

**NOTICE OF REQUEST FOR PUBLIC COMMENT ON  
NASAA'S PROPOSED AMENDMENTS TO ITS MODEL RULES ON INVESTMENT  
ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES**

**Request for Public Comment**

NASAA's Investment Adviser Regulatory Policy and Review Project Group ("Project Group") is soliciting comments from the public on a proposed set of investment adviser model rules written to reflect the organization and content of the 2002 Uniform Securities Act ("USA 2002"). The Project Group is also seeking public comment on proposed revisions to the existing investment adviser model rules ("1956 Act Model Rules") with respect to examination qualifications. The proposed rules are in two groups. The first group relates generally to investment advisers ("IA's") and investment adviser representatives ("IAR's"), under the USA 2002. The second group relates specifically to examination requirements for IA's and IAR's, under both the USA 2002 and the Uniform Securities Act of 1956, as amended ("1956 Act").

The comment period begins on Friday, July 18, 2008, and will remain open for 21 days. Accordingly, all comments should be submitted on or before Friday, August 8, 2008. Comments should be directed by email or in writing to:

Kenneth Hojnacki  
Wisconsin Dept. of Financial Institutions  
Division of Securities  
PO Box 1768  
Madison, WI 53701-1768  
[kenneth.hojnacki@dfi.state.wi.us](mailto:kenneth.hojnacki@dfi.state.wi.us),

with a copy to:

Stephen Hall  
Deputy General Counsel  
NASAA  
750 First Street, NE, Suite 1140  
Washington, DC 20002-4251  
[sh@nasaa.org](mailto:sh@nasaa.org)

**Background and Purpose of the Revised Model Rules**

The Project Group has created model IA rules that comport with the USA 2002. This new set of rules ("USA 2002 Model Rules") will serve as a helpful template in those states where the USA 2002 has been, or will be, adopted. At the same time, the existing model rules (the 1956 Act Model Rules), patterned after the 1956 Act, will continue to serve as an important guide in those states where the securities statute is based on the 1956 Act. Having model rules organized around each of the uniform acts will assist the NASAA members in their rulemaking efforts, promote uniformity, and advance the cause of investor protection.

The new USA 2002 Model Rules represent primarily a reorganization of the existing rules. They do contain some substantive changes, however, particularly in the area of qualification

examinations. All of the changes, both organizational and substantive, are highlighted in the summary below.

With respect to examinations, the Project Group is also proposing that identical revisions be made to the 1956 Act Model Rules. Examination requirements have undergone significant change over the years, even in states that have adopted a version of the 1956 Act. Accordingly, to reflect that evolution, the 1956 Act Model Rules are also being updated with respect to examinations. The Project Group anticipates that in the future, other revisions will be made to the 1956 Act Model Rules, so that they reflect all of the substantive changes now being proposed in the USA 2002 Model Rules.

### Summary of Proposed Revisions

1. The existing 1956 Act Model Rules would be reorganized and renumbered as follows:

<u>Current 1956 Act Rule</u>	<u>Proposed USA 2002 Rule</u>
102(a)(4)-1 Unethical Business Practices	502(b)
102(e)(1)-1 Custody	411(f)-1
102(f)-1 Agency Cross Trades	502(b)-(m)
102(f)-2 Principal Transactions	502(b)-(l)
102(f)-3 Performance Compensation Exemptions	502(c)-(b)
102(f)-4 Assignment of Contracts	502(c)-(a)
202(a)-1 IA Registration Requirements	403(a)
202(a)-2 IA Representative Registration Requirements	404(a)
202(a)-A Electronic Filing Requirements	406(e)-1
202(b)-1 Notice Filing Requirements	405(a)
202(d)-1 IA Minimum Financial Requirements	411(a)-1
202(e)-1 IA Bonding Requirements	411(e)-1
203(a)-2 Recordkeeping Requirements	411(c)-1
203(b)-1 Brochure Rule	411(g)
203(c)-1 Financial Reporting Requirements	411(b)-1
203(d)-1 IARD Transition Requirements	406(e)-2
204(3)-1 Withdrawal of IA and IAR Registration	408(a)-1 and 409-1
204(b)(6)-1 Examination Requirements	412(e)-1
401(n)-1 Late Payment Remedy	410
401(g)(2)-1 Investment Adviser Representative Definition	102(16)

2. Investment Adviser Registration Requirements

- A. Proposed Model Rule 403(a)-(b) contains new language that permits the Administrator to accept a PDF version of Part II filed electronically via IARD or to continue to require a paper version.
- B. Proposed Model Rule 405(a)-(b) provides similar treatment for federal covered investment advisers with regard to submitting a PDF version of Part II, while maintaining the 1956 Act provision authorizing the Administrator to waive any filing if the federal covered investment adviser agrees to provide a paper copy upon demand.

### 3. Withdrawal of Investment Adviser and Investment Adviser Representative Registration

- A. Proposed Model Rule 408(a)-1 preserves the existing language of 1956 Act Model Rule 204(e)-1(b), but adds a directive that the withdrawal be filed electronically via IARD and that the filing be made within 30 days of the termination of the investment adviser representative.

### 4. Late Fees

- A. The primary version of USA 2002 sets out the fees for each category of registrant in separate subsections of the Act: investment advisers in subsection 410(c), investment adviser representatives in subsection 410(d), and federal covered investment advisers in subsection 410(e). The alternate version of USA 2002 gives the Administrator authority to set the fees by rule: investment adviser authority in subsection 410(a)(3), investment adviser representative authority in subsection 410(a)(4), and federal covered investment adviser authority in subsection 410(a)5).
- B. To reflect this structure of the USA 2002, Proposed Model Rule 410 addressing late fee payment remedies also includes bracketed language should the state choose to utilize the rulemaking option for setting fees.

### 5. Prohibited Conduct

- A. The word “unethical” is not included in the USA 2002, so the title of the Proposed Model Rule dealing with such behavior uses the term “prohibited conduct” rather than “unethical.”
- B. Two prohibitions that exist in the 1956 Act were not included in the USA 2002. Those prohibitions have been added to the Prohibited Conduct rules.
  - i. Proposed Model Rule 502(b)-(L) addresses principal trading by advisers.
  - ii. Proposed Model Rule 502(b)-(p) addresses misstatements or omissions of material facts in soliciting advisory clients.
- C. The existing Agency Cross Transactions Model Rule 102(f)-1 is incorporated into Proposed Model Rule section 502(b)-(m).

### 6. Investment Adviser Contract Provisions

- A. Proposed Model Rule 502(c) consolidates all rules related to performance compensation and assignment of contracts. It also mirrors new financial thresholds in the federal rule under the Investment Advisers Act of 1940 for performance fees by changing the net worth threshold from \$1 million to \$1.5 million and the assets under management threshold from \$500,000 to \$750,000.

## 7. Investment Adviser and Investment Adviser Representative Examination Requirements

- A. The existing 1956 Act Model Rule on investment adviser qualification examinations was created before the Series 65 examination was formulated. As a result, its provisions are not in synch with the current requirements of the states. Therefore, in addition to proposing a new model rule under the USA 2002, the Project Group is also proposing amendments to the examination requirements under the 1956 Act Model Rules. Proposed USA 2002 Model Rule 412(e)-1, and revised 1956 Act Model Rule 204(b)(6)-1 are identical in substance.
- B. Waivers from examination requirements have also been added to both model rule versions.
- C. An optional waiver has been added subsection (g) of each version, for use where an administrator does not wish to require solicitors to qualify by examination.

## 8. Citation of USA 2002 Model Rules

- A. Because a large number of states will continue to apply rules based on the 1956 Act, the Project Group devised a labeling system that would clearly differentiate the USA 2002 Model Rules from the 1956 Act Model Rules. This is not intended to suggest that any state adopt the USA 2002 or the USA 2002 Model Rules. The rules are intended merely as a template for states to use in adopting their own rules, as they see fit. The citation of the USA 2002 Model Rules should be as follows, for example: Rule USA 2002 411(f)-1.

### Contact Information

#### Project Group Chair

Kenneth Hojnacki  
Wisconsin Dept. of Financial Institutions  
Division of Securities  
PO Box 1768  
Madison, WI 53701-1768  
[kenneth.hojnacki@dfi.state.wi.us](mailto:kenneth.hojnacki@dfi.state.wi.us)

#### Project Group Members

Kelvin Blake  
Maryland Office of the Attorney General  
Division of Securities  
200 St. Paul Place  
Baltimore, MD 21202-2020  
[kblake@oag.state.md.us](mailto:kblake@oag.state.md.us)

David Swafford  
Colorado Division of Securities  
1560 Broadway, Suite 900  
Denver, CO 80202

[david.swafford@dora.state.co.us](mailto:david.swafford@dora.state.co.us)

David Finnigan  
Illinois Office of the Secretary of State  
Securities Department  
Jefferson Terrace, Suite 300A  
300 W. Jefferson Street  
Springfield, IL 62702  
[dfinnigan@ilsos.net](mailto:dfinnigan@ilsos.net)

Hugo Mayer  
Kansas Office of the Securities Commissioner  
230 E. William, Suite 7080  
Wichita, KS 67202  
[hugo.mayer@ksc.ks.gov](mailto:hugo.mayer@ksc.ks.gov)

Lisa Muller  
Vermont Department of Banking, Insurance, Securities & Health Care Administration  
89 Main Street, Drawer 20  
Montpelier, VT 05620-3101  
[lmuller@bishca.state.vt.us](mailto:lmuller@bishca.state.vt.us)

Paul Schwartz  
Pennsylvania Securities Commission  
Eastgate Office Building  
1010 North 7<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17102-1410  
[pschwartz@state.pa.us](mailto:pschwartz@state.pa.us)

David Smith  
Arkansas Securities Department  
Heritage West Building  
201 East Markham, Room 300  
Little Rock AR 72201-1692  
[david.smith@securities.arkansas.gov](mailto:david.smith@securities.arkansas.gov)

Jackie Walter  
Nebraska Department of Banking and Finance  
PO Box 95006  
Lincoln, NE 68509-5006  
[jackie.walter@bkg.ne.gov](mailto:jackie.walter@bkg.ne.gov)

*NASAA Corporate Office Liaison*

Stephen Hall  
Deputy General Counsel  
NASAA  
750 First Street, NE, Suite 1140  
Washington, DC 20002-4251  
[sh@nasaa.org](mailto:sh@nasaa.org)