



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street N.E., Suite 1140

Washington, D.C. 20002

202-737-0900

Fax: 202-783-3571

www.nasaa.org

January 27, 2020

Mr. Tim Storey
Executive Director
National Conference of State Legislatures
444 North Capitol Street, NW
Suite 515
Washington, D.C. 20001

Re: NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation with Updated Commentary for the 2020 Legislative Session

Dear Mr. Storey:

I am writing on behalf of the North American Securities Administrators Association (NASAA)¹ regarding model state legislation that has been developed and approved by NASAA. The model legislation, entitled *An Act to Protect Vulnerable Adults from Financial Exploitation* (the “Model Act”), provides state authorities with important tools to protect seniors and other vulnerable adults from financial exploitation. The Model Act was approved by the NASAA membership on January 22, 2016, and since then, twenty-five states have enacted some or all of the Model Act’s provisions.² A copy of the Model Act, with Updated Commentary for the 2020 Legislative Session, is enclosed for your review.

Many elderly adults are vulnerable to financial exploitation, often because of their 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.³ 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 and providing adequate training, we can empower those who are best positioned to identify potential financial exploitation and report it to the appropriate state and federal agencies, as well as law enforcement.

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 The NASAA Model Act or some variation thereof has been adopted by either legislation or rulemaking in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Indiana, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, North Dakota, Oregon, Tennessee, Texas, Utah, Vermont, and Virginia.

³ See 2016 Investor Protection Trust Elder Fraud Survey, *available at*: http://www.investorprotection.org/downloads/IPT_EIFFE_Medical_Survey_Report_03-22-16.pdf.

The Model Act contains several core features discussed in detail below. Taken together, these complementary 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.

The Model Act is on a course to become operative in a majority of states in 2020. NASAA's Committee on Senior Issues and Diminished Capacity plans to undertake a review of the implementation of the Model Act over the coming year to gather information on its effectiveness in protecting vulnerable adults from financial exploitation. While the findings of this review will not be reflected in the commentary for the 2020 Legislative Session, it is our hope and expectation that they will inform subsequent commentaries.

Key elements of the Model Act include:

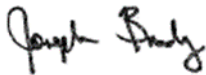
- (1) **Mandatory Reporting.** Qualified individuals, generally defined in the Model Act as persons representing broker-dealers and investment advisers – who reasonably believe that financial exploitation of an eligible adult may have occurred, been attempted, or is being attempted – must promptly notify 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 excessive, 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 that 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 this 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 you know, the NASAA State Legislation Committee focuses on state legislative matters. The Committee is chaired by Lynne Egan, Deputy Securities Commissioner of Montana, and consists of representatives from nine other states. We would welcome the opportunity to introduce members of the Committee to you for further discussion on the Model Act and other issues of mutual interest to NASAA and NCSL. Should you have questions about the Model Act or any of its provisions, please do not hesitate to contact Michael Canning, NASAA Director of Policy & Government Affairs, by email at mc@nasaa.org or by telephone at (202) 737-0900.

Sincerely,



Joey Brady
NASAA Executive Director