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## Striking a Balance Between the Need to Protect Senior Investors and the Privacy Obligations of the Financial Industry

The need to detect and prevent financial exploitation of seniors continues to be an important policy objective in 2017. However, privacy laws can complicate and impede the process for reporting suspected financial abuse to the proper authorities. On Jan. 24, U.S. Sens. Susan Collins, R-Me., and Claire McCaskill, D-Mo., introduced the bipartisan “SeniorSafe Act of 2017” to help address this issue.

A virtually identical version of the bill was introduced in Congress in 2016 and received broad support from many stakeholders, including but not limited to state securities administrators, insurance commissioners, the North American Securities Administrator Association (NASAA), the Financial Services Institute and the Securities Industry and Financial Markets Association (SIFMA). Although the House of Representatives passed a virtually identical bill, the Senior Safe Act of 2016 (H.R. 4538), in July 2016, the Senate failed to take prompt action, and the bill died in the 114th Congress.

The reintroduced act seeks to better protect seniors, defined as those 65 years and older, by helping financial services professionals identify suspected financial exploitation and encouraging them to report suspected financial abuse by eliminating barriers that might inhibit such reporting. The types of financial institutions covered by the act are credit unions, depository institutions, investment advisers, broker-dealers, insurance companies and insurance agencies. Specifically, the act grants immunity from any civil or administrative liability to certain qualified individuals (as defined by the act) when they make good-faith, reasonable reports of any suspected exploitation to state securities regulators and other appropriate governmental authorities.

One of the conditions for receiving immunity is that the financial institution must train certain employees regarding the identification and reporting of suspected financial exploitation of elders. The training must also stress the importance of protecting the privacy and respecting the integrity of the financial institution’s customers. One drawback is that the act does not provide immunity for reporting to another family member or a trusted contact of the senior investor, which may be essential to quickly stopping and preventing any further exploitation. Another considerable drawback is that the act does not *require* reporting by the qualified individual to regulators, but instead only authorizes and provides immunity for such reporting.

In some states, certain individuals, including employees of financial institutions, are required by law to report suspected abuse, neglect or exploitation.<sup>1</sup> Some of these

states even impose criminal charges on mandated reporters who do not fulfill their obligation to report elder or disabled adult abuse. NASAA's model legislation, titled "An Act to Protect Vulnerable Adults from Financial Exploitation," adopted on Jan. 22, 2016, also mandates reporting by certain qualified individuals to state securities regulators and the state's adult protective services agency. The model act also authorizes disclosure to a designated third party as long as that individual is not believed to be involved in exploitation. Many states have already enacted legislation identical to or resembling NASAA's model act.<sup>2</sup>

The Securities and Exchange Commission also recently announced that one of its areas of focus for 2017 is financial exploitation of senior investors. SIFMA and the Financial Industry Regulatory Authority are also actively working on senior protection issues and have recently engaged in joint efforts to bring together scientific experts, regulators (state, federal and self-regulatory organizations) and the financial services industry to spread awareness of this issue.

Given the strong bipartisan support for the legislation, we believe the act will become law in 2017. Because training is a key requirement of the legislation, firms should consider options to secure the necessary training sooner rather than later. Stradley Ronon's Securities Litigation & Enforcement Group closely monitors ongoing federal, state and regulatory measures designed to protect senior investors and stands ready to provide clients with the necessary training to comply with these measures.



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- <sup>1</sup> Every state except New York has passed legislation that mandates certain professionals to report suspicions of elder abuse, neglect and exploitation to law enforcement, social services and/or regulatory agencies. New York, on the other hand, requires only that adult protective services workers report suspicions of abuse to law enforcement personnel, but there are no laws that mandate other professionals or laypersons to make such reports.
- <sup>2</sup> Alabama, Indiana, Vermont and Louisiana have already adopted some version of the model act. Additionally, Delaware, Missouri and Washington already allow for a delay in disbursements in certain circumstances and create immunity for breach of financial privacy by report to regulators, as prescribed by NASAA's model act.

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