



## 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.