

Testimony in Support of SB 2325
North Dakota Securities Commissioner Karen Tyler
Senate Industry and Business Committee
January 23, 2023

Good afternoon, Mr. Chairman and members of the Committee. I am Karen Tyler, the state Securities Commissioner. I am here to testify in support of SB 2325 which creates a restitution assistance fund for certain victims of securities law violations.

This bill establishes the restitution fund, identifies that the revenue of the Department is the funding source for providing restitution to harmed investors, identifies the parameters for qualifying for this assistance, sets limits on the assistance provided, and creates the necessary authorities for the Commissioner to administer the fund.

To help frame the need for and the benefit of this additional investor protection mechanism, and how it enhances the existing enforcement authority of the Department, I would like to first share with you some information related to the characteristics of our investment fraud investigations, review some data related

to fraud and misconduct involving senior victims and then address specific conditions of the proposed fund, and suggest an amendment.

When I was testifying before this committee a couple of weeks ago on our agency pre-filed bill, I shared with you that our work to protect investors can be broken down into two categories:

- 1. regulating the capital formation process**
- 2. regulating the conduct of investment industry firms and professionals**

And while these are very distinct functions (the issuance of securities vs. the intermediation of securities transactions), what is common to both categories is the potential, the possibility, that fraud and misconduct can occur, and further, where fraud or misconduct is perpetrated, what is also common to both categories is that older investors are often the target.

For purposes of conveying our support of this bill, I will shift the focus - instead of the focusing on these two securities related functions, I want to focus on the person engaging in the fraud or misconduct, how this impacts the outcome of an investigation, and the likelihood of a successful resolution for the harmed investor, which ties directly to the need and benefit of the proposed restitution assistance fund.

Registered Persons vs. Unregistered Persons and Financial Criminals

If an investigation involves the conduct of a registered financial professional who works for a registered investment firm, the likelihood of a resolution that makes the investor whole is very high. Our securities laws provide strong enforcement mechanisms such as the potential for revocation of a firm or professional's registration, the ability to assess significant civil penalties per violation, and the ability to order the return of the investor's funds plus interest. These are authorities that currently exist in our securities act and they are exceedingly effective in resolving cases involving registered firms and professionals.

If, however, the violation involves an unregistered person with no affiliation to a brokerage firm or investment adviser firm, the likelihood of recovery of assets and a successful outcome for the harmed investor is substantially lower.

In those cases where recovery is unlikely, if not impossible, and the victim is a senior or vulnerable adult, this proposed restitution assistance fund will provide at least some level of relief.

There are a number of factors that converge to position seniors as a highly targeted cohort. This cohort is where the money is, this is where the potential for cognitive decline is most prevalent, this is where social isolation creates

vulnerability, and this is where reluctance to report a violation is strongest, allowing for continuation of the fraud. Attached to my testimony is a document with a variety of study summaries and statistics that provide more detail on these targeting factors.

Overall this age cohort has accumulated the most wealth, but of course that wealth is not evenly distributed. Many seniors live on very modest, fixed incomes and have little savings. Seniors as a cohort are relentlessly targeted because of the potential for a big score or a series of smaller takes, and victimization by a financial criminal will hit some seniors much much harder than others.

According to a study recently released by NDSU and the ND Housing Finance Agency, the most significant population change we will see here in ND in the next few years is the “aging forward” of our baby boomer population, with a 24% growth rate in the number of people over age 65 occurring by 2025. We also have an increasing number of people aging in place, which on the one hand is a really great thing but on the other hand can increase a variety of risks associated with isolation including the risk of fraud victimization. Currently 1/3 of people living alone in North Dakota are over the age of 65.

Data from our enforcement cases supports the findings of studies and research that indicates seniors are the most heavily targeted by financial fraud and exploitation.

In those cases where we are unable to secure the return of assets for a harmed investor through our existing enforcement authority, this proposed restitution assistance fund could provide some relief under the qualified circumstances. This bill is based on model legislation that was created from the best practices of a number of restitution assistance funds currently active in other states.

It provides for an application and qualification process, sets parameters for receiving and returning a payment, limits payments to the lesser \$50,000 or 50% of losses per qualified claimant, and sets certain discretionary authorities of the Commissioner.

The funding source is revenue generated by the Department – up to \$1 million per biennium. The Department will generate approximately \$23 million in the current biennium and our budget appropriation is \$3.3 million, making the restitution appropriation a very manageable number, and in our view a very meaningful use of the Department's revenue.

Proposed Amendments:

Page 1, Line 7 and Lines 21-22

This proposed amendment changes the name of the fund to avoid any potential misinterpretation caused by use of the terminology “vulnerable adult”, which is defined elsewhere in century code.

Page 1, Line 23

This proposed amendment clarifies that it is on a per biennium basis that up to \$1 million will be transferred to the restitution assistance fund.