



February 15, 2017

The Honorable Sally Doty
Mississippi State Senate
Room 404
400 High Street
Jackson, MS 39201

RE: SB 2911, an Act to prevent the exploitation of vulnerable persons;

Dear Senator Doty:

On behalf of the Securities Industry and Financial Markets Association (SIFMA),¹ I am writing to provide comments on SB 2911, which would establish a process for securities firms to take additional measures to protect their senior or vulnerable clients. SIFMA shares your interest in protecting vulnerable adult investors and requests your consideration of our recommendations based on our review of this legislation. SIFMA has been a strong supporter of state and federal laws to provide additional tools and pathways to partner with regulators to help us further protect our senior clients, while fully complying with existing securities laws and rules. To be clear, SIFMA strongly supports the goal of this bill.

Earlier this month, after SB 2911 was drafted and introduced, the Securities and Exchange Commission approved new rules on this exact issue; compliance with these rules is mandatory. Since those rules are similar in many ways and share the same goal, but differ in certain details with SB 2911, firms in Mississippi will be caught between contradicting federal and state rules, which presents compliance challenges and imposes additional costs and procedural burdens. Please find attached proposed amendments to SB 2911 that would align Mississippi's rules to the new federal rules in order to protect Mississippi's vulnerable adult investors.

SIFMA has been a vocal advocate in the fight against senior financial exploitation for nearly a decade, founded a Senior Investor Protection working group of financial firms that now includes 150 representatives from 50+ diverse member firms, and has worked with multiple states² to enact laws which create a reporting pathway from Broker-Dealers to state securities regulators and Adult Protective Services organizations (APS) and permit reporting firms to place temporary holds on suspicious transactions and/or disbursements to allow time for the state to investigate (commonly referred to as "Report & Hold" laws). We've also submitted comments to both the Financial Industry Regulatory Authority (FINRA) and North American Securities Administrators Association (NASAA) on their respective "Report & Hold" proposals, which seek similar goals but may, in certain instances, have presented operational challenges - especially where the new SEC-approved rules³ and the older state model law conflict.

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving retail clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. For more information, visit <http://www.sifma.org>.

² Washington State, Delaware, Missouri, Indiana, Alabama and Louisiana.

³ Approved by the SEC February 3, 2017.

While SIFMA and its member firms have been working in this space for nearly a decade, over the last few years – in fact over the last year alone – the senior investor protection landscape has quickly evolved. As noted earlier, new federal rules were approved this month by the SEC which govern actions by securities firms and provide firms with the ability to take additional actions to protect their senior clients. Incorporating lessons learned from states which have worked to enact laws – from Washington State’s 2010 law to present efforts – and the perspectives and expertise from the consumer, aging and industry advocates that have been working in this space, the SEC approved an effective and efficient Report & Hold rule that has received the stamp of approval from the federal government and aging advocates alike. FINRA’s new Rule 2165 underwent several rounds of notice and comment rulemaking and significantly evolved between its first release in late 2015 (shortly after the NASAA model was first proposed) and its final approval by the SEC on February 3, 2017.

This new rule is already applicable to Broker-Dealers in Mississippi and across the country. As such, we strongly urge the legislature to take note of the robust, 16-month rulemaking process, which included several sets of changes across 4 detailed releases from FINRA and the SEC.⁴ Furthermore, by harmonizing any Mississippi law with the SEC-approved rule, the legislature can help ensure seamless effective protections of Mississippi’s seniors and vulnerable adults.

Specifically, we would like to bring the following areas needing such harmonization to your attention. We’ve also attached suggested language, which would harmonize SB 2911 with the SEC-approved rule and federal law with a minimum of changes.

I. Time Periods and Procedures Regarding Extensions, and Protecting the Discretion and Authority of Investigating Agencies

- The time periods and reporting procedures were updated by FINRA and the SEC from those reflected in the earlier NASAA model to ensure: 1) a level of harmonization with existing state laws; 2) an efficient process that would effectively protect senior investors and vulnerable adults; and 3) that the Report & Hold rule did not curtail the existing authority of state investigating agencies, such as state securities regulators and APS organizations.

Specifically, the current draft of SB 2911 does not provide any investigating agency – particularly the securities commissioner – with authority to extend a hold beyond 25 business days, when necessary, without a court order. Periodically, particularly complex situations of financial exploitation can arise which may take more than 25 business days for the investigating agencies to resolve; this change would provide better protection for Mississippi’s residents subject to complex schemes, protect the investigating agencies’ existing discretion and harmonize with the SEC-approved rule, which recognizes the ability of the agencies to issue such an order.⁵

⁴ FINRA Regulatory Notice 15-37; SR-2016-039; SR-FINRA-2016-039 - Amendment #1; and SEC Release No. 34-79964.

⁵ FINRA Rule 2165(b)(3).

Additionally, the current draft of SB 2911 contains internally inconsistent reporting periods, as well as reporting periods that are inconsistent with the SEC-approved rule.⁶ As such, we urge you to adopt both the time frames and reporting procedures in Sections (b)(1) through (b)(3) of the final federal rule,⁷ which are also included in the attachment below.

II. Expanding or Harmonizing Third-Party Contact Provisions with Longstanding Federal Law

- As written, Section 1(a) of SB 2911 would permit an action that is already clearly permitted under existing law, and could be unintentionally read to limit the other actions a broker-dealer may take under well-established federal law (including the Gramm-Leach-Bliley Act). While several states (including Missouri, Alabama and Indiana) have chosen to expand this reporting provision to provide new tools to the industry, others (such as Louisiana) have added the following clause ensuring that the provision does not weaken well-settled investor protections or conflict with federal law:

“[...] or any other party permitted by state or federal laws or regulations, the rules of a self-regulatory organization, or by customer agreement.”

As such, SIFMA strongly urges you to consider providing broker-dealers with an important senior investor protection tool by expanding third party contacts to individuals “reasonably associated” with the customer, similar to the provisions in Alabama Act 2016-141. Of note, **no state** with an existing Report & Hold law has adopted the third-party disclosure provision currently in SB 2911.

III. Expanding Investor Protections by Allowing Transaction Holds

- SIFMA believes that it is imperative that the protections of any Report & Hold law be expanded to include temporary holds on transactions, in addition to disbursements. While placing a hold on disbursements allows firms to mitigate the most readily apparent consequences of financial exploitation, customers can still face significant negative impacts from both underlying and stand-alone transactions. Exploitative transactions can trigger significant tax consequences (i.e., due to the liquidation of certain securities), fees or other negative financial implications for the Specified Adult. Moreover, a bad actor (for instance, someone misusing a power of attorney) may be able to use their position to undertake trading schemes for their benefit, at the cost of the Specified Adult’s interests, exposing the client to significant financial losses (such as new investments in options or penny stocks).

⁶ Specifically, SB 2911 requires the results of an internal investigation to be submitted within 7 business days (even though the initial hold period to allow time for both a state and firm investigation is 15 business-days). No state with a Report & Hold statute includes this inconsistent requirement. Additionally, under the strong majority of state laws, as well as the SEC-approved rule, broker-dealers have a minimum of 2 business days to notify State agencies and all parties authorized to transact business on an account.

⁷ Contained in SR-2016-039 – Amendment No. 1.

Other examples of exploitative, non-disbursement transactions include: the buying of an investment product for the benefit of the wrongdoer, a change in ownership of an account, a change in the beneficiary of an account, and the incursion of penalties due to another change in the account (such as annuity-related surrender charges). For these reasons, SIFMA urges Mississippi to take the lead to provide more robust investor protections.

Thank you again for your efforts on behalf of Mississippi seniors, and we look forward to the opportunity to work with you to address these issues and better protect investors in your state. If you have any questions or if there is any further information we can provide, please contact me directly at (212) 313-1233 or nlancia@sifma.org.

Best regards,

/s/

Nancy Lancia
Managing Director
SIFMA
State Government Affairs

Appendix I:

Proposed Language Harmonizing SB 291 with SEC-Approved FINFRA Rule 2165

SECTION 1. The following shall be codified as Section 75-71-413, Mississippi Code of 1972:
75-71-413. (a) A broker-dealer registered or required to be registered under this chapter or an investment adviser registered or required to be registered under this chapter that is required to file a report with the Department of Human Services pursuant to the Mississippi Vulnerable Persons Act, Sections 43-47-1 et seq., shall immediately forward a copy of the report to the administrator and may notify any third party reasonably associated with ~~previously designated by~~ the customer of the suspected financial exploitation, or any other party permitted by state or federal laws or regulations, the rules of a self-regulatory organization, or by customer agreement.

(b) If the broker-dealer registered or required to be registered under this chapter or the investment adviser registered or required to be registered under this chapter reasonably believes that a requested transaction ~~disbursement~~ may result in financial exploitation of its customer, such person may delay a transaction ~~disbursement~~ not to exceed fifteen (15) business days. If the transaction ~~disbursement~~ is delayed the person shall, within two (2) business days, ~~immediately~~

notify the administrator and all parties authorized to transact business on or to view the account subject to the delay. The broker-dealer or investment adviser shall immediately initiate an internal review of the suspected or attempted financial exploitation of the customer. The ~~broker-dealer or investment adviser shall provide results of the review must be reported to~~ the administrator ~~and the~~, Department of Human Services ~~with an update on the investigation upon request, and any third party previously notified under subsection (a), within seven (7) business days.~~

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

(1) A determination by the broker-dealer or investment adviser, and the administrator, that the ~~transaction disbursement~~ will not result in financial exploitation of the eligible adult; or

(2) Fifteen (15) business days, unless the administrator requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall be extended for an additional ten (10) days unless ~~sooner otherwise extended or terminated by the administrator or an order of a court of competent jurisdiction in accordance with subsection (3).~~

(3) ~~The administrator, the Department of Human Services, or a~~ A court of competent jurisdiction may enter an order extending ~~or terminating~~ the delay of the ~~transaction disbursement of funds or may order other protective relief based on the petition of the administrator, broker-dealer, or investment adviser that initiated the delay under this section, or other interested party.~~

(d) Disclosures and notifications of ~~transaction disbursement~~ delays shall not be made to any third party who is suspected of financial exploitation or other abuse.

(e) A person that makes disclosures or delays ~~transactions disbursements~~ pursuant to this section shall be immune from any administrative or civil liability that might otherwise arise from compliance with this section or activity authorized under by section.

(f) A person who fails to comply with subsection (a) of this section shall be subject to Section 43-47-7(1)(c) of the Mississippi Vulnerable Persons Act.

SECTION 2. This act shall take effect and be in force from and after July 1, 2017.