



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
INVESTOR ADVOCATE

October 29, 2015

Submitted Electronically

Lynne Egan (MT), Chair, Senior Issues/Diminished Capacity Committee
Patricia Struck (WI), Vice-chair, Senior Issues/Diminished Capacity Committee
Christopher Staley, Counsel
The North American Securities Administrators Association, Inc. (NASAA)
750 First St., NE, Suite 1140
Washington, D.C. 20002

**RE: NASAA's Proposed Model Legislation or Regulation
To Protect Vulnerable Adults From Financial Exploitation**

Dear Ms. Egan, Ms. Struck, and Mr. Staley:

The Office of the Investor Advocate¹ appreciates this opportunity to provide comments in regard to NASAA's Proposed Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation.² We support NASAA's proposed model legislation ("Proposed Model Act") and believe it will enhance the ability of financial professionals and firms to protect vulnerable adults from suspected financial exploitation. We also offer one suggestion to strengthen the Model Act further.

We have made it a priority to investigate ways to help protect elderly investors from financial exploitation. More specifically, we have been looking for ways to give financial service professionals more effective tools to protect vulnerable clients. Investment adviser representatives and agents of broker-dealers are uniquely situated to spot financial abuse of their clients, and we believe it is appropriate to improve the ability of financial professionals to prevent such abuse.

Elder financial abuse is expected to grow dramatically for at least three reasons. First, our population is aging. About 10,000 Americans will celebrate their 65th birthday every day from now until 2030,³ and by 2040, more than one in five Americans will be 65 or older.⁴ Second, as the

¹ This letter expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for this letter and all analyses, findings, and conclusions contained herein.

² NASAA, *Notice of Request for Comments Regarding NASAA's Proposed Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation* (September 29, 2015), <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2015/09/Request-for-Comments-Model-Seniors-Legislation-Final-2.pdf>.

³ Kathy Greenlee, Assistant Secretary for Aging at the U.S. Department of Health and Human Services, Remarks to the SEC Investor Advisory Committee, July 10, 2014, <http://www.sec.gov/news/otherwebcasts/2014/iac071014.shtml> (archived webcast); See DOJ Press Release, Justice Department, *Health and Human Services Call for Action to Address Abuse of Older Americans* (July 9, 2014), <http://www.justice.gov/opa/pr/justice-department-health-and-human-services-call-action-address-abuse-older-americans>.

population ages, we can predict that greater numbers of seniors will begin to suffer from diminished capacity. The Alzheimer's Association estimates that the number of people age 65 and older with Alzheimer's disease will reach 7.1 million by 2025, a 40 percent increase from the current number of 5.1 million.⁵ Third, with the growing dependence upon defined contribution retirement plans instead of defined benefit plans,⁶ seniors will be left with greater control over the savings they have built up through a lifetime of hard work. According to some estimates, persons 65 years and older have a total of \$18.1 trillion in assets, including \$10 trillion in financial assets.⁷ These assets will be very tempting targets for wrongdoers of all stripes, from unethical caregivers and family members to fraudsters and scam artists.

When the unscrupulous carry out acts of exploitation, financial professionals often find themselves on the front lines. Many agents and investment adviser representatives have known their clients for years, and they may be among the first to recognize signs of diminished capacity and the red flags of financial exploitation. But these financial professionals often feel limited in their ability to protect their clients. That is where we believe the proposed Model Act can help. The proposed legislation would provide broker-dealers and investment advisers with the authority to delay disbursing funds from an eligible adult's account if the broker-dealer or investment adviser reasonably believes that such disbursement will result in the financial exploitation of the eligible adult. This represents an important step in empowering financial institutions and professionals to do the right thing when they suspect elderly financial abuse.

Any law or regulation in this area must balance two potentially conflicting goals: to respect every individual's right to self-determination, while also seeking to protect the vulnerable from exploitation and even self-destruction. Accordingly, any legislation that gives financial professionals greater authority to combat financial exploitation must also set appropriate limits on that authority and uphold the rights of customers to their property.

The Office of the Investor Advocate believes that the proposed Model Act strikes an appropriate balance, by coupling the authority to pause distributions with mandatory reporting requirements. If a broker-dealer or investment adviser delays a disbursement, it must notify persons authorized to transact business on the account (unless such persons are suspected of the financial exploitation), notify the state securities commissioner and adult protective services, and undertake an internal review of the suspected exploitation.⁸ These reporting requirements will strengthen the effectiveness of the pause, while providing an appropriate measure of checks and balances.

⁴ See U.S. Census Bureau, *2014 National Population Projections: Table 6. Percent Distribution of the Projected Population by Sex and Selected Age Groups for the United States: 2015 to 2060*, <http://www.census.gov/population/projections/files/summary/NP2014-T6.xls>.

⁵ Alzheimer's Association, *Alzheimer's Facts and Figures*, [last visited Oct. 28, 2015], http://www.alz.org/alzheimers_disease_facts_and_figures.asp.

⁶ Dep't of Labor, Emp. Benefits Sec. Admin., Private Pension Plan Bulletin Historical Tables and Graphs, at 2 and 3 Table E1 and GraphE1g, June 2013, <http://www.dol.gov/ebsa/pdf/historicaltables.pdf>.

⁷ See, e.g., David Laibson, *The Age of Reason* (June 2011), available at http://scholar.harvard.edu/files/laibson/files/ageofreason_pdf.pdf?m=1360043079; Jason Stipp and Esther Pak, *Why age matters for financial decision-makers*, Morningstar, (June 20, 2011), available at <http://www.morningstar.com.au/funds/article/age-matters/3576?q=printme>; and ThinkAdvisor, *Challenges, Opportunities of Aging Population Gauged as Morningstar Conference Ends* (June 11, 2011), available at <http://www.thinkadvisor.com/2011/06/11/challenges-opportunities-of-aging-population-gauge?page=2>.

⁸ NASAA Proposed Model Legislation, *supra* note 2 at § 7.

The proposed Model Act also imposes time limits on any delays in disbursement (to a maximum of ten business days, with the possibility of a 10-day extension upon request of protective agencies, for a total delay of 20 business days).⁹ The Office of the Investor Advocate supports this provision as another example of balanced treatment, with the deadlines serving to limit the authority of financial firms to place a pause on disbursements. In the future, as we gain experience in observing the effects of delays on disbursements, we advise NASAA to review the length of the pauses and adjust the timelines if that proves advisable.

Significantly, the Model Act explicitly permits broad access to the records of broker-dealers and investment advisers by protective agencies in cases of suspected or attempted financial exploitation.¹⁰ Such information can prove essential for an Adult Protective Services (“APS”) investigation. But we understand that, too often, APS investigators have encountered difficulties in obtaining the records in a timely manner. In some cases, financial institutions may require a subpoena before releasing account information needed by APS to investigate the very cases of elderly financial exploitation that the financial institution reported to APS.¹¹ While recognizing this provision of the proposed legislation as a positive step forward, the Office of the Investor Advocate believes that it should be strengthened further. We recommend that the proposed Model Act require, not merely permit, reporting institutions to provide records to APS upon reasonable request.

We note, and support, another provision of the Model Act that would provide financial professionals with another important communications tool. If a qualified employee reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified employee may notify any third party previously designated by the eligible adult.¹² Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult. By restricting notification to third parties who have already been designated in advance, this provision underscores the importance of an emerging industry best practice, in which firms ask (but do not require) customers to provide a trusted contact at account opening and subsequently during periodic account reviews.

In conclusion, we commend NASAA for its efforts to combat elderly abuse. We believe that adoption of the proposed Model Act will help build momentum to protect those at risk of financial exploitation. We also recommend strengthening the legislation by requiring reporting institutions to provide records to APS upon reasonable request, in order to facilitate the prompt investigation of suspected financial exploitation.

⁹ *Id.*

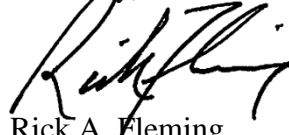
¹⁰ *Id.* at § 9.

¹¹ Communication to the Investor Advocate from Kathleen Quinn, Executive Director, NAPSA. See also NAPSA, *Survey of APS on Working with Financial Institutions*, March 31, 2014. Though the survey related to APS workers’ experience with banks, rather than broker-dealers and investment advisers, the results are nonetheless instructive. Nearly 68 percent of respondents said that the financial institution would not turn over records without a subpoena; nearly 40 percent of respondents frequently experienced long delays to obtain records from financial institutions; and 44 percent frequently experienced unwillingness of financial institutions to provide records.

¹² NASAA Proposed Model Legislation, *supra* note 2 at § 5.

Should you have any questions, please do not hesitate to contact me or Stephen Deane on my staff at (202) 551-3302.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Fleming". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.

Rick A. Fleming
Investor Advocate