

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT
RELATING TO SECURITIES; ENACTING THE PROTECTING VULNERABLE
ADULTS FROM FINANCIAL EXPLOITATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the
"Protecting Vulnerable Adults from Financial Exploitation
Act".

SECTION 2. DEFINITIONS.--As used in the Protecting
Vulnerable Adults from Financial Exploitation Act:

A. "agencies" means the securities division of the
regulation and licensing department and the adult protective
services division of the aging and long-term services
department;

B. "agent" means an individual, other than a
broker-dealer, who represents a broker-dealer in effecting or
attempting to effect purchases or sales of securities, or
represents an issuer in effecting or attempting to effect
purchases or sales of the issuer's securities, but a partner,
officer or director of a broker-dealer or issuer, or an
individual having a similar status or performing similar
functions, is an agent only if the individual otherwise comes
within the term. "Agent" does not include an individual
excluded by rule adopted pursuant to the New Mexico Uniform
Securities Act;

1 C. "broker-dealer" means a person engaged in the
2 business of effecting transactions in securities for the
3 account of others or for the person's own account.

4 "Broker-dealer" does not include:

5 (1) an agent;

6 (2) an issuer;

7 (3) a bank or savings institution if:

8 (a) its activities as a broker-dealer
9 are limited to those specified in: 1) Subsections
10 3(a)(4)(B)(i) through (vi) and (viii) through (ix) of the
11 federal Securities Exchange Act of 1934, and they are
12 unsolicited transactions; 2) Subsection 3(a)(5)(B) of that
13 act; or 3) Subsection 3(a)(5)(C) of that act; or

14 (b) the bank satisfies the conditions
15 described in Subsection 3(a)(4)(E) of the federal Securities
16 Exchange Act of 1934;

17 (4) an international banking institution; or

18 (5) a person excluded by rule adopted
19 pursuant to the New Mexico Uniform Securities Act;

20 D. "eligible adult" means:

21 (1) a person sixty-five years of age or
22 older; or

23 (2) an incapacitated person who is eighteen
24 years of age or older;

25 E. "financial exploitation" means:

1 (1) the wrongful or unauthorized taking,
2 withholding, appropriation or use of money, assets or
3 property of an eligible adult; or

4 (2) any act or omission taken by a person,
5 including through the use of a power of attorney,
6 guardianship or conservatorship of an eligible adult, to:

7 (a) obtain control, through deception,
8 intimidation or undue influence, over the eligible adult's
9 money, assets or property to deprive the eligible adult of
10 the ownership, use, benefit or possession of the eligible
11 adult's money, assets or property; or

12 (b) convert money, assets or property
13 of the eligible adult to deprive such eligible adult of the
14 ownership, use, benefit or possession of the eligible adult's
15 money, assets or property;

16 F. "incapacitated person" means a person with a
17 mental, physical or developmental condition that
18 substantially impairs the person's ability to provide
19 adequately for the person's own care or protection;

20 G. "investment adviser" means a person that, for
21 compensation, engages in the business of advising others,
22 either directly or through publications or writings, as to
23 the value of securities or the advisability of investing in,
24 purchasing or selling securities or that, for compensation
25 and as a part of a regular business, issues or promulgates

1 analyses or reports concerning securities. "Investment
2 adviser" includes a financial planner or other person that,
3 as an integral component of other financially related
4 services, provides investment advice to others for
5 compensation as part of a business or that holds itself out
6 as providing investment advice to others for compensation.

7 "Investment adviser" does not include:

- 8 (1) an investment adviser representative;
- 9 (2) a lawyer, accountant, engineer or
10 teacher whose performance of investment advice is solely
11 incidental to the practice of the person's profession;
- 12 (3) a broker-dealer or its agents whose
13 performance of investment advice is solely incidental to the
14 conduct of business as a broker-dealer and that does not
15 receive special compensation for the investment advice;
- 16 (4) a publisher, employee or columnist of a
17 bona fide newspaper, news magazine or business or financial
18 publication of general and regular circulation or an owner
19 operator, producer or employee of a cable, radio or
20 television network, station or production facility, if, in
21 either case:

22 (a) the financial or business news or
23 advice is contained in a publication or broadcast
24 disseminated to the general public; and

25 (b) the content does not consist of

1 rendering advice on the basis of the specific investment
2 situation of each client;

3 (5) a federal covered investment adviser;
4 (6) a bank or a savings institution; or
5 (7) any other person excluded by rule
6 adopted pursuant to the New Mexico Uniform Securities Act;

7 H. "investment adviser representative" means an
8 individual employed by or associated with a New Mexico
9 investment adviser or federal covered investment adviser and
10 who makes recommendations or otherwise gives investment
11 advice regarding securities, manages accounts or portfolios
12 of clients, determines which recommendation or advice
13 regarding securities should be given, provides investment
14 advice or holds herself or himself out as providing
15 investment advice, receives compensation to solicit, offer or
16 negotiate for the sale of or for selling investment advice or
17 supervises employees who perform any of the foregoing.

18 "Investment adviser representative" does not include an
19 individual who:

20 (1) performs only clerical or ministerial
21 acts;

22 (2) is an agent whose performance of
23 investment advice is solely incidental to the individual
24 acting as an agent and who does not receive special
25 compensation for investment advisory services;

1 (3) is employed by or associated with a
2 federal covered investment adviser, unless the individual has
3 a place of business in New Mexico, as "place of business" is
4 defined by rule adopted pursuant to Section 203A of the
5 federal Investment Advisers Act of 1940 and is:

6 (a) an investment adviser
7 representative, as "investment adviser representative" is
8 defined by rule adopted pursuant to Section 203A of the
9 federal Investment Advisers Act of 1940; or

10 (b) not a supervised person as
11 "supervised person" is defined in Section 202(a)(25) of the
12 federal Investment Advisers Act of 1940; or

13 (4) is excluded by rule adopted pursuant to
14 the New Mexico Uniform Securities Act;

15 I. "issuer" means a person that issues or proposes
16 to issue a security, subject to the following:

17 (1) the issuer of a voting trust
18 certificate, collateral trust certificate, certificate of
19 deposit for a security or share in an investment company
20 without a board of directors or individuals performing
21 similar functions is the person performing the acts and
22 assuming the duties of depositor or manager pursuant to the
23 trust or other agreement or instrument under which the
24 security is issued;

25 (2) the issuer of an equipment trust

1 certificate or similar security serving the same purpose is
2 the person by which the property is or will be used or to
3 which the property or equipment is or will be leased or
4 conditionally sold or that is otherwise contractually
5 responsible for assuring payment of the certificate; and

6 (3) the issuer of a fractional undivided
7 interest in an oil, gas or other mineral lease or in payments
8 out of production pursuant to a lease, right or royalty is
9 the owner of an interest in the lease or in payments out of
10 production pursuant to a lease, right or royalty, whether
11 whole or fractional, that creates fractional interests for
12 the purpose of sale;

13 J. "qualified individual" means an agent,
14 investment adviser representative or person who serves in a
15 supervisory, compliance or legal capacity for a broker-dealer
16 or investment adviser; and

17 K. "savings institution" means an institution
18 organized or chartered pursuant to the laws of a state or of
19 the United States, authorized to receive deposits and
20 supervised and examined by an official or agency of a state
21 or the United States if its deposits or share accounts are
22 insured to the maximum amount authorized by statute by the
23 federal deposit insurance corporation, the national credit
24 union share insurance fund or a successor authorized by
25 federal law, or a receiver, conservator or other liquidating

1 agent of such institutions or entities. "Savings
2 institution" does not include:

3 (1) an insurance company or other
4 organization primarily engaged in the business of insurance;

5 (2) a Morris plan bank; or

6 (3) an industrial loan company that is not
7 an "insured depository institution" as defined in Section
8 3(c)(2) of the Federal Deposit Insurance Act or any successor
9 federal statute.

10 **SECTION 3. THIRD-PARTY AND AGENCY DISCLOSURE.--**

11 A. If a broker-dealer, investment adviser or
12 qualified individual reasonably believes that financial
13 exploitation of an eligible adult may have occurred, may have
14 been attempted or is being attempted, a broker-dealer,
15 investment adviser or qualified individual:

16 (1) shall promptly notify the agencies;

17 (2) shall attempt to notify a third-party
18 previously designated by the eligible adult; and

19 (3) may attempt to notify a third-party that
20 is not designated but is reasonably associated with the
21 eligible adult.

22 B. Disclosure shall not be made to a designated
23 third-party that is at the time of disclosure suspected of
24 financial exploitation or other abuse of the eligible adult.

25 **SECTION 4. IMMUNITY FOR DISCLOSURES.--A broker-dealer,**

1 investment adviser or qualified individual who, in exercising
2 reasonable care, complies with Section 3 of the Protecting
3 Vulnerable Adults from Financial Exploitation Act and has
4 completed the training required pursuant to Section 7 of that
5 act shall be immune from any administrative or civil
6 liability that might otherwise arise from such disclosure.

7 **SECTION 5. DELAYING DISBURSEMENTS OR TRANSACTIONS.--**

8 A. A broker-dealer or investment adviser may delay
9 a disbursement or transaction from an account of an eligible
10 adult or an account on which an eligible adult is a
11 beneficiary if:

12 (1) the broker-dealer, investment adviser or
13 qualified individual reasonably believes, after initiating an
14 internal review of the requested disbursement or transaction
15 and the suspected financial exploitation, that the requested
16 disbursement or transaction may result in financial
17 exploitation of an eligible adult; and

18 (2) the broker-dealer or investment adviser:

19 (a) immediately, but in no event more
20 than two business days after the requested disbursement or
21 transaction, provides written notification of the delay and
22 the reason for the delay to all parties authorized to
23 transact business on the account, unless any such party is
24 reasonably believed to have engaged in suspected or attempted
25 financial exploitation of the eligible adult;

1 (b) immediately, but in no event more
2 than two business days after the requested disbursement or
3 transaction, notifies the agencies; and

4 (c) provides, upon a request by the
5 securities division of the regulation and licensing
6 department, a status report of the internal review required
7 pursuant to Paragraph (1) of this subsection.

8 B. Any delay of a disbursement or transaction as
9 authorized by this section will expire upon the sooner of:

10 (1) a determination by the broker-dealer or
11 investment adviser that the disbursement or transaction will
12 not result in financial exploitation of the eligible adult;
13 or

14 (2) fifteen business days after the date on
15 which the broker-dealer or investment adviser first delayed
16 disbursement or transaction, unless either of the agencies
17 requests that the broker-dealer or investment adviser extend
18 the delay, in which case the delay shall expire no more than
19 twenty-five business days after the date on which the broker-
20 dealer or investment adviser first delayed disbursement or
21 transaction unless otherwise terminated or extended by either
22 of the agencies or an order of a court of competent
23 jurisdiction.

24 C. A court of competent jurisdiction may enter an
25 order extending the delay of the disbursement or transaction

1 or may order other protective relief based on the petition of
2 the director of the securities division of the regulation and
3 licensing department, the director of the adult protective
4 services division of the aging and long-term services
5 department, the broker-dealer or investment adviser that
6 initiated the delay under this section, or other interested
7 party.

8 **SECTION 6. IMMUNITY FOR DELAYING DISBURSEMENTS OR**
9 **TRANSACTIONS.--**A broker-dealer or investment adviser that, in
10 exercising reasonable care, complies with Section 5 of the
11 Protecting Vulnerable Adults from Financial Exploitation Act
12 and has completed the training required pursuant to Section 7
13 of that act, shall be immune from any administrative or civil
14 liability that might otherwise arise from such delay in a
15 disbursement or transaction in accordance with this section.

16 **SECTION 7. TRAINING.--**

17 A. The director of the securities division of the
18 regulation and licensing department shall promulgate, by
19 rule, training guidelines or a standardized training
20 curriculum that broker-dealers and investment advisers may
21 use. A broker-dealer or investment adviser may develop the
22 broker-dealer's or investment adviser's own training as
23 approved by the director. The training required by this
24 section may include indicators of financial exploitation of
25 an eligible adult and the process for reporting suspected

1 financial exploitation both internally and to the agencies.

2 B. A broker-dealer or investment adviser shall
3 provide training concerning the financial exploitation of
4 eligible adults to its employees who are required to be
5 registered in New Mexico as agents or investment adviser
6 representatives and who have contact with eligible adults and
7 access to account information on a regular basis and as part
8 of their job.

9 SECTION 8. RECORDS.--A broker-dealer or investment
10 adviser shall provide access to or copies of records that are
11 relevant to the suspected or attempted financial exploitation
12 of an eligible adult to the agencies and to law enforcement,
13 either as part of a referral to the agencies, as part of a
14 referral to law enforcement or upon request of the agencies
15 or law enforcement pursuant to an investigation. The records
16 may include historical records as well as records relating to
17 the most recent transaction or transactions that may comprise
18 financial exploitation of an eligible adult. All records
19 made available pursuant to this section shall not be
20 considered a public record as defined in Subsection G of
21 Section 14-2-6 NMSA 1978. Nothing in this provision shall
22 limit or otherwise impede the authority of the director of
23 the securities division of the regulation and licensing
24 department to access or examine the books and records of
25 broker-dealers and investment advisers as otherwise provided

1 by law.

2 SECTION 9. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2017. _____

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25