VIA ELECTRONIC MAIL

October 30, 2015

Chris Staley
Counsel
North American Securities Administrators Association
750 First Street N.E. Suite 1140
Washington, D.C. 20002

Re: Notice of Request for Comments Regarding NASAA's Proposed Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation

Dear Mr. Staley:

On September 29th, the North American Securities Administrators Association (NASAA) published its request for public comment on proposed model legislation or regulation to protect vulnerable adults from financial exploitation (Model Rule).[1] The Model Rule would mandate reporting to state securities regulators and state Adult Protective Service agencies (APS). The Model Rule would enable broker-dealers and financial advisors to delay disbursements if they reasonably believe financial exploitation may occur. Finally, the Model Rule would also provide immunity to those who report suspected financial abuse in good faith.

The Financial Services Institute[2] (FSI) appreciates the opportunity to comment on this important proposal. In addition, FSI has appreciated being included in the Advisory Council to NASAA's Committee on Senior Issues and Diminished Capacity. FSI's members are strongly committed to working with regulators to eliminate elder abuse. However, creating a legal duty to report will create a number of unintended consequences, such as creating an incentive for advisors and others to report circumstances that may not rise to the level contemplated in the Model Rule simply in order to protect themselves. FSI offers several recommendations on the Model Rule, including increasing the amount of days that a broker may hold a disbursement and considering a permissive reporting standard for qualified employees. We elaborate on our comments below.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately

[1] Notice of Request for Comments Regarding NASAA's Proposed Model Legislation or Regulation To P:rotect Vulnerable Adults From Financial Exploitation, *available at*, http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2015/09/Request-for-Comments-Model-Seniors-Legislation-Final-2.pdf

[2] The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

167,000 independent financial advisors, which account for approximately 64.5% producing registered representatives. These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

A. Introduction

NASAA's Model Rule is intended to provide the securities industry and regulators with tools to protect senior investors. FSI is committed to the prevention of elder abuse and has worked to create tools for its members to use to combat it.[3] As stated earlier, FSI also appreciates being included in NASAA's Advisory Council to its Committee on Senior Issues and Diminished Capacity. FSI further appreciates NASAA's efforts in obtaining industry input prior to releasing its proposal. Nevertheless, FSI has concerns with the Model Rule, specifically with the mandatory reporting provision.

B. FSI believes that NASAA should adopt a Permissive Reporting Standard.

The Model Rule specifically mandates reporting of suspected elder abuse to the state securities regulator and state APS agency. A qualified employee would need to have a "reasonable belief" that financial exploitation is occurring or has already occurred.[4] The Model Rule defines qualified employee as an "agent, investment adviser representative, or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser."[5]

FSI understands the need for broker-dealers and financial advisors to be vigilant and to report instances of elder abuse. However, FSI is concerned the Model Rule as currently constituted will lead to an unnecessary over-reporting of suspected elder abuse. While some instances of elder abuse are obvious and clear cut, many are subtle and require investigation by a qualified employee. Mandating that qualified employees of broker-dealers and financial advisors report any suspicion of abuse or face civil liability will in turn lead to these individuals reporting even the slightest suspicion of elder abuse to state agencies. While this, on its face, appears to be in the best interest for senior investors, it is likely to over-tax state resources by flooding them with mere suspicions, making it more difficult to investigate urgent and legitimate claims.

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[3] FSI's Elder Abuse Prevention Resource Center, *available at*, www.financialservices.org/elderabuse
[4] Id at 2.
[5] Id.

In its recently released Regulatory Notice 15-37, FINRA proposes many of the same solutions as NASAA, including a designating a third-party who can be contacted if elder abuse is suspected.[6] FINRA's Notice does not create an obligation or duty to report suspicions of elder abuse to any government agencies or self-regulatory entities. Therefore, adoption of FINRA's rule and NASAA's Model Rule could lead to conflicting requirements imposed on broker-dealers thus complicating compliance of both. As a result, FSI requests that NASAA consider a permissive standard that would enable the industry to report clear cases of elder abuse without burdening APS with less credible reports.

Further, states have successfully implemented statutes with permissive reporting standards. As an example, Missouri has implemented a prevention of elder abuse statute that allows for permissive reporting.[7] Many states may not even accept the report if it does not meet their existing minimum qualifiers (e.g., the investor must be of a minimum age before the state will accept the report, etc.).[8] For example, Colorado's Code defines an elder as a person as 70 years old while Georgia defines it as a person 65 years old. Permissive reporting would enable financial advisors and other qualified employees to undertake a reasonable investigation of suspected elder abuse without facing liability. This in turn would best utilize state resources to investigate the most urgent and egregious claims of abuse.

Should NASAA be concerned that permissive reporting would result in under-reporting, FSI suggests that permissive reporting be the initial standard and NASAA review it retrospectively after a reasonable period-of-time to determine if under-reporting has occurred. NASAA could then implement a mandatory requirement if they find that instances of elder abuse are not being adequately reported. Independent broker-dealers and advisers have a vested interest in protecting their clients and their assets. Protecting clients is both the right thing to do and a good business practice. We believe this will prove sufficient motivation to report concerns to APS.

C. FSI Requests that NASAA Reinserts a Provision Requiring State Officials to Undertake an Investigation

FSI believes that the ongoing collaboration between state securities regulators and industry is in the best interest of all investors and best protects senior investors. FSI members are committed to providing information to assist regulators to prevent or prosecute individuals perpetrating fraud. Therefore, FSI believes that NASAA should reinsert a provision in its Model Rule that would mandate that state securities regulators conduct an investigation when provided with salient information form broker-dealers.

FSI believes that state securities regulators are the best positioned to carry out such investigations and understands that state regulators will certainly investigate legitimate claims of abuse. However, as NASAA's proposal will be a model public policy, FSI recommends that NASAA include explicit language stating that state regulators will investigate any reports of fraud. Such a provision would have the public policy implication of assuring investors that any reports of fraud will be investigated by firms, but also state officials who may have access to

[6] FNRA Regulatory Notice 15-37, *available at,*
https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-37.pdf
[7] Senior Savings Protection Act, *available at,*
http://www.senate.mo.gov/15info/BTS_Web/Bill.aspx?SessionType=R&BillID=1174064
[8] Colorado Senior Abuse Law, C.R.S. §§ 18-6.5-101 et seq. and the Georgia Code, Ga. Code §§ 30-5-3 et seq.

certain legal tools such as subpoena powers. In addition, an inclusion of such a mandate would further dissuade potential individuals from perpetrating fraud. FSI believes that an explicit mandate in the rule proposal would provide a strong assurance to the investing public that regulators and the broker-dealer community will work together to investigate and prevent fraud.

D. FSI Supports a Freeze on Disbursements and Recommends a Freeze on Transactions

In its Model Rule, NASAA enables broker-dealers or financial advisor to delay a disbursement from a client's account if elder abuse is suspected. The Model Rule provides that broker-dealers and financial advisors may freeze transactions for up 10 business days, and may request an extension for a freeze for up to 20 business days. It would also require notification to the account holder, state securities regulator, and state APS. The Model Rule would also require that firms undertake an internal investigation of suspected elder abuse and to present its findings to the state agencies within seven business days.[9]

FSI strongly supports NASAA's stance on delaying disbursements. The NASAA Model Rule would allow firms to freeze a disbursement for an adequate amount of time to dissuade any possible abuse or manipulation while also protecting account holders' rights to their funds. FSI also strongly believes in notifying the relevant state agencies if there are strong suspicions of elder abuse. FSI would request a slight change to the portion of the Model Rule requiring that an internal review be conducted and presented within seven days. While FSI agrees that an internal review should be conducted, seven days is a short time period in which to conduct such a review. Many of FSI's smaller broker-dealers would be unable to dedicate staff solely to gather and report instances of elder abuse. FSI would request that NASAA consider extending the deadline to 10 business days or stipulate that firms provide whatever information they were able gather in the seven day period.

FSI requests that NASAA consider amending the Model Rule to also allow broker-dealers to freeze a transaction if there are strong suspicions of elder abuse. A transaction freeze could prevent the liquidation of securities that could have serious financial consequences for a client, such as a liquidation of an annuity with high early termination fees and significant tax implications. Those wishing to perpetrate a fraud will not care or consider these downsides if they are trying to gain access to the funds. Therefore, FSI requests that NASAA consider implementing language that would enable firms to freeze transactions.

Finally, broker-dealers are bound under FINRA rules to comply with ACAT transfers within an expedited time frame.[10] Often, individuals attempting to perpetrate fraud will use this short timeline to their advantage and specifically push for a quick transfer of elderly investors' funds to another financial institution. These short timeframes prevent firms from conducting adequate investigations into suspicions of elder abuse while also meeting their regulatory requirements. Therefore, FSI requests that states, working with FINRA, allow for a 10 day hold on ACAT transfers if there are good faith suspicions of elder abuse. This longer hold would enable firms to conduct a reasonable investigation into suspicions and to alert, if necessary, the appropriate regulatory entities.

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[9] Notice of Request for Comments Regarding NASAA's Proposed Model Legislation or Regulation To P:rotect Vulnerable Adults From Financial Exploitation, *available at*, http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2015/09/Request-for-Comments-Model-Seniors-Legislation-Final-2.pdf

[10] See *generally*, FINRA Rule 11870, *available at*, http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9704

E. FSI Supports the Immunity Provision in the Model Rule

In the Model Rule, NASAA provides civil or administrative immunity to broker-dealers or financial advisor who report suspicions of elder abuse, in good faith, exercising reasonable care in delaying a disbursement. FSI strongly supports this provision and applauds NASAA for its inclusion. Protecting financial advisors and qualified employees from liability for reporting elder abuse suspicions enables them to express their concerns without fearing repercussions. In addition, NASAA once again protects investors by ensuring that suspicions must be reported in "good faith and exercising reasonable care." This standard removes any superfluous and obviously incorrect reports of elder abuse while continuing to protect investors.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with NASAA on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

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