

118TH CONGRESS
1ST SESSION

S. 1481

To amend the Investment Company Act of 1940 to postpone the date of payment or satisfaction upon redemption of certain securities in the case of the financial exploitation of specified adults, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2023

Mr. HAGERTY (for himself and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Investment Company Act of 1940 to postpone the date of payment or satisfaction upon redemption of certain securities in the case of the financial exploitation of specified adults, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Exploitation
5 Prevention Act of 2023”.

1 **SEC. 2. REDEMPTION OF CERTAIN SECURITIES POST-**
2 **PONED.**

3 (a) IN GENERAL.—Section 22 of the Investment
4 Company Act of 1940 (15 U.S.C. 80a–22) is amended by
5 adding at the end the following:

6 “(h) REQUIREMENTS WITH RESPECT TO NON-INSTITI-
7 TUTIONAL DIRECT AT-FUND ACCOUNTS.—

8 “(1) ELECTION.—

9 “(A) IN GENERAL.—A registered open-end
10 investment company and a transfer agent de-
11 scribed in paragraph (2) may elect to comply
12 with the requirements under paragraph (2) and
13 subsection (i) by notifying the Commission of
14 that election.

15 “(B) EFFECT OF ELECTION.—Paragraph
16 (2) and subsection (i) shall only apply to a reg-
17 istered open-end investment company and a
18 transfer agent that have made an election
19 under subparagraph (A).

20 “(2) REQUIREMENTS.—In the case of a cus-
21 tomer who is a holder of a non-institutional account
22 held directly with a registered open-end investment
23 company and serviced by a transfer agent (com-
24 monly known as a ‘direct-at-fund account’), the com-
25 pany and transfer agent shall—

1 “(A) request from that customer the name
2 and contact information of at least 1 individual
3 who—

4 “(i) is, at the time of that request, an
5 adult; and

6 “(ii) may be contacted with respect to
7 that account;

8 “(B) document and retain the information
9 received under subparagraph (A); and

10 “(C) disclose to that customer in writing
11 (including through electronic delivery) that such
12 company or transfer agent may contact an indi-
13 vidual specified under subparagraph (A) with
14 respect to the account of that customer to—

15 “(i) address possible financial exploi-
16 tation of that customer;

17 “(ii) confirm the contact information
18 or health status of that customer; or

19 “(iii) identify any legal guardian, ex-
20 ecutor, trustee, or holder of a power of at-
21 torney with respect to the customer.

22 “(i) REDEMPTION OF CERTAIN SECURITIES POST-
23 PONED.—

24 “(1) IN GENERAL.—Notwithstanding subsection
25 (e), a registered open-end investment company or a

1 transfer agent acting on behalf of such a company
2 may postpone the date of payment or satisfaction
3 upon redemption of any redeemable security in ac-
4 cordance with its terms for more than seven days
5 after the tender of such security to such company or
6 its agent designated for that purpose for redemption
7 if such company or agent reasonably believes that—

8 “(A) that redemption is requested by a se-
9 curity holder who is a specified adult; and

10 “(B) financial exploitation has occurred, is
11 occurring, or has been attempted with respect
12 to that redemption.

13 “(2) DURATION.—

14 “(A) IN GENERAL.—Except as provided in
15 subparagraphs (B) and (C), a registered open-
16 end investment company or a transfer agent
17 acting on behalf of such company may postpone
18 the date of payment or satisfaction upon re-
19 demption of a redeemable security under para-
20 graph (1) for a period of not more than 15
21 business days.

22 “(B) EXTENSION UPON DETERMINATION
23 OF EXPLOITATION.—The period described in
24 subparagraph (A) may be extended by an addi-
25 tional 10 business days if the registered open-

1 end investment company or a transfer agent
2 acting on behalf of such a company—

3 “(i) reasonably believes that—

4 “(I) the redemption is requested
5 by a security holder who is a specified
6 adult; and

7 “(II) financial exploitation has
8 occurred, is occurring, or has been at-
9 tempted with respect to such redemp-
10 tion;

11 “(ii) subject to subparagraph (D), not
12 later than 2 days after making a deter-
13 mination under clause (i), notifies the indi-
14 viduals specified by that security holder
15 under subsection (h)(2)(A) in writing (in-
16 cluding through electronic delivery) of the
17 extension of the period described in sub-
18 paragraph (A) under this subparagraph
19 and the reason for that extension;

20 “(iii) initiates an internal review of
21 the facts and circumstances relating to the
22 determination under clause (i);

23 “(iv) holds amounts relating to the
24 delayed payment or satisfaction upon re-

1 demption of the redeemable security in a
2 demand deposit account; and

3 “(v) documents and retains records
4 related to carrying out clause (iv) and in-
5 cludes those records in the first required
6 account statement of the security holder
7 provided after the date on which the deter-
8 mination is made under clause (i).

9 “(C) EXTENSION BY GOVERNMENT.—A
10 State regulator, administrative agency of com-
11 petent jurisdiction, or court of competent juris-
12 diction may extend the period described in sub-
13 paragraph (A).

14 “(D) NOTIFICATION.—

15 “(i) EXCEPTION.—Subparagraph
16 (B)(ii) shall not apply if a registered open-
17 end investment company or transfer agent
18 acting on behalf of such a company reason-
19 ably believes that an individual required to
20 be notified under that subparagraph is,
21 has been, or will subject the security holder
22 who identified that individual under sub-
23 section (h)(2)(A) to financial exploitation.

24 “(ii) REASONABLE EFFORTS.—An
25 open-end investment company or transfer

1 agent acting on behalf of such a company
2 shall be considered in compliance with sub-
3 paragraph (B)(ii) if that company or
4 transfer agent makes a reasonable effort to
5 contact the individuals specified by a secu-
6 rity holder under subsection (h)(2)(A).

7 “(E) INTERNAL PROCEDURES.—An open-
8 end investment company or transfer agent act-
9 ing on behalf of such a company shall establish
10 procedures to carry out the requirements under
11 this subsection, including procedures—

12 “(i) relating to the identification and
13 reporting of matters relating to the finan-
14 cial exploitation of specified adults;

15 “(ii) to determine whether to release
16 or reinvest delayed redemption proceeds,
17 taking into account the facts and cir-
18 cumstances of each case, should the inter-
19 nal review under subparagraph (B)(iii)
20 support the reasonable belief described in
21 subparagraph (B)(i);

22 “(iii) identifying each employee of the
23 company or transfer agent with authority
24 to establish, extend, or terminate a period

1 described in paragraph (1) or subpara-
2 graph (A);

3 “(iv) in the case of a transfer agent,
4 that are reasonably designed to ensure that
5 the employees of the transfer agent comply
6 with this subsection; and

7 “(v) in the case of an open-end invest-
8 ment company, establishing periodic re-
9 porting requirements under which a trans-
10 fer agent acting on behalf of the company
11 shall notify the company of—

12 “(I) each extension under sub-
13 paragraph (B) authorized by the
14 transfer agent;

15 “(II) each finding by the transfer
16 agent under subparagraph (B)(i);

17 “(III) each notification under
18 subparagraph (B)(ii) carried out by
19 the transfer agent; and

20 “(IV) the results of each internal
21 review initiated by the transfer agent
22 under subparagraph (B)(iii).

23 “(F) INFORMATION INCLUDED IN CERTAIN
24 STATEMENTS.—An open-end investment com-
25 pany shall include in each prospectus or state-

1 ment of additional information a notification
2 that the company or a transfer agent acting on
3 behalf of the company may postpone redemp-
4 tion of certain securities under this subsection.

5 “(G) RECORD RETENTION.—An open-end
6 investment company or transfer agent acting on
7 behalf of such a company shall—

8 “(i) document and retain records of—

9 “(I) each postponement of re-
10 demption under subparagraphs (A),
11 (B), and (C);

12 “(II) each finding under subpara-
13 graph (B)(i);

14 “(III) the name and position of
15 each employee described in subpara-
16 graph (E)(iii);

17 “(IV) each notification carried
18 out under subparagraph (B)(ii); and

19 “(V) the results of each internal
20 review initiated under subparagraph
21 (B)(iii); and

22 “(ii) make the records described in
23 clause (i) available to the Commission at
24 the request of the Commission.

1 “(3) SPECIFIED ADULT DEFINED.—In this sub-
2 section, the term ‘specified adult’ means an indi-
3 vidual who—

4 “(A) is not younger than 65 years of age;

5 or

6 “(B) is not younger than 18 years of age
7 and who a registered open-end investment com-
8 pany or a transfer agent acting on behalf of
9 such a company reasonably believes has a men-
10 tal or physical impairment that renders the in-
11 dividual unable to protect the interests of the
12 individual.”.

13 (b) RECOMMENDATIONS.—

14 (1) IN GENERAL.—Not later than 1 year after
15 the date of enactment of this Act, the Securities and
16 Exchange Commission, in consultation with the enti-
17 ties specified in paragraph (2), shall submit to Con-
18 gress a report that includes recommendations re-
19 garding the regulatory and legislative changes nec-
20 essary to address the financial exploitation of secu-
21 rity holders who are specified adults (as defined in
22 subsection (i)(3) of section 22 of the Investment
23 Company Act of 1940 (15 U.S.C. 80a–22), as added
24 by this section).

1 (2) CONSULTATION.—The entities specified in
2 this paragraph are as follows:

3 (A) The Commodity Futures Trading
4 Commission.

5 (B) The Director of the Bureau of Con-
6 sumer Financial Protection.

7 (C) The Financial Industry Regulatory Au-
8 thority.

9 (D) The North American Securities Ad-
10 ministrators Association.

11 (E) The Board of Governors of the Fed-
12 eral Reserve System.

13 (F) The Comptroller of the Currency.

14 (G) The Federal Deposit Insurance Cor-
15 poration.

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