



Consumer Federation of America

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Lynne Egan
Chair, Senior Issues/Diminished Capacity Committee
Patricia Struck
Vice-chair, Senior Issues/Diminished Capacity Committee
Christopher Staley
Counsel
NASAA
750 First Street, NE, Suite 1140
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Dear Commissioner Egan, Commissioner Struck, and Mr. Staley:

I am writing on behalf of the Consumer Federation of America (CFA)¹ in support of NASAA's proposed Model Act to strengthen protections against financial exploitation of senior investors. Protecting vulnerable seniors from financial exploitation is both an important priority and a significant challenge. The model act strikes an appropriate balance, harnessing the capacity of investment professionals to flag potentially abusive situations while incorporating important safeguards that should help to minimize the risk that this new authority could be exploited to cause additional harm.

Financial professionals are often among the first to realize when individuals are the targets of financial exploitation. But they have limited ability to intervene to prevent the exploitation and may be reluctant to do so without the assurance that they are on firm legal footing. The Model Act would provide broker-dealers and investment advisers with greater ability to step in to prevent financial exploitation by authorizing them to delay disbursing funds when they reasonably believe that the disbursement will result in the financial exploitation of a senior investor. Moreover, the model act provides them with immunity from administrative and civil liability when they do so in good faith, exercise reasonable care, and comply with the provisions of the Act.

Importantly, the model act balances this new authority with safeguards designed to limit the risk that it will be misused. A broker-dealer or investment adviser that delays a disbursement must immediately: 1) notify those who are authorized to transact business on the account (unless such persons are suspected of the financial exploitation); 2) notify the state securities commissioner and adult protective services of their action; and 3) undertake an internal review of

¹ The Consumer Federation of America is a non-profit association of nearly 300 consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education.

the suspected exploitation. The requirement to notify external authorities is a vitally important component of the model act. While the model act provides well-meaning financial professionals with new authority to help prevent financial exploitation, absent appropriate controls it could be used by abusive brokers and advisers to intimidate vulnerable seniors into taking inappropriate actions. The requirement to report to the state securities regulator should serve as a significant deterrent to such actions.

The requirement to report to adult protective services offers a different but similarly significant benefit. The ability to delay disbursement of funds creates a limited window in which action can be taken to prevent financial exploitation. In some instances, family members or others close to the targeted individual will be able to step in and address the problem. But in other cases, particularly where family members are involved in the suspected exploitation, external experts will play an important role in resolving the problem. Where this Model Act is adopted, it will be incumbent on both state securities regulators and adult protective services personnel to respond quickly to any such reports.

While we are generally supportive, the proposed approach raises a significant concern with regard to the potential harmful impact a delay in disbursing funds could in some instances have on the senior investor. What safeguards exist to ensure that seniors who experience a delay in disbursement aren't subject to bounced check fees or negative information on the credit reports if the delay results in a shortage of funds to pay bills, for example? This is a particular concern since the model act allows for up to two business days before notification of the delayed disbursement is provided, and the hold itself can last up to ten days, or longer if extended. We would urge you to consider steps to address this concern, including shortening to no more than one business day the period in which firms have to provide the required notifications.

Also, we encourage you to require firms to develop policies and procedures for dealing with such situations and to provide guidance on areas that should be addressed in any such policies and procedures. While many firms would likely take this step voluntarily, small firms in particular may benefit from further guidance. Such a requirement should help to ensure that firms have appropriate controls in place to prevent employees from misusing this authority, either intentionally or through lack of a proper understanding of the act's requirements. This would benefit firms and senior investors alike.

We congratulate NASAA for developing a balanced and thoughtful approach to strengthening protections against financial exploitation of senior investors. Broker-dealers and investment advisers would benefit from this clarification of their authority and responsibility when these difficult situations arise, and senior investors would benefit from the enhanced protections.

Respectfully submitted,



Barbara Roper
Director of Investor Protection