



*Invested in America*

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July 31, 2020

Ms. Lynne Egan, Chair of the State Legislation Committee  
Ms. Karla Black, Chair of the Restitution Assistance Working Group  
North American Securities Administrators Association  
750 First Street, NE  
Suite 1140  
Washington, DC 20002

RE: Request for Public Comments on Proposed Model to Create a Restitution Assistance Fund  
for Victims of Securities Violations

Dear Lynne and Karla:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on NASAA’s recently proposed Model Act to Create a Restitution Assistance Fund for Victims of Securities Violations (“the Act”).

As you know, SIFMA represents more than 350 large, medium, and small broker-dealers, investment banks and asset managers. Our member firms and their representatives help clients prepare for such big life events as getting married, buying a house, sending children to college, and retiring. They understand the critical role they play in investors’ lives, and they know the importance of a good reputation.

The securities industry is highly regulated. Internal legal and compliance programs as well as substantial oversight by the SEC, FINRA and state securities regulators help to ensure firms comply with federal and state securities laws and SRO obligations. When processes break down and violations occur, as they sometimes do, our member firms work to address those matters appropriately through dispute resolution processes, including internal complaint resolution and, if appropriate, external means. When such matters are ultimately resolved, our members satisfy their judgments and awards.

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>

We therefore have questions about model legislation which seeks to create a fund to subsidize entities that fail to satisfy their dispute resolution obligations. The proposal does not provide much background on the nature or extent of the problem. We respectfully suggest that more information is needed before any legislation is pursued. Some of the questions we have include the following:

- How big is the unpaid restitution problem?
- What type of entities or individuals are not paying their judgments? Are they largely unregistered? Do they no longer exist, either "corporately" or individually?
- What other tools do securities divisions have to “encourage” those who do not pay their judgments to do so? Have these tools been utilized, and have they been effective?
- What other legal options are available to both the securities division and to the victims to help ensure that settlements are paid by the violator?
- What tools do securities divisions use on the front end to encourage the investing public to utilize firms who do pay their judgments?

Moreover, the notice for public comment notes that the model legislation is based on laws in Indiana (2010), Montana (2011), and Vermont (2019). Collectively, there is 20 years of experience with this body of law. It would be very helpful to see data on the experiences of these three states. For example, it would be useful for each state to know basic information such as:

- How many judgments were made?
- How many awards were not paid?
- How many applications for restitution assistance were made?
- How many awards were paid out by the funds? and
- What is the average award made by the state restitution funds?

We believe this data would be useful in understanding the extent of the problem and assessing the best possible solutions. We would encourage the Working Group to make this information readily available.

The notice for public comment also references legislation in Kansas (2020) and Maine (2019). While the pandemic certainly influenced recent legislative activity from late spring onward of this year, neither of these bills got beyond bill introduction.

We also have questions about funding. We appreciate that the model does not designate a specific funding source, but instead encourages regulators to consider a variety of options. Our concern is that firms and financial professionals that satisfy their obligations may be made to bear the cost of others who do not. Several of the funding options (such as increased fees) effectively mean that these firms and financial professionals are paying both for their violations and for the violations of those who do not pay. This is frustrating and, in our view, unnecessary. In most states, securities divisions already collect significant fees from industry and financial professionals which may well exceed the divisions’ annual budgets. We would encourage states to use a portion of the monies already collected by securities divisions to finance any restitution assistance fund, rather than impose new costs on the industry- costs which will ultimately be passed on to firms' clients.

Additionally, states often sweep “leftover” money from government agencies and direct it towards the general fund. We support language in Section 5 which makes clear that restitution funding cannot go into the general fund but rather carries forward to be used for the same purpose in future years. We also note that Section 15 includes optional language should the restitution fund drop below \$250,000. Similarly, we would encourage you to include language which permits securities divisions to stop collecting additional monies should the fund at year end exceed a certain amount or percentage of the division’s overall budget.

Furthermore, we applaud language in Section 7 which doubles the maximum amount to be awarded by the restitution assistance fund to senior citizens and other vulnerable persons. SIFMA has worked closely with NASAA for many years to help protect senior investors. This language aligns with that objective.

Finally, the model legislation offers two options as to when the restitution assistance fund can pay any claims. The first is to permit victims to submit applications upon the issuance of a final order and allows the division to get the money back if the decision is overturned on appeal. The second is to not make a payment until any appeal is completed. We believe the latter is the better course of action. Firms will typically not pay restitution until the appeal is completed. States which choose to pay restitution claims early may pay more restitution than is warranted and will have to go through the process of recovering the distributed funds. While this could prove difficult in either instance, it would be presumably more problematic when the firm wins on appeal and the money distributed to the applicant has already been spent.

Again, we appreciate the opportunity to provide feedback. Please feel free to contact us if you have any questions or would like to speak further.

Sincerely,

A handwritten signature in black ink that reads "Kim Chamberlain". The signature is written in a cursive, flowing style.

Kim Chamberlain  
Managing Director & Associate General Counsel  
SIFMA