhance relationships between the financial industry, state securities regulators, and local Adult Protective Services (APS) agencies—an important step in protecting the financial well-being of senior clients. In Alabama, the APS agency is the Department of Human Resources.

GUIDELINE: Review and consider adapting existing training materials from state securities and local APS agencies and others.

Having strong, cooperative relationships among the financial industry, DHR, ASC, and law enforcement is critical as each group brings a unique perspective, skill set, and ability to act in order to protect seniors. When such cooperative relationships are in place, open communication is fostered between key stakeholders who can work together to protect our aging population.

GUIDELINE: Training materials should include information on resources for addressing financial exploitation and other forms of elder abuse.

II. Detecting Senior Financial Exploitation

In addition to developing training programs, policies, and procedures designed to identify senior and other vulnerable investors, firms should also develop programs, policies, and procedures designed to detect potential financial exploitation. Section 8-6-171(5) of the Code of Alabama broadly defines the term “financial exploitation”, which includes generally the wrongful or unauthorized taking of property, and any act or omission taken by a person, or through a power

⁹ NASAA has developed a training program entitled SeniorSafe, designed for broker-dealers and investment advisers. Further, the ASC and DHR are available to assist any firm, or association of broker-dealers or investment advisers, in developing training or educational programs as either a stand-alone event or as part of a firm’s continuing or special training.

of attorney, guardianship, or conservatorship, with the intent to deprive a vulnerable adult of his or her property. It is important that firms are familiar with the acts that constitute financial exploitation and that employees are trained to identify the signs of financial exploitation. Signs that a senior investor could be the victim of financial exploitation include:

- Uncharacteristic and repeated cash withdrawals or wire transfers
- Appearing with new and unknown associates, friends, or relatives
- Uncharacteristic nervousness or anxiety when visiting the office or conducting telephonic transactions
- A lack of knowledge about his or her financial status
- Having difficulty speaking directly with the client or customer
- Unexplained or unusual excitement about a sudden windfall; reluctance to discuss details
- Sudden changes to financial documents such as powers of attorney, account beneficiaries, wills, or trusts
- Closing of accounts without regard to penalties

GUIDELINE: Provide employees with informational materials detailing the signs of diminished capacity and financial exploitation.

III. Reporting Senior Financial Exploitation

In Alabama, when there is a reasonable belief by the firm that a client has been the victim of financial exploitation, the firm must report this information to both ASC and DHR.¹⁰ The Alabama Department of Human Resources is the State agency statutorily authorized to receive and investigate reports of suspected abuse, neglect, and exploitation of adults who are suspected of being physically or mentally unable to protect themselves, and to arrange protective services, including guardian and conservatorships, to the extent possible when protection is needed.¹¹ Likewise, the Alabama Securities Commission (“ASC”) is responsible for investigating crimes in connection with the offer, sale, or purchase of securities. The ASC’s enforcement authority extends to financial exploitation, as many exploitation cases involve the disposition of a senior’s

¹⁰ Ala. Code § 8-6-172 (1975).

¹¹ For a complete list of services, view the following link to the Division of Adult Protective Services at http://www.dhr.alabama.gov/services/Adult_Protective_Services/Adult_Protective_Services.aspx.

assets, life savings, retirement account, or other investments held in broker-dealer and/or financial advisor accounts. Reporting is accomplished by completing and emailing the “Alabama Securities Commission and Department of Human Resources Report of Adult Suspected to be Financially Exploited,” located on both the ASC, www.asc.alabama.gov, and DHR, www.dhr.alabama.gov, websites.¹²

GUIDELINE: Where there is a reasonable belief (after researching and investigating a situation) by the firm that a client has been exploited financially, a firm should report the situation to the appropriate state agency or agencies.

A. Reporting Mechanics

Nearly every state has an elder abuse reporting framework on its books, making it imperative that firms understand their reporting obligations under the existing laws of the states in which they operate. In Alabama, section 8-6-172 requires “qualified individuals”¹³ who “reasonably believe that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted,” to “promptly” notify both DHR and ASC. In order to streamline the reporting process, DHR and ASC have developed a **single initial reporting form**- the “Alabama Securities Commission and Department of Human Resources Report of Adult Suspected to be Financially Exploited” form- for completion and transmission to both state agencies. Once completed, the firm must email a copy to both the ASC and DHR at the respective email addresses located at the bottom of the form. The ASC will also accept faxed reports. Note that while Ala. Code Section 8-6-172 requires **prompt** notification of suspected financial exploitation, there is a **2-day** maximum notification in the instance of a delayed disbursement. As

¹² The reporting form should be completed and sent by email to DHR and by email or fax to ASC along with any other additional information, investigative reports or documentation available at the time of reporting.

¹³ Section 8-6-171(8) defines “Qualified Individuals” to include any “agent, investment adviser representative, or person who serves in a supervisory, compliance, legal, or associated member capacity of a broker-dealer or investment adviser.

discussed later in this guide, firms should be sure to include with the report any relevant documentation related to the incident.

Firms and their employees should remain particularly mindful of the applicable reporting standards, and should properly train their employees on their responsibilities. It is important for the firm to understand its reporting obligations and the reporting obligations of its employees, and to develop policies, procedures, and training programs accordingly. The duty or ability to report may fall on the individual or to the firm. While the Alabama statute references the reporting individual, DHR and ASC are aware that firms have various systems for escalating the incident and will accept existing firms' systems for reporting that fall within the statutorily designated timeframe. In actual practice, the report would be sent by the individual, the appropriate legal department designee, supervisor or other person at the firm charged with responsibility for timely reporting.

GUIDELINE: Understand reporting obligations and to whom the obligation runs, the firm or the individual.

Once firms understand their potential reporting obligation, they should develop policies and procedures designed to carry out those obligations. In developing policies and procedures, broker-dealers and investment advisers should include detailed criteria or "red flags" that would trigger reporting. These criteria must be designed to ensure compliance with the applicable reporting standards. For example, under Alabama law, a firm's reporting policies and procedures should outline facts and circumstances which could result in the development of a reasonable belief that financial exploitation has occurred, is occurring, or may occur.

Further, since the ASC accepts reports based on the firms' policies and procedures, the firm should develop clear and detailed escalation procedures which establish direct lines of communication to ensure proper reports are made. Training on escalation procedures is also

critical to ensure that when a potentially urgent situation involving a vulnerable adult arises, firm employees understand their responsibilities and the procedures they must follow. In today's world of immediate response transactions, time is of the essence and robust training is key to ensuring timely action is taken to prevent financial exploitation.

GUIDELINE: Develop clear, detailed escalation procedures, establishing direct lines of communication to ensure proper reporting.

A firm's policies and procedures should also be designed to promote internal communication and coordination regarding the reporting of financial exploitation. This is especially important for larger, more complex firms in which one division may not be aware that suspicious activity has been reported in a customer's account being managed in another division.¹⁴ Such policies and procedures, of course, will depend on the size and nature of each individual broker-dealer or investment adviser.

Firms' policies and procedures also should mandate the use of the "Alabama Securities Commission and Department of Human Resources Report of Adult Suspected to be Financially Exploited" form, and the use of any specified internal reporting forms, to ensure that each report contains pre-determined categories of information. Firms should consider developing their own form to be used for internal information gathering. The information contained on the form should include:

- the name of the client
- the relevant dates
- a description of the events that led to the report
- a description of the steps the firm has taken or expects to take in response to the event
- any relevant documentation related to the potential financial exploitation to ensure that the internal stakeholders and any outside agency receiving the report has all of the necessary information to evaluate the report.

¹⁴ For example, the banking division may not be aware that the securities division is monitoring a particular customer's account.

Comprehensive reports will help alleviate inconsistent reporting, which, in the course of developing this guide, was identified as an area of major concern among APS agencies in connection with financial firm reporting.

GUIDELINE: Mandate the use of specified internal reporting forms to ensure accurate and consistent reporting

IV. Notifying Third-Parties of Potential Financial Exploitation

In addition to reporting potential financial exploitation to DHR and ASC, notifying trusted third-parties about unusual or potentially exploitive activity occurring in a vulnerable adult's account can be an effective means of addressing any such harmful conduct. However, notifying third-parties about the financial activity of a senior investor presents many challenges and firms should implement clear policies in order to address these challenges. While the Alabama statute allows third-party notification of closely connected individuals, in addition to trusted third parties who have been designated or are on the account, it is the firm who determines the appropriate third-party contact based on the relationship of the financial professional with the client and knowledge of the clients' family, relatives, close contacts, etc. *Ala. Code* § 8-6-174 (1975). In Alabama, this provision was added, at the request of the industry, to be used in those limited or special occasions in which the firm determines is highly appropriate- under all facts and circumstances and considering the particular relationship with the account holder and the type of suspected financial exploitation.

A. Privacy Concerns

Sharing financial and other potentially sensitive information with someone other than a client or customer is a delicate subject and raises significant privacy concerns. Federal privacy laws generally prohibit the sharing of financial information unless a client or customer has

consented or another exception exists.¹⁵ Further, sharing sensitive financial information with third-parties, including family members, presents additional challenges because firms may not know all of the details of the vulnerable adult's relationship with the third-party or family member. Before broker-dealers or investment advisers share information with third-parties, including a client's family member, firms need to carefully consider the legal and other potential ramifications. Firms, however, can address many of these challenges by taking proactive measures early in the relationship with the client.

GUIDELINE: Firms should be aware of the privacy concerns and implications of notifying third-parties as it relates to financial exploitation and diminished capacity

B. Strategies for Effective Third-Party Notification

Developing strong relationships with investors is one of the most important weapons in the detection of diminished capacity and in the fight against financial exploitation. Building strong client relationships and planning for more than simply the client's technical financial future before potential issues arise is critical, and particularly important as it relates to third-party notification and advanced directives that memorialize a client's chosen course of conduct when faced with diminished capacity or financial exploitation. Firms should implement policies and procedures and related training programs that require disclosure, discussion and decisions regarding plans for potential future issues, and develop communication tools that emphasize the importance of future planning. These tools should facilitate discussions to guide the customer toward memorializing advanced financial directives and a contingent power of attorney.

GUIDELINE: Develop communication strategies to engage customers and clients on issues related to advanced planning, including the implementation of advanced directives.

¹⁵ Many of the federal privacy law concerns stems from provisions in Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., and its implementing regulations such as the SEC's Regulation S-P. 17 C.F.R. § 248.1 et seq.

One potential strategy reported to be successful by financial professionals is to engage clients and customers on the topic of planning for general medical emergencies. This approach could then grow into a discussion of other advanced safeguards, with clients more willing to commit to the designation of their “financial agent” or “in case of” contact should the need arise.

Firms should ensure that their employees are familiar with documents such as powers of attorney and advanced financial directives, including the features and limitations of each. Policies and procedures should allow clients and customers to utilize customized advanced directives or designate trusted contacts and direct what information can be shared and the conditions leading to the sharing. Because these measures are based on client consent, they can be tailored to fit the needs of specific clients and firms. Also, because clients consent to the sharing of otherwise confidential information under certain circumstances, firms that utilize advanced directives or trusted contact procedures can minimize many of the privacy concerns discussed previously.

GUIDELINE: Develop policies and procedures that allow clients and customers to utilize customized advanced directives or designate trusted contacts and direct what information can be shared and the conditions leading to the sharing.

It is important, however, that advanced directives or other forms of designation be affirmatively discussed and clearly designated, and not buried in new account forms or privacy policy statements. To assuage concerns about validity, it is critical that customers and clients know why they are designating a contact and for what reason that individual may be contacted. Firms’ policies and procedures should provide clear guidance and processes for periodically reviewing and updating third party designations, at least annually.

C. Third-Party Notifications

The concept of designating **trusted** contacts is incorporated into the Alabama statute. In addition to third parties previously designated by the vulnerable adult, section 8-6-174 allows firms to

notify certain additional third-parties, without the client’s consent, when a report is about to be or has been made to DHR and ASC. *Ala. Code § 8-6-174 (1975)*. Specifically, it authorizes a firm to notify any of the following individuals: a legal guardian, conservator, co-trustee, successor trustee, agent under power of attorney, or other “reasonably associated individual.” It is important to note that the decision to notify a third party lies within the sound discretion of the firm. Firms should be sure their policies and procedures are designed to ensure compliance with applicable state and federal laws, keeping in mind their limitations, including preventing the disclosure of information to third-parties that are suspected to be exploiting the senior investor.

GUIDELINE: Ensure policies and procedures related to third-party notification are designed to promote compliance with federal and state law.

V. Delaying Disbursements in Situations of Potential Financial Exploitation

Delaying or placing a temporary hold on a disbursement from a vulnerable adult’s account in an effort to prevent losses from financial exploitation is an important and very effective tool provided to firms under the Alabama statute. However, given the potential and unintended consequences of delaying disbursements, firms should develop clear and robust policies and procedures designed to effectively utilize these delays and to ensure that such delays comply with Alabama law and used only in appropriate circumstances.

A. Mechanics and Considerations when Delaying a Disbursement

Pursuant to section 8-6-176 firms are required to complete or continue a review or investigation after delaying a disbursement. Training is an important step in ensuring firms can successfully utilize disbursement delays when appropriate. Firms’ policies and procedures should describe the procedure, processes, and content of their required internal review following the delay of a disbursement, and firms should develop comprehensive training programs for their employees regarding these reviews and investigations.

GUIDELINE: Develop policies and procedures describing the procedure, processes, and content of internal reviews before, during, and following a disbursement delay.

Firms must also have clear procedures and processes to facilitate the notifications required when a firm, in compliance with section 8-6-176, delays a disbursement. Specifically, Ala. Code § 8-6-176 requires firms to immediately, **but in no event more than two** business days, notify all parties authorized to transact business on the account. In addition, and within the same time frame, firms must notify both DHR and ASC by filing the “Report of Adult Suspected to be Financially Exploited” form. Because these notifications are required when a firm delays a disbursement, firms should pay particular attention to developing processes for ensuring notification occurs in a timely fashion. For example, firms should designate a person who will be responsible for the notification, whether it be the account’s primary representative or someone from the firm’s legal or compliance department. Firms should also maintain systems that facilitate the identification of those authorized to transact business on the account, as each of these people is also required to receive notification of a delayed disbursement. It is incumbent on the firms, however, to devise a system for notifying account holders, and other third parties, where appropriate, and for its policies and procedures to clearly define the form and contents of these notifications to ensure accurate and consistent notification. Firms’ must also ensure that notifications are not sent to the suspected perpetrators of the financial exploitation. This is of particular importance for firms that choose to develop some type of automated notification system.

GUIDELINE: Develop clear procedures and processes to facilitate the notifications required when a disbursement delay is utilized.

Firms’ notification procedures must also provide for clear guidance on which regulators to notify- the ASC and DHR- and the time frames for such notification. It is important to note that the ASC and DHR must be notified of a delayed disbursement, in addition to the notice of

suspected financial exploitation. The “Report of Adult Suspected to be Financially Exploited” form may be used to satisfy both notice requirements¹⁶ if the decision to delay a disbursement is an immediate one. Further, and following a disbursement delay, firms should maintain open communication with ASC and DHR to report their internal findings and fully cooperate with any concurrent agency investigation or action. Section 8-6-176(2)(c) requires firms to conduct and report any additional findings of its internal investigation within 7 business days. This will ensure that the investigating agencies have the critical and time-sensitive information they need to act on any potential exploitation.

B. Timing and Other Important Considerations when Delaying Disbursements

Firms must carefully monitor the timing of delayed disbursements to ensure that funds are not withheld longer than is permissible. Reasonable time is allotted, however, to allow firms and investigating agencies to conduct a review of the transaction. The authorized time limitations on delaying disbursements are codified in section 8-6-176(b), which states that a delay expires upon the sooner either a determination by a firm that the disbursement will not result in financial exploitation, or 15 business days after the date of the delay unless ASC or DHR requests that the firm extend delay. In no instance should the delay extend beyond 25 business days unless judicial intervention is sought by either the ASC, DHR, the firm or other interested party. *Ala. Code* § 8-6-176(b)-(c) (1975).

GUIDELINE: Carefully monitor the timing of delayed disbursements to ensure that funds are not withheld longer than is permissible.

Ensuring that a senior investor’s funds are not unnecessarily delayed is critically important, as a delayed disbursement can have a significant impact on a senior investor. For example, if funds

¹⁶ Under the Section VII, “Reporter.”

are delayed, senior investors could fall behind on paying their bills or outstanding checks may bounce, which could result in additional fees. Firms' policies and procedures should be designed to minimize the time required to complete any required internal review or investigation and make the required notifications and reports. If these actions are completed in a timely manner and the proper authorities are involved, the consequences of a delay can be mitigated. The Alabama statute attempted to balance these concerns, by placing limitations on delaying disbursements, with the interest in preventing losses, knowing that once funds have left an account, they become very difficult to recover.

Finally, firms should develop communication tools to inform senior investors of the possibility of a delayed disbursement in situations of potential financial exploitation. As with the third-party designations, this should be communicated clearly and conspicuously and not exclusively in the fine print of a customer's account agreement or advisory contract.

VI. Other Considerations, Including Immunity from Potential Liability

To incentivize broker-dealers and investment advisers to further engage in combatting financial exploitation, the Alabama law contains immunity provisions that grant firms civil and administrative immunity if they fully comply with the statutory provisions. By providing immunity for certain actions, ASC and DHR envision that the firms will be more willing to utilize the available tools such as contacting designated third-parties, other third-parties in extraordinary circumstances, and delaying disbursements when necessary. The primary areas in which immunity is concerned relates to reporting, both to governmental entities and to third-parties, and when delaying disbursements.

For example, firms that file reports to ASC and DHR in good faith and using reasonable care are granted immunity from civil and administrative actions that could result from reporting and disclosing confidential information. The Alabama law also grants civil and administrative

immunity for disclosures made to third-parties and for delaying disbursements. Firms must fully comply with all relevant provisions of the law in order to qualify for immunity. To be sure that a firm's actions are covered, firms should design their policies and procedures with the law in mind, taking particular note of its dual good faith and reasonable care standard. This dual standard is designed to ensure that immunity is only available to firms or individuals that comply with the substantive provisions of the statute and do so with a desire to protect vulnerable adults from financial exploitation, and not as a result of a desire to prevent a client from taking an account to another firm.

VII. Access to Records

Maintaining records relating to the vulnerable adult's account is critical to detecting and combatting financial exploitation. In financial cases, the records are often the primary evidence of wrongdoing. Likewise, access to these records by investigating agencies is equally important as these documents are necessary to thoroughly investigate the case. Alabama law requires the disclosure of all records relating to the suspected activity. Ala. Code § 8-6-178 (1975).

GUIDELINE: Firms should develop strong working relationships with local regulatory agencies and cooperate in any investigation that may involve a firm's client or customer

With the goal of fostering cooperation and better communication, a firm's policies and procedures should include specific guidelines and requirements regarding how to respond to inquiries from ASC or DHR or law enforcement regarding the reports a firm may make regarding financial exploitation. Financial firms making an initial report regarding potential financial exploitation should not fail to respond to follow-ups or requests for additional information in a timely fashion. Given the often urgent nature of financial exploitation, maintaining clear, open communication channels is critical, and firms should develop policies that promote this communication. The records mandate is designed to facilitate this cooperation.

VII. Conclusion

Many firms have already begun to implement and utilize a number of the suggestions discussed above. While this is encouraging, and formed the basis for many of the recommendations, the Alabama Securities Commission encourages more broker-dealers and investment advisers to think critically about protecting their senior clients from financial exploitation. Implementing robust policies, procedures, and training programs that encourage firms to address these issues holistically, and that foster strong relationships among the industry, the ASC and DHR, and law enforcement, will be a significant step toward addressing the serious issues facing seniors and other vulnerable investors.