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Modernizing Financial Legislation to Protect Older Americans from Financial Abuse

Joshua F. Bautz

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The United States of America is entering into a period of time that is marked by an increasingly aging population, and a corresponding growth in its susceptibility to financial abuse. While financial abuse can take on various forms, our older Americans continuously bear the bulk of its adverse effects. In recent years, financial representatives have notably suffered from a decline in investor confidence; however, this trend has failed to address the true culprits that commit the majority of financial abuse. This Comment will help to illuminate the increasing impact that family members, friends and caregivers have on the totality of the financial abuse perpetrated against older Americans.

The current prevailing federal and state regulations have insufficiently addressed this growing issue. Many recently proposed rules have aimed to fill this regulatory void, but their drafters have failed to affix the necessary language to mandate their protective intent. Older Americans are uniquely vulnerable to financial abuse because of the many physical barriers that they disproportionately face. The protections afforded to them by the government should reflect these realities.

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I. INTRODUCTION

> Often under-identified and under-reported, elder abuse is a public health crisis that crosses all socioeconomic lines, and it is an affront to human rights around the world . . . . Every year, millions of older Americans experience abuse, neglect, or exploitation. They are our friends and neighbors, and our parents, grandparents, and loved ones, and we must do more to change this unacceptable reality.[1]
>
> – President Barack H. Obama II

In 2015, President Obama made the above statement during the Presidential Proclamation on World Elder Abuse Awareness Day. President Obama's "*unacceptable reality*" highlights our country's failure to protect older Americans through its defective elder financial abuse legislative history. This Comment will highlight the various ways in which financial abuse is committed against the older American population. It will also advocate for a modernized approach toward legislating the unique nature of the financial service industry.

In order to properly address the issue, this Comment will stress the distinctions found in-between abuse perpetrated by financial representatives and abuse committed for the benefit of family members, friends, and caregivers. While both of these transactions utilize financial services, the distinction lies in the intended beneficiary. Older Americans are either exploited by financial representatives or by third parties who coerce their financial representatives to implement their fraudulent acts. Older Americans represent a uniquely vulnerable class within our population, and as a result of the physical and emotional barriers this group disproportionately faces, we must afford them special safeguards so that we can preserve their independence.

Older Americans are often left helpless from the actions of their financial representatives, and these same financial representatives are forced to stand idly by. This issue is insufficiently addressed in the current legislation climate, and clouds our ability to better protect our older Americans. In order to provide the adequate protections our older Americans deserve, we must not only monitor financial representative's actions, but also empower those same representatives to protect our elderly population.

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1 Barack Obama, *Presidential Proclamation—World Elder Abuse Awareness Day, 2015*, THEWHITEHOUSE (Jun. 12, 2015) https://www.whitehouse.gov/the-press-office/2015/06/12/presidential-proclamation-world-elder-abuse-awareness-day-2015.

II. BACKGROUND

Perceptions of elderly financial abuse are influenced by images perpetuated by the media, such as the iconic Ponzi scheme. While this notable scheme and many other similar frauds do in fact cause massive financial harm, they dwindle in comparison to the true perpetrators of today's abuse market. In fact, only 12% of elderly financial abuse comes from the typical sources that most Americans might assume, including "insurance, banking, attorneys, contractors, [and] nursing home administrators."[2] In reality, the largest perpetrators of elderly financial abuse, representing 51% of all cases, are conducted by complete strangers utilizing home repair scams, phone scams, strangers, and criminal activity (robbery, burglary).[3] It may also come as a surprise to many that the next major category of financial elderly abuse, representing 34% of all abuse cases, is conducted by "family, friends, neighbors, caregivers, and 'befriending.'"[4] The remaining 4% of elderly financial abuse comes in the form of "Medicare and Medicaid fraud."[5]

A. Financial Representative Elderly Abuse

i. Types of Financial Abuse Employed by Financial Fiduciaries

Financial representatives are generally perceived as the perpetrators of financial elderly abuse. These individuals are tasked with the responsibility of managing client funds, recommending suitable investments, and properly implementing these strategic plans based on their client's investment goals. These representatives are uniquely positioned within their roles to gain access to their client's funds without many safeguards protecting their access. This unrestricted control creates many opportunities in which financial representatives have taken advantage of their clientele, leaving financial representatives as the impulse scapegoat for all financial abuse. These representatives oftentimes utilize three main types of elderly financial abuse: the use of fraud and scams, the intentional misuse of an elder's assets, and the negligent mishandling of assets.[6]

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2 MetLife Study of Elder Financial Abuse, *Crimes of Occasion, Desperation, and Predation Against America's Elders*, 2-4 (Jun. 2011), https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf.

3 *Id.* at 8.

4 *Id.*

5 *Id.*

6 Carolyn L. Dessin, *Financial Abuse of the Elderly*, 36 IDAHO L. REV. 207-8 (2000) [hereinafter Dessin, *Financial Abuse*].

Financial representatives commit fraud and scams in a variety of ways in order to benefit from their unique relationship. The Oxford English Dictionary defines fraud as "to defraud, cheat, or deceive"[7] In 2010, Medicare and Medicaid fraud resulted in 58% of all reported elder financial abuse damages.[8] It is much more difficult to quantify the impact that financial representatives have had on the industry because of the undetectable use of hard-selling sales tactics.[9] While this activity is not fraudulent by definition, it can amount to the improper use of an elder's assets, which still results in financial abuse.[10]

As previously mentioned, Ponzi schemes represent one of the better-known scams that have been utilized over the generations. In 2008, Bernard L. Madoff conducted the largest Ponzi scheme in history.[11] This scheme resulted in over 15,000 claim filings and $64.8 billion in losses.[12] The court defined the mechanics of a Ponzi scheme as follows:

> Rather than engage in legitimate trading activity, Madoff used customer funds to support operations and fulfill other investors' requests for distributions of profits to perpetuate his Ponzi scheme . . . . As such, the only verifiable transactions were the customers' cash deposits into, and cash withdrawals out of, their particular accounts. Ultimately, customer requests for payments exceeded the inflow of new investments, resulting in the Ponzi scheme's inevitable collapse.[13]

Although Ponzi schemes are no longer novel ideas, they are still utilized in today's market due to their simplistic and concealable nature.

Financial abuse also occurs through the intentional misuse of an elder's assets.[14] This type of abuse encompasses everything from simple theft, all the way through complex reverse churning operations. Today's investors no longer have to fear that their financial representatives will simply steal from their accounts, but over the years this type of abuse has evolved in order to shield its presence from the unsophisticated investor. Churning is defined as utilizing a high rate of turnover on purchases of

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7 J. A. SIMPSON & E. S. C. WEINER, THE OXFORD ENGLISH DICTIONARY 152-3 (2nd ed. 1989).

8 METLIFE STUDY OF ELDER FINANCIAL ABUSE, *supra* note 2, at 2-4.

9 Dessin, *Financial Abuse*, *supra* note 6, at 207-8.

10 *Id.*

11 Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff Inv. Sec. LLC), 424 B.R. 122 (Bankr. S.D.N.Y. 2010).

12 Madoff, 424 B.R. at 124.

13 *Id.* at 128.

14 Dessin, *Financial Abuse*, *supra* note 6, at 207-8.

commission-based investments in order to earn excessive fees.[15] Today, many investors may fall victim to "reverse-churning," which involves the charging of high fees on low activity accounts where financial representatives can earn percentages of the victim's account without performing any services.[16]

The last manner of financial abuse committed by financial representatives involves the negligent mishandling of the client's assets.[17] This type of financial abuse is unique in that it does not involve the "intentional" actions of the financial representative, but nevertheless involves elderly abuse. The State of Florida defines negligence as, "th[e] course of conduct which a reasonable and prudent person would know might possibly result in injuries to persons or property."[18] This type of abuse normally comes from the improper allocation of an individual's assets.[19] This improper allocation can involve any deviation from the suitability standard outlined in Financial Industry Regulatory Authority ("FINRA") Rule 2111.[20] This suitability rule requires associated persons to recommend transactions and investment strategies that are based on each customer's investment profile.[21] This investment profile includes, but is not limited to, "the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose . . . ."[22] When a financial representative deviates from recommendations catered toward their specific client's investment profile, then this misalignment can be viewed as negligent mishandling.

ii. Why Older Americans are Susceptible to Financial Abuse

Older Americans are uniquely vulnerable to financial abuse because of the many physical barriers that they disproportionately face. Namely, older Americans suffer from varying degrees of diminished mental capacity. There are currently more than 5.4 million Americans that are suffering from some sort of dementia, which drastically increases their

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15 Hecht v. Harris, Upham & Co., 283 F. Supp. 417, 431-2 (N.D. Cal. 1968).

16 Daisy Maxey, *SEC Targets 'Reverse Churning' By* Advisers, THE WALL STREET JOURNAL (Feb. 24, 2014, 2:09 PM), http://www.wsj.com/articles/SB10001424052702304610404579403251590760602.

17 Dessin, *Financial Abuse*, *supra* note 6, at 207-8.

18 Frank v. Lurie, 157 So. 2d 431, 434 (Fla. 2d DCA 1963).

19 Dessin, *Financial Abuse*, *supra* note 6, at 208.

20 FINRA Rule 2111.

21 *Id.*

22 *Id.*

likelihood of falling victim to financial abuse.[23] The Alzheimer's Association estimates that 11% of all Americans aged 65 or older have Alzheimer's disease.[24] If you look toward the population of Americans aged 85 and older this figure increases to 32%.[25] In fact, the Alzheimer's Association reports that up to 50% of all Americans aged 85 and older has Alzheimer's disease, or a different form of dementia.[26] This essentially means that the growing aging population is increasingly more affected by dementia. Therefore, this leads to a growing problem of elder financial abuse because of dementia's tendency to cause "decreased or poor judgment" when making financial decisions.[27]

Elderly women in particular are disproportionately affected by financial exploitation.[28] It is estimated that nearly two-thirds of all Alzheimer's disease victims are women.[29] This increased dementia occurrence results in women falling victim to financial abuse at a rate nearly twice as high as their similarly situated male counterparts.[30]

Older individuals are particularly likely to experience vision and hearing impairment issues, which further increases their risk of experiencing financial abuse.[31] Vision loss impairs older people's quality of life, and reduces their ability to read financial statements and drive their car to financial consultations.[32] Even older people that maintain healthy lifestyles will lose a significant amount of brain volume and physical ability throughout the aging process.[33] These physical limitations highlight the need for older Americans to receive additional protections from financial abuse.

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23 *Id.*

24 ALZHEIMER'S ASSOCIATION, *2016 Alzheimer's disease facts and figures*, ALZHEIMER'SANDDEMENTIA 467, http://www.alzheimersanddementia.com/article/S1552-5260(16)00085-6/pdf.

25 *Id.*

26 R. Craig Harrison, *Protecting the Elderly from Financial Exploitation: The Dilemma and the Solution, Part I*, 88 FLA. B.J. 77 (2014).

27 ALZHEIMER'S ASSOCIATION, *supra* note 24, at 462.

28 Dessin, *Financial Abuse*, *supra* note 6, at 221.

29 ALZHEIMER'S ASSOCIATION, *supra* note 24, at 468.

30 *Id.*

31 National Institute on Aging, National Institutes on Health & U.S. Department of Health and Human Services, *Biology of Aging: Research Today for a Healthier Tomorrow* (2011) 4, https://www.nia.nih.gov/health/publication/biology-aging/preface; Centers for Disease Control and Prevention, *The State of Vision, Aging, and Public Health in America*. Atlanta: U.S. Department of Health and Human Services (2011) 1, https://www.cdc.gov/visionhealth/pdf/vision_brief.pdf.

32 Centers for Disease Control and Prevention, *The State of Vision, Aging, and Public Health in America*, Atlanta: U.S. Department of Health and Human Services (2011) 1, https://www.cdc.gov/visionhealth/pdf/vision_brief.pdf.

33 *Id.*

B. Family, Friends & Caregiver Elderly Abuse

i. Types of Financial Abuse Employed by Family, Friends & Caregiver

As an individual ages, they grow further and further dependent upon family members, friends, and caregivers to provide the support needed for them to live fruitful lives. While dependency rates vary across the board, and some older Americans are perfectly capable of living independently, a large amount of our aging population is growing increasingly dependent upon the next generation.

The aging American population has led family members, friends, and caregivers to take on more prominent roles within the lives of the elderly.[34] Between 1994 and 2008, the percentage of children providing basic care for their parents more than tripled.[35] This high level of dependency is one of several reasons why family members, friends, and caregivers achieve abuse rates nearly three times as high as the prevailing rate of financial abuse committed by financial representatives.[36] In many ways, this is simply the type of abuse that people would rather not discuss because of the painful consequences of pushing it to the forefront of conversations.

Family members, friends, and caregivers commit elderly financial abuse in a variety of ways, all of which highlight feelings of entitlement and a varying level of dependence. In many situations these individuals do not believe they are committing abusive actions, which only further complicates the identification and prevention of the abuse. These situations oftentimes come in the form of durable power of attorney relationships, beneficiary statuses within trusts and wills, and overall asset consumption practices.[37]

According to Florida law, the term "power of attorney" means, "a writing that grants authority to an agent to act in place of the principal . . . ."[38] Florida law goes on to distinguish this from a *durable* power of attorney by stating, "[t]his durable power of attorney is not terminated by subsequent incapacity of the principal . . . ."[39] A durable power of attorney creates a relationship between an individual and the principal that gives control of the principal's assets to the chosen

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34 MetLife Study of Caregiving Costs to Working Caregivers, *Double Jeopardy for Baby Boomers Caring for Their Parents*, 2 (June 2011), http://www.caregiving.org/wp-content/uploads/2011/06/mmi-caregiving-costs-working-caregivers.pdf.

35 *Id.* at 7.

36 METLIFE STUDY OF ELDER FINANCIAL ABUSE, *supra* note 2, at 2-4.

37 Carolyn L. Dessin, *Financial Abuse of the Elderly: Is the Solution a Problem?* 34 MCGEORGE L. REV. 267, 285 (2002-2003) [hereinafter Dessin, *Solution*].

38 Fla. Stat. Ann. § 709.2102.

39 Fla. Stat. Ann. § 709.2104.

individual.[40] This distinction highlights the amount of freedom the chosen individual may possess over the principle's assets and further emphasizes the inherent opportunity for abusive conduct. Again, we find ourselves looking toward situations where a great deal of "trust" must be placed in a third-party for the sole benefit of an older American. While many fortunate individuals may not have difficulty selecting a suitable individual to occupy this role, many are unable and abusive conduct often ensues.

Similar issues arise when dealing with trusts created for the benefit of the elderly individual. The Florida Supreme Court has failed to take action in situations where trusts were created with beneficiaries that received their beneficial status as a result of undue influence.[41] In *Florida National Bank v. Genova*, the Court held "[t]he issue presented here is whether the principle of undue influence is applicable when revoking a revocable trust. We hold that it is not; therefore, we approve the decision of the Fourth District Court of Appeal."[42] In *Genova*, the 32-year-old Mark Genova was able to exert undue influence on the 76-year-old Ann Clearly in order to marry her and gain control of her assets.[43] While the Court intended to protect Ann Clearly's rights with respect to trust formation, it did not adequately protect her from Mark Genova's malicious ploy.[44] The decision in *Genova* highlights the grey area between someone's perceived capacity and their vulnerability to undue influence.

ii. Why Older Americans are Susceptible to Family, Friends & Caregiver Abuse

Older Americans face a substantial amount of obstacles and disadvantages that lead to the abusive behavior surrounding their relationships with family members, friends, and caregivers. While the perpetrators of this conduct may be motivated by fiscal *retribution*, the elders themselves may be facing the more insurmountable feeling of *reliance*.[45]

It isn't hard to image a situation in which a grandmother turns a blind eye to abusive conduct of her child in lieu of a large confrontation that could leave her in solidarity. In many cases, an older American may feel that their quality of life would decrease if they were to rid themselves of this abuse, as it would similarly relieve them of their caregiver.[46] This

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40 Dessin, *Solution*, *supra* note 37, at 312.
41 Fla. Nat'l Bank v. Genova, 460 So. 2d 895 (Fla. 1984).
42 *Id.* at 895.
43 *Id.* at 895-6.
44 *Id.* at 895.
45 Dessin, *Financial Abuse*, *supra* note 6, at 210.
46 *Id.*

predicament leaves many older Americans adhering to the old folklore expression, "The devil known is better than the devil unknown." These individuals might also harbor some level of fear from the abuser, which can lead to further complications, and can also massively decrease the quality of one's life.[47]

Many older Americans might have discovered these abusive actions, but still may not act upon them simply because they do not know how to address these issues.[48] While many hotlines and organizations exist that can assist in providing aid and assistance with handling these issues, many older Americans are simply unaware of their existence, and do not possess the resources to discover them. Older Americans may also be blissfully unaware of these events, and the abuse will forever go unnoticed. There are many factors that might contribute to this outcome but the most likely is that the elderly victim suffers from some degree of dementia.[49]

The major factor underpinning much of the financial abuse perpetrated by family members, friends, and caregivers revolves around the feeling of "entitlement" many of these individuals feel.[50] This attitude does not necessarily reflect selfish motives, as in many cases the caregiving creates a substantial burden on the parties involved.[51] This leads caregiving parties to develop a feeling of "entitlement" that is based on the goal of financial retribution to compensate from the expenses incurred.[52] In fact, out of all of the aid provided to the elderly in America, only 17% are compensated for their efforts, while the remaining 83% of aid is provided by family, friends, and unpaid caregivers.[53]

In 2015, it was estimated that caregivers spent $10.2 billion dollars on health care costs provided for elders.[54] In 2016, it is expected that the total Medicaid costs for dementia victims will be roughly $43 billion dollars.[55] Furthermore, the total annual payments for the long-term healthcare required to aid individuals with dementia is projected to nearly quadruple by 2050 from around $236 billion a year to $1 trillion a year.[56] These financial burdens further strain caregiver relationships, and create more incentives to exploit older Americans through financial abuse.

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47 *Id.* at 212.
48 *Id.*
49 *Id.*
50 Dessin, *Financial Abuse*, *supra* note 6, at 213.
51 *Id.*
52 *Id.*
53 ALZHEIMER'S & DEMENTIA, *supra* note 24, at 474.
54 *Id.* at 480.
55 *Id.* at 488.
56 *Id.* at 490.

Accordingly, additional safeguards must be implemented to protect this vulnerable class.

III. Current Legislation Protecting Older Americans from Financial Abuse

The population of the United States of America is aging at an increasingly profound rate.[57] This trend has exposed elder financial abuse and has placed it into today's legislative spotlight forcing the creation of protective measures. These measures have come in many forms including: federal legislation, state legislation, self-regulatory organizations, and through the use of non-profit organizations. One noteworthy difficulty that these legislative measures have faced includes the cohesive implementation of laws that properly address both sides of elder financial abuse resulting from both financial representative abuse, and family, friend, and caregiver financial abuse.

A. Current Federal Legislation

i. The Older Americans Act

At the outset of discovering the magnitude and scale of the financial abuse problem in the United States, Donna E. Shalala began the first steps toward addressing the issue.[58] While acting as the Health and Human Service Secretary, Shalala initiated the National Center on Elder Abuse.[59] During this time, President Bill Clinton reauthorized the Older Americans Act.[60] These two initiatives set forward a push for elder protection that has now been supplemented by dozens of new laws, each law stepping us closer to adequate elder financial abuse protection.

The Older Americans Act authorized funding for the National Center on Elder Abuse.[61] This Act works with other organizations to help raise awareness, provide education, improve responses to elder abuse, and even provide training services.[62] While both of these initiatives provide

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57 Carrie A. Werner, *The Older Population: 2010*, U.S. CENSUS BUREAU 1 (Nov. 2010), https://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf.

58 Dessin, *Financial Abuse, supra* note 6, at 204.

59 *Id.*

60 *Id.*

61 Taylor Lemick, *Society's Response to the "Invisible" Abuse of Elders: Understanding and Addressing the Financial Abuse of Society's Most Vulnerable* Citizens, 23 ELDER L.J. 151, 179 (2015-2016).

62 *Id.*

essential services for the prevention and discovery of elder abuse events, their scope is limited to mostly preventative measures.[63]

The National Center for Elder Abuse was established with a mission statement geared towards "improving the national response to elder abuse, neglect, and exploitation."[64] This organization operates through "gathering, housing, disseminating, and stimulating innovative, validated methods of practice, education, research, and policy."[65] It continuously produces statistical analysis of the current incidence rates involved in elder financial abuse, which are then used by countless organizations to better protect the elderly.[66]

ii. The Securities & Exchange Commission

The Securities and Exchange Commission ("SEC") has been tasked with the responsibility to "protect investors, maintaining fair, orderly, and efficient markets, and facilitate capital formation."[67] Elderly financial abuse falls squarely within the protections granted to enforcing and "maintaining fair, orderly, and efficient markets."[68] The SEC has recently shifted its focus to better address elderly financial abuse, as it has acknowledged the fact that this is an increasingly troublesome area for Americans.[69] Under the requirements set out in the Dodd-Frank Wall Street Reform and Consumer Protection Act,[70] the SEC has established the Office of the Investor Advocate, which has been tasked with aligning the SEC focus with adequate and proportionate resources.[71] This Office has determined that this area requires further attention, and has been progressive in its efforts to look for further solutions, many of which involve the use of Self-Regulatory Organizations.[72]

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63 *Id.* at 181.

64 NATIONAL CENTER ON ELDER ABUSE, *Who We Are*, https://ncea.acl.gov/whoweare/about.html (last visited Nov. 3, 2016).

65 *Id.*

66 *Id.*

67 *What We Do*, U.S. SECURITIES AND EXCHANGE COMMISSION, https://www.sec.gov/about/whatwedo.shtml (last visited Nov. 3, 2016).

68 *Id.*

69 Rick A. Fleming, *Protecting Elderly Investors from Financial Exploitation: Questions to Consider*, U.S. SECURITIES AND EXCHANGE COMMISSION (Feb. 5, 2015), https://www.sec.gov/news/speech/protecting-elderly-investors-from-financial-exploitation.html.

70 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

71 *Id.*

72 *Id.*

In 1999, the SEC attempted to modernize the financial service industry through the implementation of the Gramm-Leach-Bliley Act of 1999.[73] The Gramm-Leach-Bliley Act was responsible for creating legislation that *allowed* or *permitted* financial institutions to report financial abuse perpetrated against the elderly.[74] This legislation acknowledged the fact that elderly investors are "attractive targets" for financial abuse, and sought to protect them by allowing suspected elder abuse to be reported to local, state or federal agencies.[75] Accordingly, this regulation not only acknowledged the fact that elderly investors require more attention than other classes of investors, but it also understood that empowering the financial service industry is an appropriate route to solve the issue.

iii. Patient Protection and Affordable Care Act

Recently, President Barack Obama attempted to add to the dwindling protections offered for older Americans with the enactment of the Patient Protection and Affordable Care Act.[76] This Act intended to continue the fight against this elder financial abuse.[77] In 2009, the Patient Protection and Affordable Care Act required the implementation of the Elder Justice Act of 2009 and the Elder Abuse Victims Act of 2009.[78] In 2010, the Elder Justice Act of 2009 was enacted, but unfortunately the Elder Abuse Victims Act of 2009 did not pass the Senate's approval process.[79] In 2016, the newer Elder Abuse Victims Act of 2016 was signed by President Obama, and has now been assigned to the congressional committee.[80]

The Elder Justice Act of 2009 accomplishes many of the goals that one might hope elder protection measures to accomplish within long-term care operations. Among other things, this Act does the following: (1) creates elder abuse forensic centers to assist with collecting evidence; (2) establishes programs meant to enhance long-term care operations; (3) funds grants to benefit state and local agencies; (4) supports "omnibus" solutions for the benefit of nursing homes; (5) performs grant evaluations to best allocate funding; and (6) establishes "best practices" to improve in

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73 Pub. L. No. 106-102, 113 Stat. 1338.

74 U.S. SECURITIES AND EXCHANGE COMMISSION, *Federal Regulators Issue Guidance on Reporting Financial Abuse of Older Adults*, https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539837338 (last visited Nov. 3, 2016).

75 *Id.*

76 42 U.S.C. § 18001.

77 SEC. 2021(f)(1) [42 U.S.C. § 18001].

78 Lemick, *supra* note 61, at 177-82.

79 *Id.*

80 *H.R. 4963—114th Congress: Elder Abuse Victims Act of 2016*, GOVTRACK (2016) https://www.govtrack.us/congress/bills/114/hr4963.

elder abuse investigations so that the act can stay malleable and continue to improve as individuals put forth newer solutions.[81]

Most importantly, this Act also establishes a *requirement* for "owners, operators, and employees of long-term care facilities to report suspected abuse, neglect, exploitation, or other crimes against elders."[82] This requirement highlights the proactive approach that can be utilized through mandated reporting practices. These actions are not simply implemented to force employees to take on further responsibilities, but rather realign the true intention of the Act's underlying purpose.[83] Without mandated reporting practices, the employees who possess the best information for discovering the incidences will not only ignore reporting actions, but will not know if these actions are appropriate. These mandatory reporting statutes not only improve the chances that abusive practices will be discovered, but it also empowers the employees themselves, which can have a prolific rippling effect throughout the industry.

While the Elder Justice Act of 2009 seeks to correct many issues relating to the implementation of long-term care and abuse discovery, the Elder Abuse Victims Act of 2009 attempted to aid in the prosecution and retribution aspects of elder abuse.[84] The Elder Abuse Victims Act of 2009 focused on training state and local prosecutors, preparing court systems, and preparing law enforcement that might deal with elder abuse situations.[85] As previously stated, this Act was not fully implemented;[86] however, the procurement of the Elder Abuse Victims Act of 2016 sheds new hope that similarly motivated acts might soon be implemented.[87] While both of these Acts seek to better handle elderly abuse matters, both fail to address the necessary scope of the issue. Long-term care abuse is a critical issue and deserves more attention. Still, based on abuse statistics, more legislative attention should be placed on the financial service industry.

iv. The Department of Labor

In 2015, President Barack Obama made a speech at the White House Conference on Aging, discussing how current regulatory rules "do not ensure that financial advisors act in their clients' best interest when they

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81 Lemick, *supra* note 61, at 178.
82 *Id.*
83 SEC. 2021(f)(1) [42 U.S.C. § 18001].
84 *Id.* at 182.
85 *Id.*
86 *Id.*
87 *H.R. 4963*, *supra* note 80.

give retirement investment advice."[88] In this speech, President Obama discussed how the current regulatory framework creates "misaligned incentives" for financial advisors that that cost America's families an estimated $17 billion a year.[89] These misaligned incentives caused financial advisors to recommend products that have higher fees or lower returns in order to personally benefit from the commissions earned on the sales transactions. President Obama aimed to eliminate the conflict of interest that financial advisors experienced when recommending investments to retirees.[90]

In conjunction with this message, the Department of Labor produced a final rule "defining who is a 'fiduciary' of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA)."[91] While the previous standard *permitted* financial representatives to act in accordance with their client's best interests, the new standard *mandated* that it occur.[92] This new rule aimed to decrease both the intentional misuse and negligent mishandling of an elder's assets by restricting financial advisors' investment choices to advice free from conflicting incentives.

B. Legislation for the State of Florida

As with most legislation, the federal government only plays a part in the total protections offered to its citizens. Most states across the country have catered their legislation to include special carve outs to protect their elderly aged citizens from financial abuse.[93] I have highlighted legislation from the State of Florida because of its comprehensive and complex elderly financial abuse laws. Florida boasts one of the highest populations of older Americans, and is also burdened with one of the higher rates of financial abuse in the country.[94]

Like most states, Florida enacted the Florida Adult Protective Services Act, which provides for "the detection and correction of abuse, neglect, and exploitation of a 'vulnerable adult' through both social services and

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88 Barack Obama, *White House Conference on Aging*, THEWHITEHOUSE, (Jul. 13, 2015) https://www.dol.gov/newsroom/releases/ebsa/ebsa20160406-0.

89 Office of the Press Secretary, *Fact Sheet: Middle Class Economics: Strengthening Retirement* Security, (Apr. 6, 2016) https://www.whitehouse.gov/the-press-office/2016/04/06/fact-sheet-middle-class-economics-strengthening-retirement-security.

90 *Id.*

91 29 CRF Parts 2509, 2501, and 2550.

92 *Id.*

93 Dessin, *Solution*, *supra* note 37, at 288.

94 *Florida—Policy Academy State Profile*, U.S. ADMINISTRATION ON AGING (Dec. 2012) http://www.aoa.acl.gov/AoA_Programs/HPW/Behavioral/docs2/Florida%20Epi%20Profile%20Final.pdf; *Policy & Advocacy—Elder Financial Exploitation*, NATIONAL ADULT PROTECTIVE SERVICES ASSOCIATION, http://www.napsa-now.org/policy-advocacy/exploitation/ (last visited Nov. 3, 2016).

criminal investigations."[95] This Act works hand in hand with the Department of Children and Family Services and local law enforcement when there is "reason to believe that abuse, neglect, or exploitation has occurred."[96] While the term "vulnerable adult" can pertain to any individual over the age of 18, it also includes individuals dealing with the "infirmities of aging" encompassing older Floridians.[97] This program provides many necessary services to elderly Floridians, but its scope is limited to situations that have already occurred and therefore does not work as a preventative measure.

Florida also utilizes its state courts systems, which have produced the Elder Justice Center.[98] This program is catered to Floridians aged 65 and older, and serves many of the same functions that the National Center on Elder Abuse provides.[99] The Center performs many functions including: (1) acting as an information referral service for senior citizens; (2) utilizing outreach programs to educate the public; (3) helping to coordinate access to existing agencies that can assist the victims of financial abuse; (4) providing resources and services relating to financial abuse cases; and (5) to "provide assistance to elder victims of abuse, neglect, or exploitation, including advocacy, victim services, and case coordination."[100]

The State of Florida is also unique in that it has criminalized the financial abuse of the elderly.[101] While most states do not possess criminal liability for these actions, Florida imposes strict liability on the perpetrators conducting physical, psychological, and financial abuse.[102] In Florida's elder statutes, criminal liability is restricted to situations pertaining to elderly persons or disabled adults.[103] Florida has also created a "private right of action" in order to allow "vulnerable adults" who have experienced exploitation to recover "actual and punitive damages."[104] Florida is the only state that recognizes that the "negligent mishandling of funds" falls within the definition of exploitation furthering its scope of protection.[105] While Florida does not go so far as to criminalize these actions, it does serve as another example to show that Florida's high

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95 R. Craig Harrison, *Protecting the Elderly from Financial Exploitation: The Dilemma and the Solution, Part I,* 88 FLA. B.J. 77 (2014).

96 *Id.*

97 U.S. ADMINISTRATION ON AGING, *supra* note 94.

98 Lemick, *supra* note 61, at 164.

99 *Id.*

100 *Id.*

101 Shelby A.D. Moore & Jeanette Schaefer, *Remembering the Forgotten Ones: Protecting the Elderly from Financial* Abuse, 41 SAN DIEGO L. REV. 505, 526 (2004).

102 *Id.*

103 Fla. Stat. Ann. § 825.103.

104 Fla. Stat. Ann. § 415.1111.

105 Dessin, *Solution*, *supra* note 37, at 312.

exploitation rate has resulted in the creation of unique measures to protect its elderly population's vulnerability.[106]

C. FINRA

Aside from Federal and state organizations, oversight to the financial service industry is also provided by self-regulatory organizations.[107] Self-regulatory organizations are based on the notion that oftentimes an industry might be too large to regulate without the assistance of the industry itself.[108] Within the financial service industry operates one of the largest self-regulatory organizations, which is known as the Financial Industry Regulatory Authority (FINRA).[109] FINRA is tasked with ensuring that: (1) investors receive "basic protections"; (2) securities products are "tested, qualified and licensed"; (3) securities advertisements are "truthful"; (4) products sold are "suitable" to each specific investor's needs; and (5) that investors receive "complete disclosure" about the products they purchase.[110]

In order to achieve these goals, FINRA is afforded many tools and instruments. FINRA requires that all brokers become members of FINRA through licensing and registration.[111] FINRA then requires that all members adhere to the FINRA conduct rules.[112] FINRA uses the implementation of rules in order to "deter misconduct" and "safeguard the investing public against fraud and bad practices."[113] When these rules are broken, FINRA is also able to discipline the perpetrators through the use of fines, suspensions and industry bars.[114]

FINRA also requires the use of supervisory systems at the firm level.[115] These systems must be "reasonably designed to achieve compliance with the applicable securities laws and regulations and FINRA rules."[116] Additionally, these systems must establish and maintain written procedures and designating principles responsible for supervision.[117] Many financial industry firms operate with a large number of personnel,

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106 *Id.*
107 INVESTOPEDIA, http://www.investopedia.com/terms/s/sro.asp (last visited Nov. 3, 2016).
108 *Id.*
109 *Id.*
110 *What We Do*, FINANCIAL INDUSTRY REGULATORY AUTHORITY, http://www.finra.org/about/what-we-do (last visited Nov. 3, 2016).
111 *Id.*
112 *Id.*
113 *Id.*
114 *Id.*
115 FINRA Rule 3110(a).
116 *Id.*
117 FINRA Rule 3110(a)(1).

which further emphasizes the importance that requiring supervision plays in FINRA's investor protection philosophy.[118]

FINRA has stated that the protection of senior investors, as well as Baby Boomers, is a priority for the organization.[119] In September 2007, FINRA produced Regulatory Notice 07-43, which was intended to "remind firms of their obligations relating to senior investors and highlights industry practices to serve these customers."[120] Amongst these recommendations, FINRA emphasized the unique investor profiles elderly investors possess—low risk tolerance and short investment time horizons—and the suitability issues that commonly arise as a result.[121] FINRA also acknowledged the issues arising around diminished mental capacity, and advocated for supervision measures to look for "red flags" such as "sudden, atypical or unexplained withdrawals; drastic shifts in investment style; . . . and isolation from friends and family."[122]

In addition to implementing and enforcing its rules, FINRA is also tasked with the detection and prevention of potential abuses across the market.[123] In order to implement protective measures, FINRA analyzes the 50-75 billion daily transactions that are processed through the organization.[124] This vast data collection allows FINRA to detect insider trading and other fraudulent transactions and schemes, therefore protecting its investors.[125] This intellectual property allows FINRA to gain the necessary insight to "educate and inform" investors within the industry.[126]

IV. POTENTIAL LEGISLATIVE SOLUTIONS FOR PROTECTING ELDERLY AMERICANS FROM FINANCIAL ABUSE

As elder financial abuse has become more prevalent, the legislation addressing the abuse has similarly expanded in scope. However, the current legislation fails to adequately address several troublesome areas where these abusive situations arise. Despite their limited success, these legislative measures have assisted in identifying areas where further protections are warranted including situations where financial abuse is perpetrated by financial representatives and family, friends and caregivers.

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118 *What We Do*, *supra* note 110.
119 FINRA Regulatory Notice 07-43.
120 *Id.*
121 *Id.*
122 *Id.*
123 *What We Do*, *supra* note 110.
124 *Id.*
125 *Id.*
126 *Id.*

A. Proposed Legislative Solutions Directed to Broker-Dealers in Order to Curb Against Financial Representative Abuse

Elderly financial abuse perpetrated by financial representatives strains the financial service industry, and destroys its essential cornerstone of trust. While it can be assumed that the great majority of financial representatives act fully in the best interest of their clients, some bad apples have created a poor reputation for the industry. In order to restore and maintain investor confidence, it is important for our legislative bodies to modernize their approaches to quickly respond to abusive behavior and fraudulent elderly abuse. In order to accomplish this goal, FINRA has proposed a solution that would help identify improper sales conduct through the use of a regulatory surveillance program.[127] Financial representatives can also benefit from this program as it allows them an opportunity to substantiate the legitimacy of their investment history.

In September of 2014, FINRA requested comments on the basis of their proposal of the implementation of the Comprehensive Automated Risk Data System (CARDS).[128] This CARDS system will "allow FINRA to enhance investor protection and help restore and maintain investor confidence by collecting information in a standardized format across all firm subject to CARDS on a regular basis."[129] FINRA plans to apply this system by requiring the submission of investment related information on an automated basis from financial representatives and financial service firms.[130] While many financial representatives have expressed remorse for such an arduous submission process, the information provided would remain "substantially consistent with the information that it already collects."[131]

Financial representatives have also voiced their concerns over the additional costs this submission process would require. In a comment letter sent to FINRA, Fidelity Investments estimated that implementation of this rule would cost "approximately $390,000 to $8.33 million and the annual cost to maintain these systems ranges from approximately $76,000 to $2.44 million."[132] Conversely, FINRA estimates that this process will ultimately decrease the current costs associated with FINRA examinations, as all firms are currently inspected "on-site" between every

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127 FINRA Regulatory Notice 14-37, *Comprehensive Automated Risk Data System*, FINANCIAL INDUSTRY REGULATORY AUTHORITY, (Sep. 2014) http://www.finra.org/sites/default/files/notice_other_file_ref/p600964.pdf.

128 *Id.* at 1.

129 *Id.* at 2.

130 *Id.*

131 *Id.*

132 Letter from Normal L. Ashkenas & Richard J. O'Brien, Chief Compliance Officers, Fidelity Investments, to FINRA (Dec. 1, 2014) (on file with FINRA).

one and four years for a much larger cost.[133] These larger "on-site" inspections would be eliminated, therefore moving substantially closer to a modernized surveillance approach.[134]

FINRA has embraced the role that technology plays within the future of financial service regulation. FINRA believes that this proposed rule will lead to quicker identification and faster response to "high risk areas and suspicious activities."[135] FINRA also states that it would be enhanced by CARDS in a number of ways including: (1) allowing FINRA to understand the business profiles of the industry for better regulations; (2) allowing FINRA to track certain product mixes in order to identify fraudulent activity; (3) allowing for a better understanding of unsuitable investments through the correlation between "risk profiles" and "high risk products"; and (4) helping to identify "patters of transactions that indicate bad behavior" including many abusive activities such as "pump and dump schemes, suitability, churning, mutual fund switching and concentrations of high-risk securities."[136]

FINRA has been forced, however, to abandon its CARDS proposal based on the sharp criticism and pushback offered by many financial service firms and lobbyist groups.[137] Ironically, this denunciation came from the same industry that stood to benefit from the proposed rule, and further highlights the bureaucracy associated with any new regulations brought upon the industry. Among other things, these organizations raised concerns over the potential intellectual property that might be at risk from hackers.[138] In a comment letter, Wells Fargo stated, "the transmission, aggregation and storage of retail investors information of this scale raise serious public policy concerns regarding privacy and the risk of a security breach."[139] This assertion is likely based on the fear that an entire database of financial information could be considered a treasure trove for hackers looking to exploit investment accounts. Similarly, a comment letter from the Public Investors Arbitration Bar Association (PIABA) stated, "The increasingly frequent instances of high profile computer hacking has

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133 FINRA Regulatory Notice 14-37, *Comprehensive Automated Risk Data System*, FINANCIAL INDUSTRY REGULATORY AUTHORITY, (Sep. 2014) http://www.finra.org/sites/default/files/notice_other_file_ref/p600964.pdf.

134 *Id.*

135 *Id.*

136 *Id.*

137 Melanie Waddell, *FINRA's CARDS Plan Dead on Table: Axelrod*, THINKADVISOR (Nov. 3, 2015), http://www.thinkadvisor.com/2015/11/03/finras-cards-plan-dead-on-table-axelrod.

138 Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, to FINRA (Dec. 1, 2014) (on file with FINRA).

139 *Id.*

shown that sensitive personal information, especially financial data, is increasingly vulnerable."[140]

In response to this criticism, FINRA made a statement clarifying that it would not collect and store "personally identifiable information," or PII.[141] In fact, according to FINRA there is a very low security risk associated with the desired information.[142] FINRA has also stated that the "increased ability to reduce fraudulent and abusive behavior, significantly outweigh the remote risk of a security breach."[143] According to a survey conducted by the Securities Industry and Financial Markets Association (SIFMA), investors disagree with FINRA and approximately 71% of investors believe that, "the benefits of CARDS do not outweigh the cyber security risk."[144]

B. Proposed Legislative Solutions Directed to Broker-Dealers in Order to Curb Against Family, Friends and Caregiver Abuse

Family, friends, and caregivers commit financial abuse nearly three times as often as financial representatives, yet nearly all of the current legislative measures only protect against abuse from the latter.[145] This void in the legislative history is mostly based on an inability to address the third-party abuse because of the limited role that the financial industry plays in exterior relationships. Recent legislative measures have unearthed a way to not only protect elderly investors, but also empower financial representatives to better protect their industry. Both FINRA and the National American Securities Administrators Association, Inc. (NASAA) have proposed legislation rules involving the use of temporary holds.[146]

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140 Letter from Joseph C. Peiffer, PIABA President, PIABA, to FINRA (Nov. 20, 2014) (on file with FINRA).

141 FINRA Regulatory Notice 14-37, *Comprehensive Automated Risk Data System*, FINANCIAL INDUSTRY REGULATORY AUTHORITY, (Sep. 2014) http://www.finra.org/sites/default/files/notice_other_file_ref/p600964.pdf.

142 *Id.*

143 *Id.* at 6.

144 Letter from Ira D. Hammerman, Executive Vice President and General Counsel, SIFMA, to FINRA (Dec. 15, 2014) (on file with FINRA).

145 METLIFE STUDY OF ELDER FINANCIAL ABUSE, *supra* note 2, at 2-4.

146 FINRA Regulatory Notice 15-37, *Financial Exploitation of Seniors and Other Vulnerable Adults*, FINANCIAL INDUSTRY REGULATORY AUTHORITY, (Oct. 2015) http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-37.pdf; Model Act, *An Act to Protect Vulnerable Adults from Financial Exploitation*, NASAA, (Sep. 29, 2015), http://serveourseniors.org/wp-content/uploads/2015/11/NASAA-Model-Seniors-Act-adopted-Jan-22-2016.pdf.

In 1976, the United States Supreme Court decided a case that greatly influenced the way banks viewed financial abuse reporting.[147] In *United States v. Miller*, the Court held that bank customers had "no legitimate 'expectation of privacy'" in their bank records.[148] Accordingly, the federal government had the right to subpoena the bank records.[149] Shortly after this case, Congress passed the Right to Financial Privacy Act (RFPA), which overruled *Miller*.[150] As a result, bank customers can now generally expect their bank records to be kept confidential.[151] The RFPA protections are limited to federal government interferences, and would not place any restrictions on state or local authorities.[152] Many banks fear the inadvertent privacy law violations that financial abuse reporting might cause and fail to report claims as a result.[153]

In October 2015, FINRA proposed Regulatory Notice 15-37, which outlined two new rules that would work together to better address the financial exploitation of seniors and other vulnerable adults.[154] The first aspect of this proposal is based off customer account information, and seeks to "require firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer's account."[155] The second aspect of this proposal seeks to permit "qualified persons of firms to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers."[156]

The new rule is based on the experiences FINRA had encountered while operating the Securities Helpline for Seniors.[157] This helpline assisted in identifying the important aspect that timing has on elder abuse cases.[158] FINRA determined that it was not able to "quickly and effectively address suspected financial exploitation of seniors and other vulnerable adults consistent with FINRA rules."[159] In many situations, financial

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147 Reid Johnson, *Eradicating Elderly Exploitation: How Simple Solutions Can Protect the Elderly Population of Texas From Financial* Abuse, 15 TEX. TECH. ADMIN. L.J. 209, 223 (2013-2014).

148 United States v. Miller, 425 U.S. 435, 442 (1976).

149 Miller, 425 U.S. at 440.

150 12 U.S.C.S. § 3401.

151 Lemick, *supra* note 61, at 175.

152 *Id.*

153 *Id.*

154 FINRA Regulatory Notice 15-37, *Financial Exploitation of Seniors and Other Vulnerable Adults*, FINANCIAL INDUSTRY REGULATORY AUTHORITY, (Oct. 2015) http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-37.pdf.

155 *Id.* at 3.

156 *Id.* at 1.

157 *Id.* at 2.

158 *Id.* at 6.

159 *Id.*

representatives are faced with a "reasonable basis to believe that financial exploitation" is occurring, but they are currently powerless to prevent these exploitations despite their close proximity to the transactions.[160] In order to address both of these concerns, FINRA has implemented what has been affectionately called the "pause-rule."[161]

The "pause-rule" allows FINRA and financial representatives to work together to combat financial abuse by allowing financial representatives to: (1) "place a temporary hold on a disbursement of funds or securities from a customer's account"; and (2) "notify a customer's trusted contact (or, if unavailable, immediate family member) of the firm's decision to place the temporary hold on a disbursement from the customer's account."[162] Allowing financial representatives to place temporary holds on elderly investors accounts will prevent many of the abusive tactics that family members, friends, and caregivers may utilize to commit financial abuse.[163] Oftentimes, the financial representative is the only person in a position to discover these situations, and giving them the opportunity to assist their clients will have increasingly positive impacts on the financial service industry. This proposed rule will not mandate the disclosure of financial exploitation, but rather it will provide a "safe harbor" for financial representatives that do decide to place temporary holds.[164]

The permissive nature of the currently proposed rule will allow financial representatives to ignore signs of financial abuse. Firms are likely financially incentivized to ignore these signs because of the costly procedures that are involved with reporting. In order for a firm to implement a temporary hold they must: (1) "establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with this Rule";[165] (2) "develop and document specific training policies or programs reasonably designed to ensure that registered persons comply with the requirements of this Rule";[166] and (3) "retain records related to compliance with this Rule, which shall be readily available to FINRA, upon request."[167] A mandatory rule would produce more financial abuse reporting as financial representatives may otherwise be dissuaded by the burdensome reporting requirements.

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160 *Id.*
161 FINRA Rule 2165.
162 *Id.* at 2.
163 *Id.*
164 *Id.* at 4.
165 FINRA Rule 2165.02.
166 FINRA Rule 2165.03.
167 FINRA Rule 2165 (b)(2)(C).

The NASAA has also proposed a similar rule based on the discoveries of the NASAA Committee on Senior Issues and Diminished Capacity.[168] The NASAA version of the "pause-rule" similarly allows financial representatives to delay the disbursing of funds from "eligible adults" when their financial representative "reasonably believes that such disbursement will result in the financial exploitation of the eligible adult."[169] This delay in disbursement is performed in conjunction with notifying "state securities commissioner and adult protective services" so they can conduct an "internal review of the suspected exploitation."[170]

While the NASAA pause-rule essentially conforms to FINRA's pause-rule in most aspects, it also deviates in many important ways. Most notably, the NASAA rule creates a *mandatory* obligation for financial representatives to report and pause accounts suspected of financial exploitation.[171] While FINRA's rule merely created the option and "safe harbor" required for original account pauses, the NASAA's rule requires these actions putting much more pressure and responsibility on financial representatives.

V. CONCLUSION

In order to fully protect older Americans in today's day and age, our legislative bodies must abide by one simple rule, "trust but verify." Our ever-expanding financial markets are far more significant than any other industry that exists today, and as such, our regulatory bodies need to adapt and modernize their tactics. The industry currently works within a regulatory system that employs both self-regulatory organizations and standard black letter law statutes. Moving forward, this industry needs to more heavily rely upon its self-regulatory organizations in order to proactively increase investor confidence.

The financial service industry needs to put its "trust" in the financial representatives that work with the elderly clientele that they are indeed actively trying to protect from financial abuse. Oftentimes, the financial representatives themselves are the only people that are able to identify fraudulent activity conducted by third parties. Financial representatives are also uniquely positioned to have the largest impact on the mitigation of damages once they are discovered. In order to protect our elderly

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168 Model Act, *An Act to Protect Vulnerable Adults from Financial Exploitation*, NASAA, (Sep. 29, 2015) http://serveourseniors.org/wp-content/uploads/2015/11/NASAA-Model-Seniors-Act-adopted-Jan-22-2016.pdf.

169 *Id.*

170 *Id.*

171 *Id.*

population, this industry needs to empower its financial representatives to assist in this discovery through measures like the FINRA and NASAA "pause-rules." It is also important to advocate for regulations including *mandatory* reporting language, so that the greatest amount of financial exploitation can be prevented.

Furthermore, the financial service industry needs to "verify" the actions of its players and create common-sense regulations that limit the opportunity for fraudulent activity to manifest. In order to accomplish this goal, the financial service industry needs to modernize its surveillance program to include all transactions. Although the CARDS proposal was ultimately not implemented, it is important for our industry to adopt a similar proposal that effectively monitors the entire industry. This monitoring allows us to "verify" that our financial representatives are working in their client's best interests, whilst still collecting valuable information that could aid in the prevention of future financial exploitation.

The financial service industry needs to modernize its approach to surveillance, and it needs to utilize the financial representatives themselves in order to prevent elderly financial abuse. As a whole, we need to "trust" our financial representatives to assist in the regulatory process while simultaneously "verifying" their actions through unbiased procedures.