



Wells Fargo Advisors, LLC  
Regulatory Affairs and Elder Client Initiatives  
1 N. Jefferson Avenue  
St. Louis, MO 63103  
HO004-11D  
Tel 314-242-3105  
Fax 314-875-7811

Member FINRA/SIPC

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VIA internet to:

Lynne Egan (MT), Chair, Senior Issues/Diminished Capacity Committee ([legan@mt.gov](mailto:legan@mt.gov));  
Patricia Struck (WI), Vice-chair, Senior Issues/Diminished Capacity Committee  
([patricia.struck@dfi.wisconsin.gov](mailto:patricia.struck@dfi.wisconsin.gov));  
Christopher Staley, Counsel, NASAA ([cs@nasaa.org](mailto:cs@nasaa.org)).

**Re: NASAA'S PROPOSED MODEL LEGISLATION OR REGULATION TO PROTECT  
VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION**

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

Wells Fargo Advisors, LLC ("WFA" or "the Firm") appreciates the opportunity to provide this letter in response to NASAA's proposed model legislation or regulation to protect vulnerable adults from financial exploitation ("the Proposal"). WFA applauds NASAA for taking direct aim at elder financial abuse, one of the major challenges facing investors, regulators and the industry. We hope our brief comments are insightful and help NASAA finalize a model rule that efficiently and effectively begins the process of combatting elder financial abuse.

WFA consists of brokerage operations that administer approximately \$1.4 trillion in client assets. It employs approximately 14,988 full-service financial advisors in branch offices in all 50 states and 3,838 licensed financial specialists in retail bank branches across the country.<sup>1</sup> Wells Fargo is committed to providing individuals and their families with the advice and guidance they need to plan for a long and healthy retirement. Since 2006, WFA has focused continuously on

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<sup>1</sup> WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 77 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

challenges facing our elder clients, particularly the scourges of elder financial abuse and the devastating pain of dementia and diminished capacity.<sup>2</sup>

### **The NASAA Proposal**

In the last two years, NASAA has made a concerted and focused effort to address elder financial abuse. NASAA has crafted the Proposal to give its members a regulatory or legislative framework to address a key problem that faces firms like WFA when engaging clients who might be victims of abuse or suffer from dementia. Current privacy rules make it virtually impossible for a firm to contact trusted family members or others who are not listed on the elder client's account to advise them that their elder is in the throes of a scam or is unable to function completely. Another problem arises from the general requirement that firms promptly and faithfully execute client instructions. That industry rule makes no allowances to refuse such a client order when there are indications that a scam is underway or there is considerable question about a client's capacity to make that order.

The Proposal provides key definitions, one of which defines an eligible adult as age 60 and over. It also allows the insertion of an individual state's definition of "vulnerable adults." The Proposal next states broker dealers and investment advisers who suspect elder financial abuse "shall promptly notify Adult Protective Services and the commissioner of securities (collectively "the Agencies")."<sup>3</sup> When acting "in good faith and exercising reasonable care," those making a disclosure under the Proposal will receive immunity from civil and administrative liability.<sup>4</sup>

To address the concern about contacting trusted individuals, Section 5 of the proposal states, curiously, that the appropriate firm employees:

may notify any third party previously designated by the eligible adult. Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.<sup>5</sup>

The Proposal grants immunity to those who comply with Section 5.<sup>6</sup>

Section 7 allows the financial firm to delay disbursement when suspecting elder financial exploitation. That right to delay comes with a number of requirements:

(b) the broker-dealer or investment adviser:

i. Immediately, but in no event more than two business days after the requested disbursement provides written notification of the delay and the reason for the

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<sup>2</sup> In 2014, WFA created the Elder Client Initiatives team that specializes in addressing and reporting elder financial abuse issues for WFA.

<sup>3</sup> The Proposal at Section 3.

<sup>4</sup> The Proposal at Section 4.

<sup>5</sup> The Proposal at Section 5

<sup>6</sup> The Proposal at Section 6.

delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

ii. Immediately, but in no event more than two business days after the requested disbursement, notifies the Agencies; and

iii. Immediately initiates an internal review of the suspected or attempted financial exploitation of the eligible adult and reports any results to the Agencies within seven business days.<sup>7</sup>

Section 8 provides immunity for firms acting pursuant to Section 7<sup>8</sup>. Section 9 states firms are allowed to provide their financial records to agencies who investigate the report of financial exploitation<sup>9</sup>.

### **Concerns with the Proposal**

The Proposal raises a few concerns that, if not corrected, make it unlikely the Proposal will address the current state of financial exploitation elders and vulnerable adults and their families face. It is in Section 5 that the Proposal first goes astray. The provision, allowing firms to “notify any third party previously designated,” simply ignores the way financial exploitation happens in the real world. Many clients do not plan adequately in advance for potential issues such as a lottery scam or suffering from dementia. Therefore, they do not provide a name of a trusted person to the brokerage firm. For those few with that advance planning, this provision is irrelevant. Simply put, there is no need for NASAA to create a model rule simply parroting what the law already allows financial firms to do today, i.e., contact someone the client in advance gives permission to the firm to contact. More importantly, as drafted with the immunity provision in Section 6, NASAA seems to be re-crafting existing law by implying that firms are liable civilly or administratively for contacting “a third party previously designated” by the client as someone whom the firm could contact.

Section 5 should address the all too frequent scenario where the elder client has *failed* to provide an emergency contact or other legal form (power of attorney, successor trustee, etc.) to the firm in advance. It is that clear dilemma a model law or regulation must address. Fortunately for NASAA, this is not a blank slate. Missouri recently enacted a statute that permits a firm to notify a trusted contact, even if the client did not have the foresight to name that trusted contact on the account.<sup>10</sup> Firms in Missouri, after notifying securities regulators and Adult Protective Services (APS), can now reach out to that trusted person when they suspect financial exploitation. Some may say a provision like Missouri’s violates federal privacy laws. It is worth noting that to date, no federal regulator has opined publicly that the Missouri legislation is

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<sup>7</sup> The Proposal at Section 7.

<sup>8</sup> The Proposal at Section 8.

<sup>9</sup> The Proposal at Section 9.

<sup>10</sup> Senior Investor Protection Act, MO SB 244.

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contrary to privacy statutes. More importantly, the rule appears to fall squarely within one of the exceptions to federal privacy rules, permitting what otherwise might be a breach of privacy to go forward “[t]o protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability.”<sup>11</sup>

Another problem with Section 5 is the language prohibiting contact with a person who is actually committing the financial exploitation. While the goal is commendable, the rule as drafted has a sequencing problem. In many instances, the firm may not know who the actual perpetrator is at the moment it first learns about the financial exploitation. As drafted, the current provision in the proposal would penalize a firm that innocently contacts a perpetrator before the firm learns all of the facts. The language needs to recognize that a firm should face no sanction if a person they contact subsequently is shown to be an abuser of the elderly or vulnerable client. NASAA should either amend Section 5 or eliminate the section entirely.

Section 7 should not impose an investigation requirement on the firms. By the very nature of reporting to the agencies, firms have already completed an initial investigation of some form. The Proposal appears to put the investigative burden on the firms alone. The Proposal would be more effective if it acknowledges that the agencies initiate a review after receiving a report from the financial firms. The agencies have at their disposal additional legal and regulatory resources that are not available to firms. NASAA should eliminate Section 7 (b) (iii). Removing this investigative language provides the agencies an opportunity to be involved in the case in a timely manner which potentially halts the financial abuse at an early juncture.

## **Conclusion**

WFA appreciates the chance to comment on NASAA’s Proposal and commends their continuing efforts in addressing elder financial abuse and diminished capacity. We look forward to further opportunities to work towards a comprehensive legislative or regulatory solution for financial exploitation of elder and vulnerable adults. Please feel free to contact me with any questions or comments.

Sincerely,



Ronald C. Long  
Director of Regulatory Affairs and Elder Client Initiatives  
Wells Fargo Advisors

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<sup>11</sup> 16 CFR §313.15(a)(2)(ii)