



PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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November 2, 2017

Via email to joseph.borg@asc.alabama.gov

Joseph P. Borg, Director
Alabama Securities Commission
401 Adams Ave., Suite 280
Montgomery, AL 36104

Re: Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation

Dear Mr. Borg:

I am writing on behalf of the Public Investors Arbitration Bar Association (“PIABA”)¹ with respect to NASAA’s Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation (“Model Act”). PIABA applauds NASAA’s work with the various states to ensure nationwide adoption of the Model Act. For the reasons set forth below, PIABA fully supports the Model Act.

Financial exploitation of seniors and other vulnerable adults remains a significant problem in the United States and is projected to worsen as our population grows older. Between 2012 and 2050, the population of those aged 65 and over is expected to reach 83.7 million.² This considerable growth is due to the aging of the baby boomer generation,³ who began turning 65 in 2011.⁴ Cognitive impairments such as Alzheimer’s disease and dementia are also projected to rise as the population grows older,

¹ 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.

² Jennifer M. Ortman, Victoria A. Velkoff, and Howard Hogan, *An Aging Nation: The Older Population in the United States: Population Estimates and Projections*, U.S. CENSUS BUREAU, p. 1 (2014), available at <https://www.census.gov/prod/2014pubs/p25-1140.pdf> [hereinafter “U.S. CENSUS BUREAU”].

³ The baby boomer generation includes those born between 1946 and 1964.

⁴ U.S. CENSUS BUREAU, p. 1.

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further increasing the vulnerability of seniors to financial exploitation.⁵ A 2011 MetLife study reported a \$2.9 billion annual loss by victims of elder financial abuse.⁶ Additionally, approximately 36.9% of seniors are affected by financial abuse in any five-year period.⁷ These figures illustrate the magnitude of the problem affecting a significant portion of the population, which will only improve with the implementation of remedial measures.

Recently, FINRA adopted Rule 2165, “Financial Exploitation of Specified Adults.” The FINRA Rule is to become effective in February 2018, and permits brokerage firms to “place a temporary hold on a disbursement of funds or securities from the Account of a Specified Adult” under certain circumstances. However, the FINRA rule is only permissive; it does not mandate that such a hold be placed, even if the firm reasonably believes financial exploitation is occurring or has occurred. The FINRA rule is also silent as to reporting the suspected financial exploitation to the appropriate securities regulator or adult protective services.

Similarly, Congress is considering passage of the SeniorSafe Act of 2017, S. 223 & H.R. 3758. The SeniorSafe Act contemplates immunity for financial professionals who report suspected financial exploitation of a senior citizen to an appropriate agency. Like the FINRA rule, the SeniorSafe Act permits reporting but does not require it.

Unlike the FINRA rule and the SeniorSafe Act, the Model Act offers comprehensive protections to vulnerable adults. For example, the Model 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,

⁵ See THE ALZHEIMER’S ASSOC., available at <http://www.alz.org/facts/> (noting that, “An estimated 5.4 million people in the United States have Alzheimer’s disease”); see also K. L. Triebel & D. C. Marson, *The Warning Signs of Diminished Financial Capacity in Older Adults*, GENERATIONS 36.2, 39–45 (2012), available at <https://www.questia.com/library/journal/1P3-2717110131/the-warning-signs-of-diminished-financial-capacity>; Robert Abrams, *The Dementia Crisis*, 89 N.Y. STATE BAR ASSOC. J. 10 (Jan. 2017) (“Approximately 47 million people have dementia worldwide, over 20 percent of whom reside in the United States. By 2050, 135 people worldwide are projected to have dementia and similar growth of this disease is expected to increase proportionately in the United States.”).

⁶ *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation against America’s Elders*, p. 2, June 2011, available at <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf>.

⁷ The True Link Report on Elder Financial Abuse 2015 (Jan. 2015), available at <https://truelink-wordpress-assets.s3.amazonaws.com/wp-content/uploads/True-Link-Report-On-Elder-Financial-Abuse-012815.pdf>.

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assets or property of an eligible adult, but also the steps leading up to such a wrongful or unauthorized taking.

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 positions 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.

Additionally, the Model Act is not merely permissive; it requires action if certain specified individuals have a reasonable belief that an eligible adult is being, may be, or may have been financially exploited. The Model Act also requires prompt notification to Adult Protective Services and the securities commissioner of such a belief, providing comprehensive protection to seniors and other vulnerable adults. Like the FINRA rule and the SeniorSafe Act, the Model Act contemplates administrative and civil immunity for qualified individuals that comply with the Model Act, which, should encourage compliance as long as such compliance is in good faith and reasonable.

The Model Act may be used by states to compliment, supplement, and/or bolster existing statutes, regulations and/or rules that protect vulnerable investors from financial abuse, including the FINRA rules and the SeniorSafe Act (if it is adopted). One of the virtues of the Model Act is that it recognizes that financial intermediaries are uniquely positioned to identify potential financial exploitation and take immediate steps to protect vulnerable adults by reporting suspected abuse to authorities. PIABA believes that all states should enact the Model Act. That way, all seniors and vulnerable adults will be protected from financial exploitation, regardless of their state of residence.

PIABA thanks NASAA for its efforts on behalf of vulnerable adults. PIABA is grateful for the opportunity to comment on these important issues, and is happy to provide any additional information that may be helpful.

Respectfully submitted,



Andrew Stoltmann
PIABA President

cc: Michael Canning (*via email to mc@nasaa.org*)