

UNIFORM SECURITIES ACT (2002) (EXCERPT)
Act 551 of 2008
ARTICLE 5A
FINANCIAL EXPLOITATION

451.2531 Definitions.

Sec. 531.

As used in this article:

(a) "Account" means any account with a broker-dealer or investment adviser for which a client or customer has the authority to transact business.

(b) "Adult protective services" means the office, division, or unit under the department of health and human services that is charged with the investigation of abuse, neglect, or exploitation of vulnerable individuals under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(c) "Agency of competent jurisdiction" means an entity authorized to investigate or review suspicions of abuse or exploitation, including, but not limited to, adult protective services and a law enforcement agency.

(d) "Caregiver" means a parent or other relative responsible for the health and safety of an individual, or a guardian, conservator, or any other individual with legal or fiduciary obligations to an individual.

(e) "Covered financial exploitation" means financial exploitation of an individual through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship.

(f) "Financial exploitation" means any of the following:

(i) A fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual who uses or attempts to use the financial resources of another individual for monetary or personal benefit, profit, or gain.

(ii) A fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual that results or is intended to result in depriving another individual of rightful access to or use of benefits, resources, belongings, or assets.

(g) "Law enforcement agency" means a police agency of a city, village, township, or county or the state police.

(h) "Unauthorized" means without permission, or utilizing permission obtained from an individual through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship.

(i) "Vulnerable adult" means an adult who, because of mental or physical impairment or advanced age, is unable to protect himself or herself from covered financial exploitation.

(j) "Written" means inscribed in a tangible or electronic medium.

History: Add. 2023, Act 306, Eff. Mar. 13, 2024

451.2533 Delayed disbursement; suspected or detected financial exploitation; expiration of delay; investigation; written notification; reporting; requirements

Sec. 533.

(1) Subject to subsection (4), if a broker-dealer or investment adviser suspects or detects covered financial exploitation of a client or customer, the broker-dealer or investment adviser may delay the related disbursement or transaction for further investigation or examination of available facts. On investigation or examination of available facts, if the broker-dealer or investment adviser still suspects or detects covered financial exploitation of a client or customer, the broker-dealer or investment adviser may continue the delay of the related disbursement or transaction under this subsection.

(2) A delay authorized under this section expires on either of the following:

(a) The day a broker-dealer or investment adviser determines that the disbursement or transaction will not result in covered financial exploitation of the client or customer.

(b) Not later than 15 business days after the date that the broker-dealer or investment adviser first delayed the disbursement or transaction, unless otherwise terminated or extended under subsection (3) or (4), or by court order.

(3) If a broker-dealer's or investment adviser's investigation or examination of the suspected or detected covered financial exploitation supports the broker-dealer's or investment adviser's suspicion of covered financial exploitation

or reasonable belief that covered financial exploitation has been detected, a broker-dealer or investment adviser may extend a delay authorized under this section for not longer than 40 business days after the date authorized under subsection (2)(b), unless the delay is otherwise terminated or further extended under subsection (4).

(4) If a broker-dealer or investment adviser is informed by a law enforcement agency, adult protective services, or another agency of competent jurisdiction that suspected or detected covered financial exploitation that has been reported to that agency is under investigation, the broker-dealer or investment adviser may extend the term of a delay authorized under this section until the broker-dealer or investment adviser is informed of the dismissal of the reported incident by all agencies that informed the broker-dealer or investment adviser of an investigation.

(5) Not more than 2 business days after the date that the broker-dealer or investment adviser first placed the delay on the disbursement or transaction, the broker-dealer or investment adviser must provide written notification that is maintained as correspondence under section 411(3) of the reason for the delay to all of the following:

(a) The administrator and an agency of competent jurisdiction.

(b) All persons who are authorized to transact business on the account, unless a person is unavailable or the broker-dealer or investment adviser reasonably believes that the person has engaged, is engaged, or will engage in covered financial exploitation of the client or customer.

(c) Any individual who the client or customer has previously designated as authorized to receive information about the account, unless that individual is unavailable or the broker-dealer or investment adviser reasonably believes that the individual has engaged, is engaged, or will engage in the covered financial exploitation of the client or customer.

(6) Except as otherwise provided in subsection (7), if a broker-dealer or investment adviser suspects or detects covered financial exploitation of a vulnerable adult, the broker-dealer or investment adviser shall report that activity to a law enforcement agency or adult protective services. If a broker-dealer or investment adviser elects to report to adult protective services instead of a law enforcement agency, a report made to adult protective services must be made according to the procedures established by adult protective services under applicable law.

(7) A broker-dealer or investment adviser is not required to make a report of suspected covered financial exploitation to a law enforcement agency or adult protective services if, after investigation or examination of available facts, the broker-dealer or investment adviser makes a determination that covered financial exploitation has not occurred or is not occurring and no action is necessary.

(8) Subject to subsection (6), if a broker-dealer or investment adviser suspects or detects covered financial exploitation of a client or customer, the broker-dealer or investment adviser may provide notification of that covered financial exploitation to any of the following:

(a) An agency of competent jurisdiction.

(b) A reasonably associated individual, unless that individual is unavailable or the broker-dealer or investment adviser reasonably believes that the individual has engaged, is engaged, or will engage in covered financial exploitation of the client or customer.

(c) Any third party previously designated by the client or customer to receive information about the account, unless that individual is unavailable or the broker-dealer or investment adviser reasonably believes that the individual has engaged, is engaged, or will engage in the covered financial exploitation of the client or customer.

History: Add. 2023, Act 306, Eff. Mar. 13, 2024

451.2535 Access to compliance procedures; financial exploitation of vulnerable adults; limited authorization to extend delay; written report and notification; disclosure of identity; prohibition; exception; freedom of information act.

Sec. 535.

(1) A broker-dealer or investment adviser that takes action under this article shall provide to the administrator or an agency of competent jurisdiction access to or copies of any written procedures it adopts, maintains, and implements that are reasonably designed to achieve compliance with this article, including, but not limited to, procedures related to the identification, escalation, and reporting of matters related to the financial exploitation of vulnerable adults.

(2) Only an individual who serves in a supervisory, compliance, legal, or senior or vulnerable investor protection capacity for the broker-dealer or investment adviser is eligible for identification as an individual authorized to place, terminate, or extend a delay on behalf of the broker-dealer or investment adviser under this article.

(3) A report of suspected or detected covered financial exploitation made by a broker-dealer or investment adviser must include the name of the individual believed to be the victim, a description of the suspected or detected covered financial exploitation, and a designated contact for notices required under subsection (4). If a report is made by telephone, the law enforcement agency or adult protective services that receives the report must make a written report of the information provided in the telephonic report.

(4) Not more than 15 business days after it receives a report of suspected or detected covered financial exploitation from a broker-dealer or investment adviser under this section, the law enforcement agency or adult protective services that received the report must provide written notification to the designated contact of the broker-dealer or investment adviser that clearly indicates whether the reported incident is under investigation or has been referred to a law enforcement agency for investigation. As soon as practicable after the investigation, the law enforcement agency or adult protective services shall notify the broker-dealer or investment adviser of the disposition of the reported incident.

(5) Not more than 15 business days after it receives a report of suspected or detected covered financial exploitation from a broker-dealer or investment adviser under this section, the law enforcement agency or adult protective services must notify the office of a county prosecutor. Notice must be made in a manner prescribed by the attorney general and must include, at a minimum, a copy of each report submitted to or committed to written form by the law enforcement agency or adult protective services and the response to the report by the law enforcement agency or adult protective services and any action taken by the law enforcement agency or adult protective services based on the report.

(6) If a broker-dealer or investment adviser that attempts to make a report of suspected or detected covered financial exploitation under this section is unable to communicate with law enforcement or adult protective services to make the report, or if a law enforcement agency or adult protective services that receives a report under this act fails to provide notification to the broker-dealer or investment adviser under subsection (4), the broker-dealer or investment adviser may notify the office of a county prosecutor. Notification under this subsection must be made in a manner prescribed by the attorney general.

(7) A law enforcement agency, adult protective services, or county prosecutor shall not disclose the identity of an individual or broker-dealer or investment adviser that makes a report of suspected or detected covered financial exploitation without the consent of the individual or the broker-dealer or investment adviser. However, this subsection does not prohibit a disclosure that is made by adult protective services to a law enforcement agency or by a law enforcement agency or adult protective services to a county prosecutor as required under subsection (5), or a disclosure required in a civil or criminal proceeding. A law enforcement agency, adult protective services, or county prosecutor shall not disclose the identity, or personal or account information, of an individual that is the subject of a report of suspected or detected covered financial exploitation without that individual's consent, except as required under subsection (5) or as required in a civil or criminal proceeding.

(8) The identity of an individual or broker-dealer or investment adviser that makes a report of suspected or detected covered financial exploitation under this section is exempt from disclosure under section 13(1)(b)(iv) or (d) of the freedom of information act, 1976 PA 442, MCL 15.243. The identity of an individual that is the suspected or confirmed victim of covered financial exploitation or his or her personal account information is exempt from disclosure under section 13(1)(a), (b)(iii), or (d) of the freedom of information act, 1976 PA 442, MCL 15.243. This subsection does not limit the applicability of any other exceptions to disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, to all or any part of a report made under this act.

History: Add. 2023, Act 306, Eff. Mar. 13, 2024

451.2537 Access and availability of compliance records.

Sec. 537.

(1) Subject to 15 USC 78o(i)(1) and 15 USC 80b-18a, and the record-keeping requirements provided in section 411, a broker-dealer or investment adviser shall provide access to any records related to compliance with this article and ensure that those records are readily available to the department on request. The records described in this subsection may include all of the following:

(a) Any requests for a disbursement or other transaction that a broker-dealer or investment adviser reasonably believed to constitute covered financial exploitation of a vulnerable adult and the resulting temporary delay.

(b) Any finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted,

or will be attempted underlying a decision to delay a disbursement or other transaction.

(c) The name and title of any individual who authorized a delay on a disbursement or other transaction.

(d) Any notifications to relevant parties under section 533.

(e) Any investigation or examination of available facts conducted under section 533(1).

(2) A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to suspected or detected covered financial exploitation to adult protective services and law enforcement agencies, either as part of a referral to adult protective services or a law enforcement agency or on request of adult protective services or a law enforcement agency in connection with an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may constitute suspected or detected covered financial exploitation. All records made available to agencies or law enforcement under this subsection are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. This subsection does not limit or otherwise impede the authority of the administrator to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

History: Add. 2023, Act 306, Eff. Mar. 13, 2024

451.2539 Disclosure of general status or final disposition.

Sec. 539.

Notwithstanding any provision of law to the contrary, an agency of competent jurisdiction may disclose to any reporting or notifying broker-dealer or investment adviser the general status or final disposition of an investigation that arose from a report made by the broker-dealer or investment adviser.

History: Add. 2023, Act 306, Eff. Mar. 13, 2024

451.2541 Liability of broker-dealer or investment adviser.

Sec. 541.

A broker-dealer or investment adviser that exercises good faith in an action, determination, omission, or practice under this article is immune from any administrative or civil liability that might otherwise arise from those activities.

History: Add. 2023, Act 306, Eff. Mar. 13, 2024

451.2543 Scope of article.

Sec. 543.

(1) This article does not limit the responsibilities of a law enforcement agency to enforce the laws of this state or preclude a law enforcement agency from reporting and investigating, as appropriate, alleged criminal conduct.

(2) This article does not limit the ability or authority of a broker-dealer or investment adviser to do either of the following:

- (a) Take lawful action under local, state, or federal law or private agreement.
- (b) Report or prevent fraud or other illegal activity related to the broker dealer's or investment adviser's operations or the assets of a client or customer that are held by the broker-dealer or investment adviser.
- (3) This article does not restrict or prohibit an individual, other than an individual who is acting as an employee of a broker-dealer or investment adviser, who suspects or detects that covered financial exploitation of an individual has occurred or is being attempted by another individual from making a report to a law enforcement agency or adult protective services.
- (4) This article does not limit the responsibilities of adult protective services to investigate, as appropriate, alleged abuse of any adult in need of protective services, as the term adult in need of protective services is defined in section 11 of the social welfare act, 1939 PA 280, MCL 400.11.

History: Add. 2023, Act 306, Eff. Mar. 13, 2024