KILPATRICK TOWNSEND

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Regulators Focus on Vulnerable Seniors; Advisers and Brokers On Notice

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On Tuesday, the U.S. House of Representatives passed the "National Senior Investor Initiative Act of 2019" (H.R. 1876) (the "Act"), which directs the U.S. Securities and Exchange Commission ("SEC") to establish a taskforce (the "Taskforce") focused on protecting investors over the age of 65. The Taskforce would operate for 10 years and issue bi-annual reports to Congress. The Act would also require that within the next two years the Government Accountability Office conduct a study and submit a report to Congress with respect to the financial exploitation of seniors. The Act builds on similar legislation, including the Senior Safe Act passed by Congress last year to encourage reporting of potential exploitation of seniors to the appropriate authorities.

Of course, regulators have been working for years to enhance protections for senior investors. The SEC, MSRB, FINRA, NASAA and state securities regulators each have numerous initiatives and resources dedicated to the issue (see imbedded links for examples). Similarly, the SEC's Office of Compliance Inspections and Examinations ("OCIE") and FINRA's 2019 exam priorities both include issues relating to the exploitation of seniors.

US Census Bureau data shows that in 2017 seniors (65+) composed approximately 15 percent of the population. Generally, the following states and regions have an above-average concentration of seniors:

- Florida
- Pennsylvania
- New England (Vermont, New Hampshire and Maine)
- Southwest (Nevada, New Mexico and Arizona)

Of course, the SEC may take a more targeted approach and scrutinize cities known for their elderly populations, for example: The Villages, FL (57%), Punta Gorda, FL (39%), Prescott, AZ (31%), Lake Havasu, AZ (30%), Port Angeles, WA (29%), Ocean City, NJ (26%), Myrtle Beach, SC (25%), and Grants Pass, OR (25%).

It's our understanding that FINRA uses this type of data in its effort to identify what it calls "high-risk" brokers for examination. Broker-dealers and investment advisers with offices located in areas with large senior populations may be particularly likely to incur regulatory scrutiny regarding effective systems, policies and procedures to ensure necessary protections for senior investors.

If you have any questions about the contents of the recent legislative and regulatory efforts to protect elderly investors or about the regulation of investment advisers and broker-dealers generally, please feel free to contact us.

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