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NASAA

December 14, 2017

Mr. William Pound
Executive Director
National Conference of State Legislatures
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001

Re: NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation

Dear Mr. Pound:

I am writing on behalf of the North American Securities Administrators Association (NASAA),[1] regarding model state legislation approved by NASAA. The model legislation, entitled An Act to Protect Vulnerable Adults from Financial Exploitation ("Model Act"), provides important new tools to state authorities designed to help protect seniors and other at risk individuals from financial exploitation. The Model Act was approved by the NASAA membership in its final form on January 22, 2016, following more than a year of work by the NASAA Committee on Senior Issues and Diminished Capacity. A copy is enclosed for your review. We would welcome the opportunity to work with you to ensure that NCSL is aware of its provisions.[2]

Many in our elderly population are vulnerable to financial exploitation often due to social isolation and distance from family, caregivers, and other support networks. Indeed, evidence suggests that one out of every five citizens over the age of 65 has been victimized by financial fraud. To be successful in combating senior financial exploitation, state policymakers must undertake to modernize and broaden the safety net for our elderly. By breaking down barriers, we can empower those who are best positioned to identify red flags early on and to encourage reporting and referrals to appropriate local, county, state, and federal agencies, including law enforcement.

The NASAA Model Act contains several core features discussed in detail below. Taken together, these complimentary provisions serve to clarify and more closely align the interests and responsibilities of financial professionals, securities regulators, and law enforcement regarding the reporting and prevention of senior financial exploitation.

[1] The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

[2] As of December 8 2017, legislation or rulemaking similar or identical to the Model Act has been enacted in Alabama, Arkansas, Colorado, Indiana, Louisiana, Maryland, Mississippi, Montana, New Mexico, North Dakota, Oregon, Texas, and Vermont.

Key elements of the Model Act include:

(1) **Mandatory Reporting.** Qualified individuals, generally defined in the Model Act as persons representing broker-dealers and investment advisers, who reasonably believe that financial exploitation of an eligible adult may have occurred, been attempted, or is being attempted, must promptly notify Adult Protective Services (APS) and their state securities regulator. By providing a 'reasonable belief' standard for purposes of determining when reporting is required, the Act aims to minimize the possibility that the reporting mandate could give rise to numerous false or unsubstantiated reports.

(2) **Notification of Previously Designated Third-Parties**. The Model Act provides that a qualified individual who reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, may notify a previously designated third-party to whom the disclosure may be made. Empowering clients to designate a third party leaves this important decision in the hands of the person most capable of making it. However, the Act prohibits such notifications in the event the designated third-party is believed to be involved in the suspected financial exploitation.

(3) **Temporary Delay of Disbursements to Protect Investors.** The Model Act provides broker-dealers and investment advisers with the authority to delay disbursing funds from an eligible adult's account for up to 15 business days if the broker-dealer or investment adviser reasonably believes that a disbursement would result in the financial exploitation of the eligible adult. If the broker-dealer or investment adviser delays a disbursement, it must notify the individuals authorized to transact business on the account (unless these individuals are suspected of financial exploitation), notify the state securities regulator and the state APS agency, and undertake an internal review of the suspected exploitation. Under the model, the securities regulator or APS agency may request an extension of the delay for an additional 10 business days.

(4) **Civil and Administrative Immunity.** The Model Act's immunity provisions are applicable to the reporting of suspected financial abuse to governmental agencies, the disclosure of information to designated third parties, and the decision to delay disbursements. The provisions provide immunity from administrative and civil liability for qualified individuals, broker-dealers, or investment advisers who, in good faith and exercising reasonable care, comply with the provisions of the Act.

(5) **Sharing of Records with Adult Protective Services.** The Model Act requires that broker-dealers and investment advisers comply with requests for information from Adult Protective Services agencies or law enforcement in cases of suspected or attempted financial exploitation. The Act further clarifies that the granting of such access shall not be construed to subject the records of the broker-dealer or investment adviser to a state's public records laws.

As I believe you know, NASAA's State Legislation Committee focuses on state legislative matters. The Committee is chaired by Lynne Egan, the Deputy Securities Commissioner of Montana, and consists of representatives from eight other states. We would welcome an opportunity to introduce members of that committee and discuss issues of mutual interest to NASAA and NCSL. Further, we would welcome the opportunity to discuss the Model Act and answer any questions you may have about any of the provisions. Please do not hesitate to contact myself, Michael Canning, NASAA's Director of Policy & Government Affairs at 202-737-0900 or by email at mc@nasaa.org, or David Carpenter, NASAA's Government Affairs Assistant by email at dc@nasaa.org.

Sincerely,

Joseph P. Borg
NASAA President and Alabama Securities Director