

North American Securities Administrators Association

MODEL ACT TO PROTECT VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

LEGISLATIVE TEXT AND COMMENTARY

FOR THE 2021-2022 LEGISLATIVE SESSION



NASAA

About NASAA

The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. (“NASAA”), was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and responsible capital formation.

State securities regulators have a long-standing commitment to protecting investors, especially elderly and vulnerable adult investors, and do so using a variety of tools. For instance, state securities regulators often initiate investigations as a result of complaints from investors who believe they have been wronged by a professional in (or claiming to be part of) the securities industry. Many individuals in our elderly population are especially vulnerable due to social isolation and distance from family, caregivers, and other social support networks. NASAA’s members are keenly aware of this fact, and seek opportunities to engage with senior and vulnerable adult investors through educational events and other programs designed to respond to investors’ questions and to educate them on schemes and manipulative practices.

You can learn more about NASAA and the activities of its members at www.nasaa.org and can review the work of the NASAA Committee on Senior Issues and Diminished Capacity, including the NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation and other committee initiatives, at www.serveourseniors.org.

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BACKGROUND

The Need for New Tools to Help Detect and Prevent Financial Exploitation of Vulnerable Adults

Financial exploitation is the fastest growing category of elder abuse in many states. According to the 2016 Investor Protection Trust Elder Investment Fraud Survey, nearly one out of every five citizens over the age of 65 has been victimized by a financial fraud.¹ These frauds can be perpetrated by strangers, con artists, or even by family members and caregivers whom the elderly have placed their trust. In addition, a February 2019 report by the Consumer Financial Protection Bureau titled “Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends” reported over 180,000 suspicious activities targeting older adults, involving more than \$6 billion and noted that financial exploitation by scammers, family members, and caregivers is widespread.²

State securities regulators are committed to protecting retail investors and are often well-positioned to intercede on behalf of vulnerable seniors.³ However, to successfully combat senior financial exploitation, securities regulators must be made aware of it. State legislatures should assist in this effort by enacting policies to break down barriers to sharing information about financial exploitation and provide critical training to inspire action by financial services professionals who are positioned to identify red flags. In this regard, the enclosed NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation (the “Model Act” or “Act”) represents an important and significant step forward.

DEVELOPMENT AND RATIONALE

NASAA Senior Issues and Diminished Capacity Committee

The Model Act originated as an initiative of NASAA’s Committee on Senior Issues and Diminished Capacity (the “Seniors Committee” or “Committee”).⁴ The Seniors Committee was formed in 2014 by NASAA and its members. In addition to its seminal policy work of developing the Model Act in 2016, the Committee has sought to raise awareness on the issue of financial exploitation of older and vulnerable adults, as well as the effects of diminished capacity on financial decision making among both investors and industry professionals. The Committee has also facilitated research to gain a better understanding of these issues, as well as provided tools and educational materials to its members and industry participants who may

see cases of financial exploitation or diminished capacity in their day-to-day interactions with clients. In the past several years, the Committee released the following materials to improve the understanding of issues that may impact older and vulnerable adults in the securities industry:

- a toolkit to educate members on when and how to report instances of suspected financial exploitation;⁵
- a toolkit to help enable members to form a strong multi-disciplinary team to address issues of financial exploitation;⁶
- research that examined the issue of diminished capacity in financial professionals and identified items for firms to consider, including risk assessment, supervision, training, and succession planning;⁷ and
- a NASAA-SEC-FINRA training on addressing and reporting financial exploitation of senior and vulnerable adult investors.⁸

NASAA believes the most effective way to address the protection of seniors and vulnerable adults is through a holistic approach, and so the work of the Seniors Committee is informed by an Advisory Council drawing from representatives in the financial services industry and academia, as well as among regulatory agencies and advocates of the elderly.⁹

NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation

On September 29, 2015, NASAA released a draft of the proposed Model Act for a 30-day public comment period.¹⁰ The Seniors Committee received and considered comments from various interested parties and considered a similar proposal set forth by the Financial Industry Regulatory Authority (“FINRA”) in FINRA Regulatory Notice 15-37.¹¹ The Committee further reviewed the Model Act in late 2015 and made several revisions to the proposal. On December 22, 2015, the NASAA Board of Directors approved the Committee’s request to submit the proposed Model Act to the NASAA membership for consideration. On January 22, 2016, NASAA members voted to approve the Model Act.

The NASAA Model Act applies to broker-dealers and investment advisers, including certain qualified individuals (e.g., broker-dealer agents, investment adviser representatives, and persons serving in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser). The provisions of the Model Act are designed to be statutorily adopted by a jurisdiction as part of its existing securities laws.¹² The Model Act has five core features that, when taken together, clarify and more closely align the interests and responsibilities of

financial professionals, regulators, and law enforcement agencies regarding the reporting and prevention of senior financial exploitation. These features are:

- (1) A mandatory reporting requirement applicable to qualified individuals of broker-dealers and investment advisers;
- (2) Notification to certain third-parties of potential financial exploitation with advance consent of the investor;
- (3) The authority to temporarily delay disbursement of funds;
- (4) Immunity from civil and administrative liability for reporting, notifications, and delays; and
- (5) Mandatory record-sharing in cases of exploitation with law enforcement and state adult protective services agencies.

The commentary in each section of the Model Act explains the rationale for these provisions and the interplay between them. The endnotes to this report provide additional information about many of the policy recommendations embodied in the Model Act.

OVERVIEW OF RECENT DEVELOPMENTS

Review of State Adoption of NASAA Model Act Since 2016

As of July 14, 2021, the NASAA Model Act has been adopted, in whole or in part, by thirty-two states. This is in addition to statutes previously enacted in Washington¹³ and Missouri¹⁴ that included some, but not all, elements of the Model Act. While legislation may vary from state to state, two of the hallmarks of the Model Act are the “report” and “hold” provisions leading to these laws often being colloquially referred to as “report and hold” laws.

In 2016, Alabama¹⁵ enacted legislation that contained many of the provisions found in the Model Act, including mandatory reporting to state securities and Adult Protective Services (“APS”) offices, as did Indiana¹⁶ with respect to broker-dealers. Additionally, in 2016, Vermont¹⁷ adopted the Model Act by regulation, and Louisiana¹⁸ enacted legislation that protects voluntary disclosures.

In 2017, Indiana¹⁹ adopted revisions to its version of the Model Act to include investment advisers, and an additional six states – Colorado,²⁰ Maryland,²¹ New Mexico,²² North Dakota,²³ Oregon,²⁴ and Texas²⁵ – enacted legislation containing provisions similar or identical to those in the Model Act, including mandatory reporting to state securities

regulators and APS offices. Additionally, in 2017, several other states, including Arkansas,²⁶ Mississippi,²⁷ Montana,²⁸ New Mexico,²⁹ and Tennessee,³⁰ enacted legislation that protects voluntary reports of financial exploitation. In 2018, five more states introduced bills based on the Model Act – Alaska,³¹ Delaware,³² Kentucky,³³ Minnesota,³⁴ and Utah³⁵ – that were ultimately signed into law.

In 2019, Maine³⁶ saw the adoption of a statute largely identical to the Model Act, while New Hampshire³⁷ enacted legislation substantially similar to the Model Act. Also in 2019, Arizona,³⁸ California,³⁹ Rhode Island,⁴⁰ and Virginia⁴¹ enacted legislation that protects disclosures of financial exploitation and allows for delayed disbursements. In 2020, despite the legislative impact of the coronavirus pandemic, four more states adopted rules that included elements of the Model Act – Florida,⁴² New Jersey,⁴³ and West Virginia⁴⁴ adopted legislation based on the Model Act, while Oklahoma adopted the Model Act by regulation.⁴⁵ In 2020, Missouri also announced amendments to its financial exploitation statute, the Senior Saving Protection Act, which included modifying the definition of “qualified individual” to include broker-dealers, investment advisers, or persons associated with a broker-dealer or investment adviser, permitting transactional holds, and establishing that a subsequent extension of a hold must be reviewed every 30 days.⁴⁶

State legislative activity in 2021 involving the Model Act included the adoption of statutes based on the Model Act in Iowa,⁴⁷ Nebraska,⁴⁸ and South Carolina.⁴⁹ In addition, two states – Massachusetts⁵⁰ and Wisconsin⁵¹ – have legislation that includes provisions similar to the Model Act pending in their legislatures.⁵²

Adoption of FINRA Rule 2165 and Relationship to NASAA Model Act

State regulation of broker-dealers parallels self-regulation conducted by FINRA, a federally sanctioned self-regulatory organization (“SRO”). As an SRO, FINRA exercises significant authority over the conduct and practices of its broker-dealer members, but its role is also strictly circumscribed by federal statutes and regulations. Thus, state laws are legally and functionally distinct from rules adopted by FINRA and any other SRO.

In 2017, after the Model Act was adopted, FINRA adopted Rule 2165 (Financial Exploitation of Specified Adults) and amendments to FINRA Rule 4512 (Customer Account Information).⁵³ Certain provisions of these rules are complementary to the Model Act. For example, the former is similar to sections 7 and 8 of the Model Act in that it allows broker-dealers to place temporary holds on the disbursements of funds or securities from the accounts

of specified customers in situations where there is a reasonable belief that a customer may be the subject of financial exploitation.⁵⁴ The latter requires broker-dealers to make reasonable efforts to obtain, from the customer, the name and contact information for a trusted contact person for the customer's account, which has similarities with sections 5 and 6 of the Model Act.⁵⁵ In the fall of 2019, FINRA announced that it was conducting a retrospective review to assess the effectiveness and efficiency of its rules and administrative processes that help protect senior investors from financial exploitation.⁵⁶ FINRA solicited public comment on a variety of ideas to expand its rules. The comment period closed on October 8, 2019.⁵⁷

On June 28, 2021, FINRA filed with the Securities and Exchange Commission ("SEC") a proposed rule change to amend rule 2165 (Financial Exploitation of Specified Adults) to permit member firms to: (1) extend a temporary hold on a disbursement of funds or securities or a transaction in securities for an additional 30-business days if the member firm has reported the matter to a state regulator or agency or a court of competent jurisdiction; and (2) place a temporary hold on securities transactions where there is a reasonable belief of financial exploitation.⁵⁸

Adoption by FINRA of Rules 2165 and 4512 was an important step; however, the promulgation of these rules is not a substitute for the enactment of state legislation. The scope of FINRA's jurisdiction is narrower than that of state securities regulators and does not include investment advisers.⁵⁹ Moreover, the protections afforded by the FINRA rules are substantively different from those afforded by the Model Act and related report and hold legislation. For example, the requirement to report suspected financial exploitation to state regulators or state APS agencies (or both) is unique to the Model Act, as is the requirement that securities firms share records with state APS and law enforcement agencies, which is an essential tool for agencies tasked with preventing and investigating financial exploitation. Furthermore, the FINRA rules do not provide firms with civil and administrative immunity that may otherwise arise from disclosing certain financial information.

Federal Enactment and Implementation of the Senior Safe Act

On May 24, 2018, Congress enacted S. 2155, the "Economic Growth, Regulatory Relief, and Consumer Protection Act," which included a provision that is commonly referred to as "The Senior Safe Act." This provision extends civil and administrative immunity for the disclosure of suspected financial exploitation to certain "qualified" financial institutions and individuals.⁶⁰

The Senior Safe Act does not mandate governmental or third-party disclosure of suspected financial exploitation. However, the law does complement the Model Act by providing immunity to broker-dealers, investment advisers, banks, credit unions, insurance companies, and certain individuals for disclosing suspected financial exploitation to state regulators, APS agencies, and certain other state and federal agencies. It is the only nationwide law covering such diverse entities.

It should be emphasized that the Senior Safe Act does not preempt or otherwise limit applicable state law. On the contrary, it is intended to promote the reporting of suspected senior financial exploitation to state regulators and other state and federal authorities by providing certain financial institutions and individuals with a minimum level of protection against civil and administrative liability for making the disclosure. The immunity provided by the Senior Safe Act is only applicable when employees receive training on how to identify and report exploitative activity against seniors. In addition, reports of suspected exploitation must be made “in good faith” and “with reasonable care.”

As with SRO rules, the adoption of the Senior Safe Act by the federal government is not a substitute for enacting state legislation. The protections in the federal provision are substantively different from those afforded by the Model Act. For instance, as explained above, the Senior Safe Act expressly requires individuals to receive specialized training on financial exploitation as a prerequisite to the individual and/or the reporting firm receiving immunity. Moreover, the Senior Safe Act only applies to individuals 65 years of age or older and does not apply to vulnerable adults protected under state APS laws. In addition, the Senior Safe Act does not contemplate any manner of immunity for delays of disbursements.⁶¹ To learn more about the Senior Safe Act, please see the 2019 Senior Safe Act Fact Sheet and 2021 “Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors” training released jointly by NASAA, the SEC, and FINRA.⁶²

Retrospective Review of the Model Act, 2020-2021

In 2020 and 2021, the Committee undertook a retrospective review (“retrospective review” or “review”) of the implementation and efficacy of the Model Act in the states that have adopted report and hold laws identical or substantially similar to the Model Act. The purpose of the retrospective review was to gather information about how effective the laws have been in protecting eligible adults from financial exploitation and determining whether a revision to the Model Act was warranted. The review included an analysis of feedback

provided by state and federal regulators, law enforcement and APS agencies, investors, broker-dealers, investment advisers, and other interested stakeholders.⁶³

The information derived from the review indicated that the Model Act and similar report and hold laws have been overwhelmingly successful at protecting investors. Securities regulators in several states reported that report and hold laws are being used to delay disbursements, and in some states, transactions in cases of suspected and attempted financial exploitation. No state securities regulator reported concerns of systematic inappropriate use of these holds. Therefore, the Committee determined that no amendments to the Model Act are warranted at this time.⁶⁴

At the same time, the review also revealed some considerations for jurisdictions and agency and industry participants on how regulator and industry participants can most effectively utilize the Model Act. An overview of these considerations is below.

Summary of Key Findings from the Retrospective Review

(a) Effective Communication

The Committee overwhelmingly heard that open lines of communication are crucial to effective reports of financial exploitation. Without regular communication among all parties, including firms, state securities regulators, and APS, the firms that report this type of wrongdoing may become dissuaded to engage further. Although client privacy is paramount, firms stated that follow-up by state securities regulators or APS asking if they have any further information or developments to discuss could go a long way to building relationships between parties. This reassures reporting parties that something is being done with their reported concerns, even if particulars about the investigation cannot be disclosed.

(b) Comprehensive Education and Training

Education is key to effective reporting of financial exploitation. The Committee is encouraged to see that many jurisdictions are adopting laws modeled after the Model Act. We note that these laws are best utilized by those who know how to navigate and apply them effectively. In the past number of years, several training resources on financial exploitation have become available, including the newly released NASAA, SEC, and FINRA training entitled “Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors.”⁶⁵ Ensuring that state securities regulators, APS, firms, and anyone who encounters

financial exploitation have proper knowledge of these rules is crucial to their continued success.

(c) Trusted Contacts

Separately, the Committee was made aware that the Model Act's provision that allows firms to contact a third-party previously designated by the client, such as a trusted contact person, is an effective, yet often underutilized tool in assisting investors who face financial exploitation.⁶⁶ Although the Model Act provides clear authority and administrative and civil immunity for contacting a previously designated contact person in good faith to report suspected financial exploitation, it does not require registrants to take reasonable steps to obtain a contact person. Our discussion revealed that this tool is not always available to firms as clients do not always appoint such a contact person. Some firms expressed the desire to contact anyone "reasonably associated" with the account, a broader authority than the Model Act contemplates. Some states have enacted laws allowing that broader authority to firms responding to suspected exploitation. Regardless, jurisdictions should continue to encourage firms and associated persons to discuss the merit of appointing a contact person their with clients. One opportunity to do this is during an examination of a firm. Asking licensed individuals during an examination to share how they request a contact person from clients may lead to a dialogue on recommended procedures. The Committee's retrospective review found that a conversation with real-life examples of why and how appointing a contact person could be beneficial goes a long way in ensuring the client understands the concept and ultimately agrees to appoint one.⁶⁷

(d) Multi-disciplinary Approach

Lastly, creating a network of agencies and resources available to address suspected financial exploitation will ensure a multifaceted approach in assisting investors who may be experiencing financial exploitation and other harmful acts. NASAA previously released a taskforce toolkit intended to assist NASAA members with starting a partnership with other state and provincial agencies dedicated to preventing senior financial exploitation, generating resources, educating the community, and advocating for the needs of older and vulnerable victims.⁶⁸ This toolkit aims to create a stronger multi-disciplinary approach that we hear is so often lacking. Although the toolkit is designed for NASAA jurisdictions, firms and other interested persons may also create or be a part of such a taskforce. Additionally, state securities regulators and firms are encouraged to educate themselves on the APS reporting system in their jurisdictions and work cooperatively with APS when cases of financial exploitation arise.

We believe that knowing your network, firms, state securities regulators, APS, and others who advocate for older adults will be more successful in addressing financial exploitation.

Additionally, the retrospective review highlighted the industry's interest in a centralized reporting mechanism to notify multi-disciplinary teams, state securities regulators, and APS simultaneously. We are aware that a centralized reporting program is currently being piloted and are monitoring the outcome of said program to consider the feasibility of a national reporting system for the future.

(e) Conclusion

In conclusion, we commend states for adopting report and hold laws modeled after the Model Act and are encouraged to see these laws working to further investor protection. In the text that follows, we provide some updated commentary, including an overview of variations in the approach jurisdictions have taken in regard to the length and type of hold (i.e., disbursement vs. transaction). However, the most important point remains that legislation based on the Model Act is paramount to investor protection. Therefore, it is crucial that jurisdictions continue to adopt these laws and work with other individuals and agencies to address cases, educate others on financial exploitation and how these laws and tools work, and develop relationships with their local network of individuals and agencies who can aid in these cases.

Text of NASAA Model Act and Commentary

Section 1. Short Title

Sections ___ to ___ may be cited as “An Act to Protect Vulnerable Adults from Financial Exploitation” and in this chapter as this act.

Section 2. Definitions

In this act, unless the context otherwise requires:

- (1) “**Agent**” shall have the same meaning as in [insert state code section].
- (2) “**Broker-dealer**” shall have the same meaning as in [insert state code section].
- (3) “**Eligible adult**” means:
 - (a) a person sixty-five years of age or older; or
 - (b) a person subject to [insert state Adult Protective Services statute].
- (4) “**Financial exploitation**” means:
 - (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets or property of an eligible adult; or
 - (b) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:
 - i. Obtain control, through deception, intimidation or undue influence, over the eligible adult’s money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets or property; or
 - ii. Convert money, assets or property of the eligible adult to deprive such eligible adult of the ownership, use, benefit or possession of his or her money, assets or property.
- (5) “**Investment Adviser**” shall have the same meaning as in [insert state code section].
- (6) “**Investment Adviser Representative**” shall have the same meaning as in [insert state code section].

(7) “**Qualified individual**” means any agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

Commentary:

Relevant definitions of terms used throughout the Model Act are found in Section 2. The definition of “eligible adult” includes any natural person who, at the time of the suspected financial exploitation, is 65 years or older or is subject to the provisions of a state’s adult protective services (“APS”) statute.⁶⁹

The term “qualified individual” consists of those persons charged with certain responsibilities and provided certain immunities under the Model Act. Qualified individuals include “agents” and “investment adviser representatives” (or similar terms) as defined in a jurisdiction’s securities laws. Qualified individuals also include persons serving in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser. Qualified individuals may be registered in any capacity with the jurisdiction or physically located in the jurisdiction. A broker-dealer or investment adviser employing or supervising such qualified individuals also may be registered or located in the jurisdiction.⁷⁰

The term “financial exploitation” is intended to be interpreted broadly and to include any unlawful or unauthorized taking, withholding or deprivation of beneficial ownership rights in any money, assets, or property in which an eligible adult has a lawful property interest. The elements of wrongfulness in the definition of financial exploitation are intended to be subjective, not objective, standards – i.e., it is “financial exploitation” within the meaning of the Model Act if a qualified individual believes that an unlawful or unauthorized taking, withholding or deprivation of beneficial ownership rights has occurred, regardless of whether that person’s belief is in fact correct. (Objective considerations are reflected in the Model Act’s operative provisions.)

During the 2020-2021 retrospective review, states that had adopted legislation based on the Model Act were asked if they encountered instances where the definition of “eligible adult” did not afford protection to those who may have been vulnerable and needed protection. Ninety percent of states responded that they have not encountered this situation.

Section 3. Governmental Disclosures

If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall promptly notify Adult Protective Services and the commissioner of securities (collectively “the Agencies”).

Commentary:

Section 3 mandates reporting to a jurisdiction’s securities regulator (or like agency) and to a jurisdiction’s APS (or like agency) whenever a qualified individual “reasonably believes” that financial exploitation of an eligible adult may have occurred or been attempted, or currently is being attempted.

“Reasonable belief” is intended to be both a subjective and objective standard – i.e., a qualified individual must have a subjective belief in the existence of the financial exploitation, and this belief must be objectively reasonable. Section 3 requires a notification when a qualified individual reasonably believes financial exploitation “may have” occurred or been attempted. The presence of the “reasonable belief” element in Section 3 should limit the number of unsubstantiated reports.

Violations of Section 3 would be actionable by state regulatory authorities. Because the Model Act is drafted for potential adoption as a statute or as a regulation, jurisdictions should determine whether any appropriate conforming provisions are required to clarify the appropriate regulatory authority for enforcement of Section 3 and the potential consequences for violations.

The issue of mandatory versus permissive reporting received significant comment from the public during the process of developing the Model Act.⁷¹ Some commenters, primarily industry trade groups, advocated for a permissive reporting standard while others, including consumer advocates and adult protective service professionals, supported mandatory reporting. The Seniors Committee carefully weighed the arguments and ultimately declined to shift to a permissive reporting regime on the grounds that the reporting mandate in Section 3 is indispensable to the Act’s goal of enhancing protection for seniors and other vulnerable adults.

Far too many instances of elder abuse go unreported.⁷² A mandatory reasonable belief reporting

requirement coupled with immunity for reporting provides an appropriate balance of incentives to encourage broker-dealers and investment advisers to report potential financial exploitation. Time is of the essence when one considers financial exploitation, as it is often accompanied by some other form of elder abuse or neglect. Mandatory reporting ensures that the proper regulatory agencies are alerted to cases of potential financial exploitation as early as possible and when their intervention may be able to prevent harm or limit the damage to victims of financial exploitation. The ability to have a regulator assess the situation and determine whether additional resources should be brought to bear is also a key component of any approach intended to provide meaningful protection to vulnerable investors.

Section 4. Immunity for Governmental Disclosures

A qualified individual that in good faith and exercising reasonable care makes a disclosure of information pursuant to Section 3 shall be immune from administrative or civil liability that might otherwise arise from such disclosure or for any failure to notify the customer of the disclosure.

Commentary:

Section 4 grants immunity from potential administrative or civil liability to a qualified individual for making a report pursuant to Section 3. The individual must have acted in “good faith” and exercised “reasonable care” in making the Section 3 report. These are intended to be objective, not subjective, standards. But Section 4 grants no immunity from any potential criminal liability.⁷³ Section 4 furthermore confers no civil or administrative immunity with respect to prior misconduct by the reporting individual – i.e., an individual cannot engage in wrongful conduct, report that wrongful conduct pursuant to Section 3, and then seek civil or administrative immunity for the prior wrongful conduct under Section 4.

Section 5. Third-Party Disclosures

If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify any third-party previously designated by the eligible adult. Disclosure may not be made to any designated third-party that is

suspected of financial exploitation or other abuse of the eligible adult.

Commentary:

To the greatest possible extent, seniors and other vulnerable adults should themselves be making decisions about whom a financial services professional should contact in the event of suspected financial exploitation. Section 5 of the Model Act provides that where a qualified individual would be required to make a report pursuant to Section 3, the qualified individual may also make a notification to the same extent to any such person as has previously been designated by the eligible adult. The disclosure may not be made, though, if the qualified individual suspects the designated person of being involved in, or aware of, the suspected financial exploitation or otherwise suspects the designated person as having engaged in abuse of the eligible adult. A goal of the Model Act is to encourage seniors and other vulnerable adults to designate persons in whom they trust to receive notices of potential financial exploitation. Further, broker-dealers and investment advisers should do what they can to encourage seniors and other potentially vulnerable clients to identify appropriate points-of-contact for situations such as suspected exploitation or diminished capacity in advance of its occurrence. By providing immunity only for the notification of third-parties that have been previously designated by the client, Section 5 will encourage financial professionals to have these important conversations prior to any potential exploitation while empowering the client with the decision of the person to be contacted.⁷⁴

In addition, the National Adult Protection Service Association (“NAPSA”) notes that obtaining a trusted contact person on a non-institutional customer account provides “a great resource for investor protection and the benefits are clear.”⁷⁵ NASPA notes that despite FINRA Rule 4512’s requirement that a broker-dealer make reasonable efforts to obtain a trusted contact, 25% or less of broker-dealer customers designate a trusted contact. NAPSA recommends additional efforts be made to increase this number.

Section 6. Immunity for Third-Party Disclosures

A qualified individual that, in good faith and exercising reasonable care, complies with Section 5 shall be immune from any administrative or civil liability that might otherwise arise from such disclosure.

Commentary:

Section 6 is intended to provide immunity to qualified individuals for making disclosures pursuant to Section 5 to the same extent as such immunity is conferred by Section 4 with respect to notifications made pursuant to Section 3.

Section 7. Delaying Disbursements

(1) A broker-dealer or investment adviser may delay a disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(a) the broker-dealer, investment adviser, or qualified individual reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may result in financial exploitation of an eligible adult; and

(b) the broker-dealer or investment adviser:

i. Immediately, but in no event more than two business days after the requested disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

ii. Immediately, but in no event more than two business days after the requested disbursement, notifies the Agencies; and

iii. Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports the investigation's results to the Agencies within seven business days after the requested disbursement.

(2) Any delay of a disbursement as authorized by this section will expire upon the sooner of:

(a) a determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the eligible adult;

or

(b) fifteen business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds, unless either of the Agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire no more than twenty-five business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds unless sooner terminated by either of the agencies or an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief based on the petition of the commissioner of securities, Adult Protective Services, the broker-dealer or investment adviser that initiated the delay under this Section 7, or other interested party.

Commentary:

Section 7 provides broker-dealers and investment advisers with the authority to delay disbursing funds from an eligible adult's account if the broker-dealer or investment adviser (or any qualifying individuals therein) reasonably believes that such disbursement will result in the financial exploitation of the eligible adult. The broker-dealer or investment adviser shall direct that the funds be held in temporary escrow pending resolution of the disbursement decision. If a disbursement is delayed, notice must be provided within two days to all persons authorized to transact business on the account (unless any such person is suspected of financial exploitation) and to the state securities commissioner and APS agency. The broker-dealer or investment adviser must also undertake an internal review and report the results within seven days of the requested disbursement.⁷⁶ In developing the Model Act, the Committee considered some commenters' suggestions that the Model Act allow broker-dealers or investment advisers to delay the actual execution of transactions but concluded that holding funds in temporary escrow would be preferable policy and, furthermore, that delaying executions could be inconsistent with applicable federal laws and regulations governing the execution of securities transactions.

Retrospective Review: Disbursement and Transactional Holds

In conducting its retrospective review, NASAA noted that some state's report and hold laws are limited to disbursement delays, while some states permit holds on transactions within the account, not connected to a disbursement.⁷⁷ The states that adopted only disbursement holds, cite client autonomy as one of their primary concerns in limiting temporary holds to disbursements. They note that transactions within an investment account do not change ownership of the investment and that delaying a transaction may have a severe adverse impact on an eligible adult if the price of a security changes during the delay. Eligible adults, particularly those in retirement, are unlikely to earn back their losses. Member jurisdictions that permit a transactional delay note that transactional delays have the potential to protect an eligible adult from tax implications should a person with authority over the account request a sale of a high-priced security that has a low tax basis. The tax implications may have a severe impact, just as the price change impact. Notably, states that allow transactional delays report it is rarely used, but in all reported instances a finding of financial exploitation was substantiated.

Some firms report incorporating clauses in their customer contracts that permit holds on transactions.⁷⁸ This may mean that firms are implementing transactional holds in the states whose statutes do not allow for it outside the scope of the statute.

Retrospective Review: Length of Holds

The retrospective review also found that state securities regulators were divided on whether the Model Act's 15-day hold, with a potential extension of 10 days, should be extended to adequately address situations of suspected financial exploitation. Those surveyed were split on whether or not the delay should be extended with no clear consensus. When adopted in 2016, the purpose of the Model Act's hold period was to implement a temporary pause in order to interrupt the disbursement, notify APS, and contact the Eligible Adult. Of those who supported extending the delay the reasons given included:

- To provide additional time to get information from third-parties;*
- To address delays by firms unaware of the statutory requirements; and*
- To obtain further protections for individuals who are unaware they are being exploited.*

No responses indicated that additional time was necessary to contact the Eligible Adult.

Firms canvassed supported lengthening the hold period to allow government authorities to

complete their investigations, stating APS was the agency most likely investigating instances of financial exploitation. According to NAPSA, an average APS investigation of any type is 52.6 days, and financial exploitation investigations are more complicated and time-consuming.⁷⁹ Firms surveyed expressed frustration with the system that mandates they report but does not allow for reciprocal dialogue with government agencies after the report has been made. While the goal of a firm's transaction or disbursement hold and an APS investigation both aim to protect the investor, without that reciprocal dialogue a firm can be left wondering whether their client is being supported and protected adequately such that the holds should be lifted.

Although the Committee noted discrepancies in the delays permitted from jurisdiction to jurisdiction, we were encouraged to hear that report and hold laws based on the Model Act are working to prevent exploitation, increase investor protection, and are being administered appropriately. Jurisdictions, firms, and those involved with the review agree that understanding the laws, educating others on resources that can be used in tandem with the laws, and developing relationships between entities that utilize the laws are important to the utilization of the Model Act.

Section 8. Immunity for Delaying Disbursements

A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with Section 7 shall be immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement in accordance with this section.

Commentary:

Section 8 is intended to provide immunity to broker-dealers and investment advisers (and any qualifying individuals therein) for delaying disbursements pursuant to Section 7.

Section 9. Records

A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law

enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available to agencies under this section shall not be considered a public record as defined in [State public records law]. Nothing in this provision shall limit or otherwise impede the authority of the state securities commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

Commentary:

Section 9 ensures appropriate access to the records of broker-dealers and investment advisers by agencies in cases of suspected or attempted financial exploitation by requiring that broker-dealers and investment advisers provide such records to APS and law enforcement. Section 9 also clarifies that records shared by broker-dealers or investment advisers pursuant the Act shall not be subject to state public records laws. This provision is intended to facilitate disclosure to APS and law enforcement agencies while maintaining the confidentiality of personal financial information. This provision does not diminish the authority of state securities regulators to examine or obtain the records of broker-dealers or investment advisers under currently applicable law.⁸⁰

ENDNOTES

¹ Nearly one in five Americans over the age of 65, which is nearly seven million seniors, have “been taken advantage of financially in terms of an inappropriate investment, unreasonably high fees for financial services, or outright fraud,” according to a major survey conducted by Public Policy Polling (PPP) and on behalf of the Investor Protection Trust (ITP). See <https://www.investorprotection.org/ipt-activities/?fa=research>.

² See <https://www.consumerfinance.gov/about-us/blog/financial-institutions-report-widespread-elder-financial-abuse/>.

³ In 2019, NASAA members received 607 complaints, opened 486 investigations, and brought 208 enforcement actions involving seniors. See NASAA 2020 Enforcement Report, available at <https://www.nasaa.org/wp-content/uploads/2020/09/2020-Enforcement-Report-Based-on-2019-Data-FINAL.pdf>.

⁴ For more information about the NASAA Senior Issues and Diminished Capacity Committee, See <http://serveourseniors.org/about/policy-makers/nasaa-committee-on-senior-issues-and-diminished-capacity/>.

⁵ For NASAA members, See www.nasaa.org under Members Only. For non-members, please contact Mike Canning at mcanning@nasaa.org for more information.

⁶ For NASAA members, See www.nasaa.org under Members Only. For non-members, please contact Mike Canning at mcanning@nasaa.org for more information.

⁷ For NASAA members See www.nasaa.org under Members Only. For non-members, See https://www.nasaa.org/wp-content/uploads/2017/06/BD-Study-of-Senior-Practices-and-Procedures_06152017.pdf.

⁸ See <https://www.nasaa.org/57803/nasaa-sec-and-finra-offer-free-resource-to-securities-firms-to-assist-in-detection-prevention-and-reporting-of-financial-exploitation-of-seniors/?qoid=current-headlines>.

⁹ For more information about the Advisory Council to the NASAA Senior Issues and Diminished Capacity Committee, See <http://serveourseniors.org/about/policy-makers/advisory-council/>.

¹⁰ See Notice of Request for Comments Regarding NASAA’s Proposed Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation (Sept. 29, 2015), available at <https://www.nasaa.org/37301/notice-of-request-for-comments-regarding-nasaas-proposed-model-legislation-of-regulation-to-protect-vulnerable-adults-from-financial-exploitation/?qoid=request-for-comment>.

¹¹ See FINRA Regulatory Notice 15-37, Financial Exploitation of Seniors and Other Vulnerable Adults (Nov. 30, 2015), available at <https://www.finra.org/rules-guidance/notices/15-37>.

¹² Two states – Vermont and Oklahoma – have adopted the Model Act through agency regulation.

¹³ See Revised Code of Washington, § 74.34.215, available at <http://app.leg.wa.gov/rcw/default.aspx?cite=74.34.215>.

¹⁴ See SB 244, Missouri Regular Session (2015), available at http://www.senate.mo.gov/15info/BTS_Web/Bill.aspx?SessionType=R&BillID=1174064.

¹⁵ See SB 220, Alabama Legislature, Regular Session (2016), available at <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016rs/PrintFiles/SB220-enr.pdf>.

¹⁶ See SB 221, Indiana General Assembly, Second Regular Session (2016), available at <http://iga.in.gov/legislative/2016/bills/senate/221#document-72ee118f>.

¹⁷ See Rule No. S-2016-01, Vermont Sec. Reg. § 8-5, available at <https://dfr.vermont.gov/reg-bul-ord/vermont-securities->

[regulations.](#)

¹⁸ See SB 338, Louisiana State Legislature, Regular Session (2016), *available at* <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1012781>.

¹⁹ See HB 1526, Indiana General Assembly, First Regular Session (2017), *available at* <http://iga.in.gov/legislative/2017/bills/house/1526/#document-d94fa5d4>.

²⁰ See HB 17-1253, Colorado General Assembly, Regular Session (2017), *available at* <http://leg.colorado.gov/bills/hb17-1253>.

²¹ See HB 1149 and SB 951, Maryland General Assembly, Regular Session (2017), *available at* <http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=hb1149&stab=01&pid=billpage&tab=subject3&ys=2017rs> and <http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=sb0951&stab=01&pid=billpage&tab=subject3&ys=2017rs>, respectively.

²² See HB 326, New Mexico 53rd Legislature, First Session (2017), *available at* <https://www.nmlegis.gov/Sessions/17%20Regular/final/HB0326.pdf>.

²³ See SB 2322, North Dakota 65th Legislative Assembly (2017), *available at* <https://www.legis.nd.gov/assembly/65-2017/documents/17-0979-04000.pdf>.

²⁴ See SB 95, Oregon State Legislature, Regular Session (2017), *available at* <https://olis.oregonlegislature.gov/liz/2017R1/Measures/Overview/SB95>.

²⁵ See SB 95, Texas 85th Legislature (2017), *available at* <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=85R&Bill=HB3921>.

²⁶ See HB 1800, Arkansas State Legislature, 91st General Assembly, Regular Session (2017), *available at* <http://www.arkleg.state.ar.us/assembly/2017/2017R/Pages/BillInformation.aspx?measureno=HB1800>.

²⁷ See SB 2911, Mississippi Legislature, Regular Session (2017), *available at* <http://billstatus.ls.state.ms.us/2017/pdf/history/SB/SB2911.xml>.

²⁸ See SB 0024, Montana 65th Legislature (2017), *available at* <http://leg.mt.gov/bills/2017/sesslaws/ch0084.pdf>.

²⁹ See HB 326, New Mexico 53rd Legislature, First Session (2017), *available at* <https://www.nmlegis.gov/Legislation/Legislation?chamber=H&legtype=B&legno=326&year=17>.

³⁰ See SB 1192 and HB 0304, Tennessee General Assembly, 110th Regular Session (2017), *available at* <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB1192> and <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0304&GA=110>, respectively.

³¹ See HB 170, Alaska 30th Legislature (2017-2018), *available at* <http://www.akleg.gov/basis/Bill/Detail/30?Root=HB%20170>.

³² See HB 332, Delaware 149th General Assembly (2016-2018), *available at* <https://legis.delaware.gov/BillDetail/26343>.

³³ See HB 93, Kentucky Regular Session (2018), *available at* <https://apps.legislature.ky.gov/record/18rs/hb93.html>.

³⁴ See HF 3833, Minnesota 90th Legislature (2017), *available at* <https://www.revisor.mn.gov/bills/bill.php?f=HF3833&y=2017&ssn=0&b=house>.

³⁵ See SB 88, Utah State Legislature, General Session (2018), *available at* <https://le.utah.gov/~2018/bills/static/SB0088.html>.

³⁶ See HP 410, Maine Legislature, Regular Session (2019), *available at* <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0410&item=3&snum=129>.

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- ³⁷ See SB 252, The General Court of New Hampshire, Regular Session (2019), *available at* http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2019&id=1088&txtFormat=pdf&v=current.
- ³⁸ See SB 1483, Arizona State Legislature, Regular Session (2019), *available at* <https://www.azleg.gov/legtext/54leg/1R/laws/0221.pdf>.
- ³⁹ See SB 496, California State Legislature, Regular Session (2019-2020), *available at* http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB496.
- ⁴⁰ See H 6091 and S 433, Rhode Island General Assembly, Regular Session (2019), *available at* <http://webserver.rilin.state.ri.us/BillText/BillText19/HouseText19/H6091A.pdf> and <http://webserver.rilin.state.ri.us/BillText/BillText19/SenateText19/S0433.pdf>.
- ⁴¹ See HB 1987 and SB 1490, Virginia General Assembly, Regular Session (2019), *available at* <http://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB1987> and <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+SB1490&191+sum+SB1490>.
- ⁴² See HB 813 and SB 1672, Florida Legislature, Regular Session (2020), *available at* <http://www.flsenate.gov/Session/Bill/2020/813/?Tab=BillText> and <http://www.flsenate.gov/Session/Bill/2020/1672>.
- ⁴³ See A 5091, New Jersey Legislature, Regular Session (2018-2019), *available at* <https://www.njleg.state.nj.us/bills/BillsByNumber.asp>.
- ⁴⁴ See HB 4377, West Virginia Legislature, Regular Session (2020), *available at* https://www.wvlegislature.gov/Bill_Text_HTML/2020_SESSIONS/RS/bills/HB4377%20SUB%20ENR.pdf.
- ⁴⁵ See Okla. Admin. Code § 660:11-15-2, *available at* <https://www.securities.ok.gov/Act-Rules/Rules.asp#660:11-15-1.2>.
- ⁴⁶ See Senior Savings Protection Act, Sections 409.605 to 409.630, RSMo., *available at* <https://revisor.mo.gov/main/OneSection.aspx?section=409.605&bid=48648&hl=>.
- ⁴⁷ See HF 839, Iowa General Assembly, Regular Session (2021), *available at* <https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF839>.
- ⁴⁸ See LB 297, Nebraska Legislature, Regular Session (2021), *available at* <https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB297.pdf?web=1&wdLOR=c00905468-7757-458F-A62F-B02952B2F844>.
- ⁴⁹ See S425, South Carolina General Assembly, Regular Session (2021-2022), *available at* https://www.scstatehouse.gov/sess124_2021-2022/bills/425.htm.
- ⁵⁰ See H 252, Massachusetts Legislature, Regular Session (2021), *available at* <https://malegislature.gov/Bills/192/HD2545>.
- ⁵¹ See SB 20, Wisconsin State Legislature, Regular Session (2021), *available at* <https://docs.legis.wisconsin.gov/2021/proposals/reg/sen/bill/sb20>.
- ⁵² The Massachusetts State Legislature and Wisconsin State Legislature are scheduled to adjourn on December 31, 2021.
- ⁵³ See Regulatory Notice 17-11, Financial Exploitation of Seniors – SEC Approves Rules Relating to Financial Exploitation of Seniors, FINRA (Mar. 30, 2017), *available at* <http://www.finra.org/sites/default/files/Regulatory-Notice-17-11.pdf>.
- ⁵⁴ See FINRA Rule 2165, *available at* <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165>.
- ⁵⁵ See FINRA Rule 4512, *available at* <https://www.finra.org/rules-guidance/rulebooks/finra-rules/4512>.
- ⁵⁶ See FINRA Regulatory Notice 19-27, *available at* <https://www.finra.org/rules-guidance/notices/19-27>.
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⁵⁷ *Id.*

⁵⁸ See <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2021-016>. See also NASAA’s December 2020 comment letter on the proposed amendment to FINRA Rule 2165, available at <https://www.nasaa.org/wp-content/uploads/2020/12/NASAA-Comment-Letter-Re-Reg.-Notice-20-34.pdf>.

⁵⁹ FINRA has jurisdiction over broker-dealers but not investment advisers.

⁶⁰ See Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155, 115th Cong. § 303 (2018), available at <https://www.congress.gov/bill/115th-congress/senate-bill/2155/text?q=%7B%22search%22%3A%5B%222155%22%5D%7D&r=7#tocid45B692A3CB264F64BDE568E071AA2CFD>.

⁶¹ For additional information about the Senior Safe Act, See the 2019 NASAA-SEC-FINRA Senior Safe Act Fact Sheet, available at <https://www.nasaa.org/wp-content/uploads/2019/05/Senior-Safe-Act-Fact-Sheet.pdf>.

⁶² On May 23, 2019, NASAA, the SEC, and FINRA issued a Senior Safe Act Fact Sheet to help promote greater reporting of suspected senior financial exploitation, available at <https://www.investor.gov/senior-safe-act-fact-sheet>. On June 15, 2021, NASAA the SEC, and FINRA collaborated again to release the “Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors” training presentation to train associated persons about how to detect, prevent, and report financial exploitation of senior and vulnerable adult investors, available at <https://www.finra.org/rules-guidance/key-topics/senior-investors/elder-abuse-prevention-training>.

⁶³ The retrospective review consisted of surveys and direct outreach to NASAA members, other regulators, industry participants, and other interested stakeholders. During the Summer and Fall of 2020, the Committee surveyed and conducted follow-up discussions with member states that have adopt rules based on the Model Act. The Committee also heard from its Advisory Council, which is comprised of experts from government, business, senior advocacy organizations, academia, and medical and legal practitioners, during our annual meeting in March 2021. In addition, the committee conducted outreach to mid and large sized firms with various organizational structures.

⁶⁴ For instance, in 2019, NASAA members received 709 reports relating to the NASAA Model Act, which led to 233 investigations and 15 enforcement actions. See NASAA 2020 Enforcement Report, available at <https://www.nasaa.org/wp-content/uploads/2020/09/2020-Enforcement-Report-Based-on-2019-Data-FINAL.pdf>.

⁶⁵ On June 15, 2021, NASAA, the SEC, and FINRA published a joint training presentation, entitled “Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors,” as a service to the securities industry. Firms can use this presentation to train associated persons about how to detect, prevent, and report financial exploitation of senior and vulnerable adult investors. The training serves as a resource for firms implementing the requirements of the federal “Senior Safe Act” (Section 303 of the “Economic Growth, Regulatory Relief, and Consumer Protection Act”) and the state training requirements for certain firms and financial institutions relating to senior investor protection. See <https://www.finra.org/rules-guidance/key-topics/senior-investors/elder-abuse-prevention-training>.

⁶⁶ FINRA Rule 2165 mandates that all FINRA registrants ask their clients if they would like to designate a trusted contact person. The NASAA Model Act does not require registrants seek a third-party contact.

⁶⁷ The Ontario Securities Commission released OSC Staff Notice 11-790 Protecting Aging Investors through Behavioral Insights in November 2020, which identified behaviorally informed techniques broker dealers and investment advisers can use to encourage their older clients to provide trusted contact person information. These techniques may also help firms increase the uptake of the trusted contact person information. See https://www.osc.ca/sites/default/files/2020-11/rule_20201109_11-790_protecting-aging-investors-through-behavioural-insights.pdf.

⁶⁸ For NASAA members, See www.nasaa.org under Members Only. For non-members, please contact Mike Canning at mcanning@nasaa.org for more information.

⁶⁹ The decision to affix the age at 65 reflected a desire to maximize the Model Act’s consistency with related proposals that were being developed by Congress, FINRA, and some state legislatures. As originally proposed, the Model Act would have applied to adults 60 years or older or those adults that would be subject to the provisions of a state’s APS statute. Some commenters suggested adjusting the age to 65 to bring the Model Act in line with other frameworks aimed at protecting seniors from financial exploitation (including existing state definitions, federal legislation such as the proposed Senior Safe Act, and FINRA Regulatory Notice 15-37), and the Seniors Committee and NASAA ultimately agreed.

⁷⁰ As proposed for public comment, the Model Act used the term “qualified employee,” however, this term was revised in the final version of the Model to make clear that the Model Act does not only apply to employees of a broker-dealer or investment adviser, but also to any independent contractors that may be fulfilling any of the roles described in the definition. The use of the term also reflects the determination that requiring individual agent and adviser level reporting is appropriate given these individuals often have closer relationships with their clients and customers than does any firm or institution. Some commenters suggested that the Model Act limit the definition of qualified individual to only those employees of a broker-dealer or investment adviser that serve in a supervisory, compliance, or legal capacity, arguing that the duties of qualified employees and the decisions that qualified employees must make regarding the sensitive issues surrounding potential financial exploitation are better suited for more senior, experienced personnel. Commenters also expressed a concern about multiple reports involving the same vulnerable adult. Other commenters felt the reporting personnel should be expanded. While the Committee considered these comments, the Committee ultimately determined that requiring individual agent and adviser level reporting is appropriate given these individuals often have closer relationships with their clients and customers.

⁷¹ Numerous states enacted laws that mandate reporting of suspected elder financial exploitation by banks and other financial institutions prior to the Model Act, including California (CAL. WELF.&INST. CODE § 15630.1), Florida (FLA. STAT. § 415.1034), Georgia (GA. CODE § 30-5-4), Kansas (KAN. STAT. § 39-1431), and Mississippi (MISS. CODE § 43-47-4).

⁷² According to the National Association of Adult Protective Services (NAPSA), only one in 44 cases of financial abuse is ever reported. See <http://www.napsa-now.org/policy-advocacy/exploitation/>.

⁷³ The provision of criminal immunity was considered and rejected by the NASAA Committee prior to seeking public comment on the Model Act, and no commenters presented persuasive arguments for its addition. Indeed, neither the NASAA Committee nor commenters were able to envision a situation in which criminal liability would arise from either the reporting requirements of the Model Act or from the delay of a disbursement pursuant to Section 7. Some commenters sought further clarifications as to the applicability of the immunity provisions in Section 4 to specific actions brought by specific parties. Some commenters wanted clarification that the immunity provisions extended to actions brought by government entities, such as state securities regulators or APS agencies. Other commenters advocated for the inclusion of immunity from criminal liability. Still another commenter sought clarification as to the “good faith and reasonable care” standard, the extension of immunity beyond reporting and disbursement delays, and clarification that nothing in the Model Act would limit a firm’s options under existing law, such as the ability to utilize certain contractual provisions. However, the NASAA Committee concluded that the language in Section 4 fully encompassed the scope of all civil and administrative actions, and no further clarification was necessary.

⁷⁴ NASAA believes financial services firms should be doing more to work with seniors and other potentially vulnerable clients to identify appropriate third-party contacts ahead of any suspected exploitation or diminished capacity (for example, at the time an account is opened). Under Section 5, a disclosure may not be made to a third-party if the qualified individual suspects the third-party of being aware of or involved in the financial exploitation. This is important because research indicates that a high proportion of reported senior financial exploitation is perpetrated by friends or family members.

⁷⁵ See NAPSA Response to FINRA Regulatory Notice 20-34 (Dec. 4, 2020), *available at* <https://www.finra.org/sites/default/files/NoticeComment/12.3.2020%20-%2020201204%20-%20NAPSA%20Comments%20->

[%20FINRA%20Regulatory%20Notice%202020-34.pdf](#).

⁷⁶ As initially proposed, the Model Act would have permitted an initial disbursement delay of 10 business days. The Committee increased this initial disbursement delay from 10 to 15 business days in the final version of the Act following public comment because a longer period would provide more time for broker-dealers or investment advisers to review the suspected financial exploitation. Section 7(1)(a) clarifies that a firm must conduct an internal review of the facts and circumstances in order to have a reasonable belief that financial exploitation may occur. Section 7(1)(b)(iii) clarifies that a firm must continue its review or investigation following a delayed disbursement and must report the results of that review or investigation to the Agencies. The Committee considered but declined some commenters' recommendations to add a provision relating to governmental investigations. The Committee declined to expand the delay beyond a total of 25 business days (an initial 15-day delay at the firm's discretion, followed by a potential 10-day extension at the request of a state securities regulator or adult protective services office) in view of comments from consumer advocates noting the potential harms investors could face if disbursements are delayed too long, such as bounced check fees, missed bill payments, and other financial hardships.

⁷⁷ As of July 2021, the following 21 states permit holds on both disbursements and transactions: Arizona, Arkansas, California, Florida, Hawaii, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, Texas, Utah, Virginia, and West Virginia.

⁷⁸ See SIFMA Response to FINRA Regulatory Notice 20-34 (Dec. 4, 2020), *available at* https://www.finra.org/sites/default/files/NoticeComment/12.4.2020%20-%20SIFMA%20Comments%20on%20FINRA%20RN%202020-34%20FINAL%20%5BLisa%20J.%20Bleier%5D_Redacted.pdf.

⁷⁹ See NAPSA Response to FINRA Regulatory Notice 20-34 (Dec. 4, 2020), *available at* <https://www.finra.org/sites/default/files/NoticeComment/12.3.2020%20-%2020201204%20-%20NAPSA%20Comments%20-%20FINRA%20Regulatory%20Notice%202020-34.pdf>.

⁸⁰ It is NASAA's understanding that APS agencies often have difficulty obtaining records from financial firms in a timely fashion. Mandating record sharing will help forestall this potential problem. Given the often urgent nature of these matters, it is important to make clear in the Model Act that broker-dealers and investment advisers must comply with requests for information from APS agencies or law enforcement.