

February 24, 2017

The Honorable Sarah Maestas Barnes
The Honorable Nick Salazar
State Capitol
Santa Fe, NM 87501

RE: NM HB 326, An Act Relating to Securities; Enacting the Protecting Vulnerable Adults from Financial Exploitation Act

Dear Representatives Maestas Barnes and Salazar:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is a national trade association which represents hundreds of large, medium and small broker-dealers, banks and asset managers. SIFMA is proud to be a vocal advocate in the fight against senior financial exploitation. Among other things, SIFMA has educated policymakers and the general public on the need for increased senior protections, founded a large working group for member firms to share ideas and best practices, and worked with state legislatures and federal and state regulators on various “Report and Hold” proposals that would allow reporting firms to place temporary holds on suspicious transactions and/or disbursements.

SIFMA strongly supports the goals of your recently introduced HB 326. We, however, are writing to encourage you to consider some amendments which we believe strengthen the bill.

- Expanding Investor Protections by Allowing Holds on Transactions. SIFMA believes that permitting holds on transactions as well as disbursements provides substantial additional protection for seniors and other vulnerable adults.
 - Certainly, a hold on a disbursement is very helpful as it prevents a client’s assets from leaving the account while the suspected financial exploitation is being investigated.
 - There, however, are various scenarios in which failing to place a hold on a transaction could cause substantial damage to the senior account holder. A wrongdoer could, for example, encourage a senior to liquidate a stock or terminate an annuity. Honoring those requests could result in significant penalties or tax consequences for the senior - even before a disbursement request is received. Other examples of potentially exploitative, non-disbursement transactions which would not be protected under the legislation as drafted include: changes in account ownership, changes in beneficiaries and the buying of an investment product for the benefit of the suspected wrongdoer.
 - Washington and Delaware currently extend the hold to transactions and disbursements. We would encourage you to consider doing the same.

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>

- Expanding Investor Protection Through Broader Third-Party Contact Provisions. Under Sections 5 and 6 of the bill, certain firm personnel who suspect financial exploitation “shall notify a third party previously designated by the eligible adult” and are immune from administrative or civil liability for such notification.
 - This language provides no additional investor protection. Firm personnel can already reach out to persons previously designated by the client under contract law and some federal laws and SRO rules.
 - The more difficult situation is what to do when a senior has not designated a third-party contact. We believe the client is better protected if firm personnel can also reach out to an “immediate family member” or someone “reasonably associated” with the senior if financial exploitation is suspected but no third party has been designated. Missouri, Alabama and Indiana have enacted laws that provide this expanded protection.
 - Even as currently drafted, the “shall notify” requirement is problematic. No other state has used this language, preferring instead to say that an entity “may notify” a third party. In some instances, particularly when substantial time has passed since the third party was first identified, it may be hard to find the designated individual. In other instances, the issue might be easily resolved without having to involve the third-party designee.
- Redefining Qualified Individual for Harmonization, Compliance and Efficiency Reasons. HB 326 assigns the “Report and Hold” responsibilities to qualified individuals, defined as “any agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.”
 - As you may know, earlier this month, the Securities and Exchange Commission approved new “Report and Hold” rules promulgated by the Financial Industry Regulatory Authority (FINRA). FINRA initially used the “qualified individual” language but ultimately placed the actions, obligations, and protections on “broker-dealers and investment advisers” rather than on individual agents and representatives.
 - We believe this language is preferable. Individuals should be reviewing their concerns with firm personnel prior to any report being made. This is consistent with firm supervisory procedures, protects against duplicative reporting and helps ensure that any report contains sufficient detail and information for the agencies’ use.
 - In addition, many firms have established or are establishing dedicated multi-disciplinary units to review suspicious activity in the accounts of seniors and vulnerable adults. These teams may or may not meet the industry’s very specific definition of supervisory and may or may not fall within the compliance or legal departments.
 - We would encourage you to strike the term “qualified individual” and replace it with “broker-dealer or investment adviser.” Alternatively, if you feel there must be an individual included in the definition, you could define qualified individual to be “a broker-dealer, investment adviser, or a person who serves in a supervisory, compliance, legal, or senior investor protection capacity for a broker-dealer or investment adviser.”

- Protecting Investors Through a Flexible Extension of the Hold. Section 7(B) provides for a total hold on a disbursement of no longer than 25 business days. It does not give the agencies the ability to extend the hold beyond this timeframe without a court order. Periodically, some situations will take longer than 25 days to resolve. We would encourage you to give the agencies flexibility to extend the hold. This could be accomplished by replacing the language “unless sooner terminated by either of the agencies . . .” with “unless otherwise terminated or extended by either of the agencies . . .”
- 7 Day Additional Reporting Requirement is Unnecessary and Raises Issues. SIFMA would encourage you to consider striking the language in Section 7 (A)(2)(c) directing the broker-dealer or investment adviser to continue its internal review of the suspected exploitation and report the “investigation’s results” within seven business days.
 - None of the six states that have passed “Report and Hold” statutes (Washington, Missouri, Delaware, Indiana, Alabama and Louisiana) have included this language.
 - In our view, the language creates potential problems as broker-dealers and investment advisers are passing on documented concerns but are not technically conducting formal legal investigations. In addition, in at least some instances, the BDs and IAs may have no other information to share.
 - Alternatively, rather than striking the language completely, it could be amended to read:
 - (c) provides, upon agency request, a status report of the internal review required under paragraph A (1) of this section.
- Mandating specific training content poses issues. Section 9 of the legislation links the bill’s immunity protections to persons completing training required by the securities director. We are not aware of any state that has linked immunity to enrollment in a state required training program. While many in the industry already do substantial senior investor protection training, we do not believe that states should be dictating training content. We are concerned that national broker-dealers would end up with different training requirements in every state. We are also concerned that state requirements could stifle ever changing science based training innovations. We would encourage you to strike this provision.

We look forward to working with you and greatly appreciate your willingness to consider our concerns. If you have any questions or if there is any further information we can provide, please contact me directly at (212) 313-1311 or kchamberlain@sifma.org.

Best regards,
 /s/
 Kim Chamberlain
 Managing Director & Associate General Counsel

Cc: The Honorable Gail Chasey
 Chair, House Judiciary Committee