

Statement of Kristen Standifer for the Investor Advisory Committee of the U.S. Securities and Exchange Commission

December 2, 2021

Introduction

Hello and good afternoon. I am Kristen Standifer, a supervisor for the Washington State Securities Division and the Chair of the Senior Issues and Diminished Capacity Committee of North American Securities Administrators Association, commonly referred to as NASAA¹. Thank you for having me here today. I am grateful for the opportunity to discuss ways we can better protect senior and diminished capacity investors. My comments today reflect my personal views and do not represent the official opinions of the Washington State Securities Division or NASAA.

By way of background, I've built my career around consumer and investor protection. In addition to supervising the licensing and examination team, I conduct outreach to financial institutions and their employees on Washington's vulnerable adult statute and on preventing fraud. I also commonly present to older Americans as a part of a coalition of various state and federal regulators focused on detecting and preventing fraud and exploitation. In addition, I served as an assistant attorney general for many years. As a part of my duties, I prosecuted cases related to the financial exploitation of seniors and vulnerable adults.

Recent Efforts to Protect this Population

We all know that great work is happening to protect this important population. From my perspective, two important pieces of legislation have driven much of the work that is happening at the federal and state level. The legislation includes the NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation ("NASAA Model Act"), which the NASAA membership adopted in 2016, and the Senior Safe Act, which became federal law in 2018. To date, at least 33 states have adopted the NASAA Model Act in whole or in part.²

The NASAA Model Act and the Senior Safe Act have some similarities. Both grant firms a safe harbor for reporting financial exploitation of seniors in certain circumstances.

However, there are differences. The Senior Safe Act's protections apply to financial institutions, such as insurance companies, insurance agents, credit unions, depository institutions, and transfer agents, which are not covered by NASAA's Model Act. Further, the NASAA Model Act allows broker-dealers and investment advisers to hold a disbursement of money or securities

¹ Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grassroots investor protection and efficient capital formation.

² This is in addition to statutes enacted in Washington and Missouri prior to 2016 that included some, but not all, elements of the Model Act. See [NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation Update Center](#).

from an account and contact a third party when financial exploitation is occurring or is suspected. The Senior Safe Act does not.

NASAA members and FINRA maintain frequent communications in this space. Even yesterday, I participated in a call with FINRA regarding protecting older adult investors. We engage on FINRA's rules, specifically FINRA Rule 2165 and FINRA Rule 4512.³ In addition, we collaborate on educational projects, including the two that I will cover momentarily.

Future Efforts to Protect this Population

To me, the question for all of us is—Where do we go from here? How do we make the next five years of our collective efforts even more successful than the last five?

I'd like to offer a few observations and recommendations for the Committee's consideration. These recommendations include (1) more employee training, (2) encouraging the designation of trusted third-party contacts, (3) increasing regulators' ability to report and access necessary information, (4) adding additional protections from broker-dealers not complying with Regulation Best Interest, and (5) working more collaboratively.

Better Employee Training

First, we should do more to improve training for employees on how to detect, prevent, and report the financial exploitation of vulnerable adults. The need for better training is underscored by a NASAA sweep of investment advisers this year that showed that one of the most common examination deficiencies was the failure to provide training for employees on financial exploitation of vulnerable adults.⁴

To remedy this need, the SEC, FINRA, and NASAA released a training presentation as a resource for the securities industry in June 2021.⁵ Firms can use the presentation to train their associated persons on how to detect, prevent, and report financial exploitation. When supplemented with information about the organization and its roles, the training will meet the requirements of the Senior Safe Act and certain state statutes.⁶ The joint training has been posted online by the SEC, FINRA, and NASAA; however, additional assistance is needed to promote the training further.

³ In 2017, the SEC approved FINRA Rule 2165. It permits FINRA members to place a temporary hold regarding the account of a specified adult, similar to the NASAA Model Act. See <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165>. In 2017, FINRA amended Rule 4512 to require FINRA members to make reasonable efforts to obtain a trusted contact person on retail accounts. See <https://www.finra.org/rules-guidance/rulebooks/finra-rules/4512#the-rule>.

⁴ See [State Investment Adviser Examinations Sweeps Uncover Deficiencies in Policies to Protect Seniors And Vulnerable Persons](#) (Sept. 20, 2021).

⁵ See the SEC-FINRA-NASAA "[Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors](#)" training presentation (June, 15, 2021).

⁶ Both the Senior Safe Act and some state laws require firms to train employees how to detect, prevent, and report financial exploitation of senior and vulnerable adult investors for their safe harbor provisions to apply.

Encourage Designating a Trusted Contact

Second, we need to do even more to encourage the identification of a trusted third-party contact on all financial accounts. Studies have shown that naming a trusted third-party contact is one of the most important things an investor of any age can do to protect against financial exploitation. Unfortunately, perhaps not ironically, older adult investors, who are statistically the most likely to require the aid, are the ones least likely to provide a trusted contact.⁷

During NASAA's annual outreach to stakeholders, we consistently received feedback on trusted third-party contacts. Industry participants reported that additional supports are needed, and we repeatedly heard a desire for regulators to provide information to investors about trusted third-party contacts. In fact, one firm reported that it received feedback that clients (i) felt the trusted third-party contact was a marketing device and (ii) didn't want to designate one for fear the firm would reach out to the person to solicit business.

Since that outreach, NASAA, FINRA, and the SEC's Office of Investor Education and Advocacy collaborated on an educational campaign. We created a [short one-minute video](#), a [colorful infographic](#), and public-facing [web pages](#) describing the importance and role of a designated third-party contact on financial accounts. These materials emphasize that the designated contact does not have a right to transact business in the account. However, a firm may contact the person when the firm is unable to contact the investor or when the fraud is suspected. More information may be found on NASAA's website.⁸

Increase Regulators' Ability To Report And Access Necessary Information

Third, we need to do even better in making it easy for regulators to report and access the information needed to collectively protect our nation's most vulnerable investors. As this group knows, it is difficult, if not impossible, to prevent or detect harm when it is happening outside your line of sight. Currently, there are regulators, including some state securities regulators, that do not have a clear line of sight into reports and other informational sources that would allow us to prevent and detect harm. The good news is—this problem is fixable, particularly with the advancements in technology that are happening all the time.

One opportunity to assist in this effort is creating a centralized system whereby financial firms report financial exploitation, and the appropriate stakeholders – such as the state securities regulator and adult protective services – have notice of and access to the financial firm's report.

For context here, most state securities regulators do not have access to Suspicious Activity Reports, commonly referred to as SARs. This is true even when the suspicious activity falls squarely within the jurisdiction of the state securities regulator and no other agency. So, by way of example, if a custodian detects and reports suspicious activity to the government, the state securities regulator, in most instances, does not have access to the report.

⁷ For example, [research report](#) published in 2020 by the Ontario Securities Commission (OSC) identified three key biases that impact a senior's willingness to appoint a third party trusted contact.

⁸ See NASAA's [Establishing a Trusted Contact](#) webpage.

Added Protections From Broker-Dealers Not Complying With Regulation Best Interest

Fourth, the SEC needs to be even more proactive in its efforts to protect investors, particularly older adult investors, from broker-dealers who are not complying with Regulation Best Interest. A few weeks ago, NASAA announced the results of a nationwide survey conducted by state securities regulators that provides the first comprehensive look at broker-dealer industry policies and practices following the implementation of Regulation Best Interest (“Reg BI”) by the SEC.

In short, NASAA’s member states did not see the tide-turning reforms they had expected to see in the broker-dealer industry after Reg BI took effect. By way of example, the percentage of broker-dealer firms surveyed that were offering complex, costly, and risky products increased by 11% after Reg BI took effect. In addition, 65% of broker-dealer firms surveyed are not discussing lower-cost or lower-risk products with their customers when they recommend these products. I’d encourage anyone interested in protecting older adult investors to take a closer look at this report, which can be found on the NASAA website.⁹

Furthermore, there should be more oversight of products sold on the premise of banks and credit unions (collectively “Depository Institutions”). Anecdotally, I’ve found through enforcement and outreach efforts that older adults that invest through a broker-dealer located on the site of Depository Institutions place a high degree of trust in the safety and security of the investments purchased there. Unfortunately, we often see confusion in terms of whether the purchase was from the Depository Institution or the broker-dealer and the degree of risk of the investment. This is an important distinction since investors believe that products purchased from Depository Institutions are guaranteed. Often, investors, particularly elderly investors, will not appreciate the risk of the investment purchased through a broker-dealer located on the site of a Depository Institution. To even further the confusion, firms often will use a trade name at these locations that mirror the name of the Depository Institution. Broker-dealers will assert that the contract clearly spells out who the investor is doing business with, but investors often do not read or understand the distinction. It is not enough to undo the investor’s impression that it is doing business with a Depository Institution. More needs to be done to tighten up the supervision of broker-dealer locations at a Depository Institution and to limit the ability to sell complex, costly, and risky products there.

Work More Collaboratively on Investor Protection Efforts

Last, my hope is that we can do even better to work collaboratively on efforts to protect investors, particularly older adult investors. On this point, I want to flag there is important legislation pending in Congress right now that would establish a grant program that would enhance existing efforts by state securities and insurance regulators to protect older adult investors and policyholders from financial fraud. It’s called the *Empowering States to Protect*

⁹ See [NASAA Report Finds that Many Broker-Dealer Firms Still Place Their Financial Interests Ahead of Their Customers Despite Implementation of Regulation Best Interest](#) (Nov. 4, 2021).

Seniors from Bad Actors Act.¹⁰ Importantly, the bill would charge the SEC with administering the grant program and effectively create more opportunities for federal and state securities regulators to communicate and coordinate in their efforts to protect older adult investors. I sincerely hope that Congress will pass this legislation and give my office a chance to compete for grants that would go a long way toward protecting older adults.¹¹

Conclusion

I hope my observations and recommendations have been helpful. Should you decide to incorporate some or all of them into a recommendation to the SEC, I'd be delighted to engage with you further on the specifics. In the meantime, I look forward to any questions you might have for me. Thank you.

¹⁰ See [Empowering States to Protect Seniors from Bad Actors Act](#), H.R. 5914, 117th Cong. (2021).

¹¹ See [NASAA's Letter to HFSC Leadership Regarding H.R. 5914, the Empowering States to Protect Seniors from Bad Actors Act](#) (Nov. 15, 2021).