



PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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June 29, 2020

Ms. Lynne Egan
Chair of the State Legislation Committee
North American Securities Administrators Association
750 First Street NE, Suite 1140
Washington, DC 20002
legan@mt.gov

Re: Public Comment on the NASAA Proposed Model
Whistleblower Award and Protection Act

Dear Ms. Egan:

I write on behalf of the Public Investors Advocate Bar Association (“PIABA”), an international, not-for profit, voluntary bar association that consists of attorneys who represent investors in disputes with the securities industry. Since its formation in 1990, PIABA’s mission has been to promote the interests of the public investor by, among other things, seeking to protect such investors from abuses in the dispute resolution process, seeking to make the dispute resolution process as just and fair as possible, and advocating for public education related to investment fraud and industry misconduct.

PIABA recognizes the significance of model legislation in promoting reform and uniformity where they are needed. NASAA has had success with previous model acts: for example, 27 states have enacted some form of the 2016 NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation. Through those efforts, NASAA helped broaden and strengthen the protection of our most financially vulnerable population.

PIABA is generally supportive of the NASAA Proposed Model Whistleblower Award and Protection Act (“Model Act”). Our members and their clients have a fundamental interest in advocating the passage of strong, sensible, and consistent state laws that provide a safe environment for whistleblowers to come forward. This in turn will provide regulators with a greater opportunity to stop securities law violations and prevent investors from being harmed. By encouraging states to pass the whistleblower protection and incentives in the Model Act, both PIABA’s and NASAA’s investor protection missions will be served.

As important as it is to establish incentives and protection for whistleblowers, PIABA has some concern about the practicality of the Model Act when the vast majority of states do not have any established fund to pay the whistleblower rewards, and some states do not allow regulators to assess monetary penalties against wrongdoers. Section 6 of the Model Act provides that any whistleblower awards may be paid from a fund established elsewhere under state law, and each state will need to determine the source of payment of whistleblower awards. Establishment of a robust recovery pool is a critically important first step for states – not just for the Model Act, but for NASAA’s

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investor protection overall¹. Without that, PIABA worries that the Model Act will not be widely adopted, and NASAA's purpose in putting forth the Model Act will not be served. Regardless of how strong the whistleblower protection rules, regulations, and laws are, they are meaningless absent a whistleblower's ability to actually recover for the risk they have undertaken by reporting the wrongdoing. PIABA urges NASAA to advocate for state creation of investor recovery pools that will allow states to incentivize whistleblowers *and* protect investors from unscrupulous and uninsured financial professionals.

PIABA also has some concern about the list of disqualifications for receiving whistleblower status under the Model Act – specifically, Section 8(3), which essentially allows for the disqualification of a whistleblower if the information is not submitted in exactly the way the state's securities administrator prescribes. This presents the possibility that a well-intending would-be whistleblower tries to blow the whistle under the Model Act and inadvertently disqualifies themselves because he or she did not follow the exact prescription of steps. This would inadvertently result in disincentivizing whistleblowers from taking the action needed to best protect investors in each state.

Our members have seen situations where an individual loses Dodd-Frank whistleblower status by making an innocuous and logistical mistake that does not affect the actual delivery of the valuable information to regulators. The rules should be flexible enough to allow state actors to recognize the person who provided the earliest substantive evidence of securities violations and qualify that person under the Model Act. The best sources are likely to be people who did not even think of themselves as whistleblowers or start out on that course of action for financial reward. PIABA urges any states adopting Section 8(3) of the Model Act to establish only easy, clear, and widely advertised steps for an individual to maintain whistleblower status.

Thank you for taking on a task that has very important investor protection implications that may not otherwise exist in certain states. PIABA also thanks you for the opportunity to stay involved on this important matter.

Respectfully submitted,



Samuel B. Edwards, President
Public Investors Advocate Bar Association

cc: Faith Anderson, Chair of the Whistleblower Protections/
Awards Working Group [faith.anderson@dfi.wa.gov]

NASAA Corporate Office [nasaacomment@nasaa.org]

¹ PIABA has long been an advocate of investor recovery pools to combat the widespread problem of unpaid FINRA arbitration awards. In the absence of a national recovery pool, states must act individually to protect their citizens – including whistleblowers – by creating dedicated investor protection funds. Three states - Indiana, Montana, and North Dakota - have enacted investor recovery pools that may also be able to fund whistleblower awards. Additionally, Utah and Indiana have funds from which it already pays whistleblowers. The remaining states lack any kind of dedicated fund from which to pay either whistleblower awards or unpaid arbitration awards, a problem that may prevent widespread enactment of the Model Act.