



July 8, 2016

Judith M. Shaw, President  
North American Securities Administrators Association (NASAA)  
750 First Street, NE, Suite 1140  
Washington, DC 20002

Dear Ms. Shaw:

We are writing on behalf of the Consumer Federation of America<sup>1</sup> and Americans for Financial Reform<sup>2</sup> to express our strong support for the “Model Act to Protect Vulnerable Adults from Financial Exploitation,” adopted by NASAA earlier this year. This model act helps to address a pressing problem – the financial exploitation of vulnerable seniors – by harnessing the capacity of investment professionals to flag potentially abusive situations. We urge its adoption by states without weakening amendments.

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 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.

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<sup>1</sup> The Consumer Federation of America (CFA) is an association of roughly 280 non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.

<sup>2</sup> AFR is a coalition of more than 250 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.

We note, in this regard, that the final version of the Model Act was modified to lengthen the hold period to 15 days, with the potential for a 10-day extension of the delay at the request of the state securities administrator or adult protective services. While we understand the logic behind providing additional time to investigate and resolve the concerns, this potential lengthening of the hold period also increases the risk that the individual whose account is targeted will be inconvenienced or even suffer financial harm as a result – such as bounced checks and associated negative information on their credit report. It will be incumbent on state securities regulators to work closely with firms to ensure that individuals whose accounts are put on hold will be fully protected from any such adverse consequences.

Further, we note that the model act provides immunity for reporting to non-governmental third parties only where such third-parties have been previously designated by the vulnerable adult. This limitation on reporting to third parties serves an important purpose. First, it reduces the likelihood of notifications to familial or other third parties that are not consistent with the investor's wishes. Second, it creates an incentive for broker dealers and investment advisers to have important conversations with their clients and obtain advance directives from them regarding appropriate third parties. To the greatest extent possible, we believe discretion regarding which third parties are notified in the event of suspected exploitation should reside with the investor, as opposed to the broker dealer or investment adviser.

Strengthening protections for vulnerable seniors is a cause that enjoys broad support. In crafting its model act, NASAA struck an appropriate balance, giving financial firms new tools to act quickly when they see signs of abuse, but imposing restrictions designed to ensure that those tools are used responsibly. It is unfortunate that, as states have moved toward implementation of the statute, some industry groups that are otherwise supportive of the effort have sought changes to the model act that would undermine its effectiveness and the firm's accountability.

In particular, we urge states to resist suggestions that the reporting be made entirely voluntary, thus shielding firms from accountability both when they report evidence of exploitation and when they do not. This has been put forward under the guise of protecting state officials from the obligation to investigate numerous false positives. But the model act already addresses this issue by limiting the reporting requirement to situations in which a qualified individual has a reasonable belief that financial exploitation of an eligible adult has been attempted or has occurred. Making the reporting entirely voluntary would have the effect of allowing individuals who reasonably believes there is a threat of exploitation to ignore that threat. That undermines the very purpose of the model act.

We congratulate NASAA for developing a balanced and thoughtful approach to strengthening protections against financial exploitation of senior investors. As states move forward with adoption, broker-dealers and investment advisers will benefit from this clarification of their authority and responsibility when these difficult situations arise, and senior investors will benefit from the enhanced protections.

Respectfully submitted,



Barbara Roper, Director of Investor Protection  
Consumer Federation of America



Lisa Donner, Executive Director  
Americans for Financial Reform





February 9, 2016

Ms. Judith M. Shaw, President  
North American Securities Administrators Association (NASAA)  
750 First Street, NE, Suite 1140  
Washington, DC 20002

RE: NASAA's Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation

Dear Ms. Shaw:

I am writing on behalf of the 900 members of the National Adult Protective Services Association (NAPSA)<sup>1</sup> to express NAPSA's strong support of NASAA's *Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation (Model Act)*.

By adopting the Model Act, states will strengthen protections for the financial assets and well-being of older persons, and other individuals with cognitive impairments, who are at a disproportionately high risk of being victimized by financial exploitation.

The Model Act includes a provision that permits firms to impose a brief delay in disbursing a vulnerable client's funds when financial abuse is suspected. The Model Act also requires broker-dealers and investment advisers to promptly report financial exploitation, where there is a reasonable belief that it is being perpetrated, to Adult Protective Services (APS) and the state securities regulatory agency. These provisions will provide significant added protections for vulnerable adults by helping to safeguard their assets and holding their perpetrators accountable. The reporting provision in the Model Act also means that APS can work to identify other client needs, and provide critical services, such as home-delivered meals and in-home care, where necessary and available.

The Model Act also protects the broker-dealers and advisers from liability for taking steps to shield their clients from harm, and gives them a clear mandate to report.

A strong reporting mandate is an essential element of the Model Act. By mandating reporting only where a qualified individual "reasonably believes" exploitation may be occurring or attempted, the Model Act imposes a reporting mandate similar to those already operative in many states,<sup>2</sup> and in NAPSA's view, strikes the correct and appropriate balance. Such a mandate will not encourage "over-reporting";

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<sup>1</sup> The National Adult Protective Services Association (NAPSA) is a national non-profit 501 (c) (3) organization with members in all fifty states. Formed in 1989, the goal of NAPSA is to provide Adult Protective Services (APS) programs a forum for sharing information, solving problems, and improving the quality of services for victims of elder and vulnerable adult mistreatment. Its mission is to strengthen the capacity of APS at the national, state, and local levels, to effectively and efficiently recognize, report, and respond to the needs of elders and adults with disabilities who are the victims of abuse, neglect, or exploitation, and to prevent such abuse whenever possible.

<sup>2</sup> Additional information regarding states the mandate reporting of suspected senior financial exploitation to state APS agencies is available on NAPSA's website. See: <http://www.napsa-now.org/wp-content/uploads/2014/11/Mandatory-Reporting-Chart-Updated-FINAL.pdf>

however, it will in some cases make it more likely that situations where there is a reasonable belief that a vulnerable adult is a target of exploitation are reported to APS and appropriate law enforcement and regulatory agencies.

Taken together, the reporting mandate and the immunity provisions will better align the interests of investment professionals with those of clients and vulnerable adults, thereby making it easier for these professionals to affirmatively protect their clients' interests when exploitation is suspected.

NAPSA especially supports *Section 9*, of the Model Act. This provision requires broker-dealers or investment advisers to provide relevant client records to state adult protective services and to law enforcement, either as part of a referral to those entities, or upon their request pursuant to an investigation. As you know, NAPSA advocated for the inclusion of such a provision in NASAA's proposed Model Act, and we are delighted that NASAA heeded our request, and strengthened the Model in this important regard. APS' hands are tied in financial exploitation investigations if access to the alleged victim's financial records is denied.

NASAA is to be commended for its leadership and comprehensive approach in addressing the immensely complex issue of financial exploitation. NAPSA looks forward to continuing to work with you, all of NASAA, and state legislators throughout the country, to promote the prompt adoption of the Model, and to strengthen protections for millions of seniors and other vulnerable adults.

Sincerely,



Kathleen M Quinn  
Executive Director

the study. The first author (SM) was the primary investigator and was responsible for the design, data collection, data analysis and writing of the manuscript. The second author (MM) was responsible for the data collection and data analysis. The third author (MM) was responsible for the data analysis and writing of the manuscript. The fourth author (MM) was responsible for the data collection and data analysis.

## Methods

### Design

The study was a descriptive study. The purpose of the study was to describe the prevalence of low back pain among nurses in the intensive care unit. The study was conducted in a tertiary care hospital in Tehran, Iran. The study was approved by the ethics committee of the hospital.

### Setting

The study was conducted in the intensive care unit of a tertiary care hospital in Tehran, Iran. The intensive care unit is a specialized unit that provides care for critically ill patients. The intensive care unit is a high-stress environment and is a common site for low back pain among nurses.

### Subjects

The subjects of the study were nurses working in the intensive care unit. The study was conducted over a period of 12 months. The study included all nurses who were working in the intensive care unit during the study period. The study was conducted in a tertiary care hospital in Tehran, Iran.

### Measures

The prevalence of low back pain was measured using a self-report questionnaire. The questionnaire was based on the International Classification of Diseases (ICD-10) criteria for low back pain. The questionnaire asked the nurse to report any pain in the lower back that interfered with their work or daily activities.

### Data analysis

The data were analyzed using SPSS software. The prevalence of low back pain was calculated as the number of nurses reporting low back pain divided by the total number of nurses in the intensive care unit. The prevalence of low back pain was compared between nurses who were working in the intensive care unit and nurses who were not working in the intensive care unit.



## PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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March 11, 2016

Via Email Only [Judith.m.shaw@maine.gov]

Judith M. Shaw  
NASAA President/Maine Securities Administrator  
Dept. of Professional & Financial Regulation  
121 State House Station  
Augusta, ME 04333-0121

RE: NASAA's Passage of the Model Legislation or Regulation to Protect  
Vulnerable Adults from Financial Exploitation

Dear Ms. Shaw:

I am writing on behalf of the Public Investors Arbitration Bar Association ("PIABA")<sup>1</sup> to congratulate NASAA on its recent passage of the Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation ("Model Act"). PIABA believes that the Model Act is an important step forward in continuing efforts by investor advocates, state regulators, Financial Industry Regulatory Authority ("FINRA") and other industry participants concerned with protecting vulnerable investors from being victimized by those who may try to financially exploit them.

More specifically, PIABA particularly praises the following elements of NASAA's Model Act:

- The definition of "eligible adult" draws a bright-line at age 65 for identifying adults who may be in need of the increased protective measures provided by the Model Act while still including other vulnerable adults such as those who qualify for protection under a state's adult protective services statute.
- "Financial exploitation" is broadly defined to include acts or omissions of someone for the purpose of obtaining control of, or converting, money, assets or property of an eligible adult. Thus, the Model Act applies to not only the actual wrongful or unauthorized taking of money, assets or property of an eligible adult, but also steps leading up to such a wrongful or unauthorized taking.

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<sup>1</sup> As you know, PIABA is an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct.

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Ms. Judith Shaw, NASAA President

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- In contrast to States that do not specifically include broker-dealers or investment advisors among those who have reporting obligations, the Model Act defines certain people at broker-dealers and investment advisory firms as “qualified individuals” who have the right or obligation to protect an eligible adult and, thus, the Model Act can be used to bridge gaps in existing statutory or regulatory schemes that do not include broker-dealers or investment advisors.
- Section 3 of the Model Act properly mandates that a qualified individual with a reasonable belief that an eligible adult is being, may be, or may have been financially exploited “promptly notify” Adult Protective Services and the securities commissioner of such belief.
- The inclusion of administrative and civil immunity for qualified individuals that comply with the Model Act should encourage compliance as long as such compliance is in good faith and reasonable, which will hopefully extend to even the sections of the Model Act that do not mandate action but merely permit it.<sup>2</sup>

PIABA hopes that the NASAA Model Act will be used by states and by FINRA to compliment, supplement, and/or bolster existing statutes, regulations and/or rules that protect vulnerable investors from financial abuse. However, PIABA also expects NASAA and FINRA to continue to broaden and strengthen investor protection going forward and PIABA will continue to make itself available, on behalf of investors, to assist in those efforts.

Thank you for taking on a difficult task and reaching enough of a consensus to be able to pass a Model Act that has some very important investor protections that may not otherwise exist in certain States. PIABA also thanks you for the opportunity to stay involved on this important matter.

Very truly yours,



Marnie C. Lambert  
PIABA EVP/President-Elect  
Chair of NASAA Committee

cc: Michael Canning [via email only to [mc@nasaa.org](mailto:mc@nasaa.org)]

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<sup>2</sup> On October 29, 2015, PIABA filed a letter in support of NASAA’s proposed Model Act, but also identified the following two areas of the proposed Model Act that did not go far enough in the protection of vulnerable investors: (1) Sections 5 (third party disclosures) and 7 (delaying disbursements) only provided permission to act rather than mandating action like Section 3 (governmental disclosures); and, (2) there were no penalties for willfully ignoring evidence of financial abuse of vulnerable investors. PIABA’s opinion that the Model Act should be stronger in those respects has not changed, but does not detract from the important benefits that vulnerable investors can reap from the Model Act as passed by NASAA.