

VIA ELECTRONIC MAIL

February 15, 2011

Joseph Brady
Deputy General Counsel
North American Securities Administrators Association
750 First Street, NE, Suite 1140
Washington, DC 20002

RE: Proposed NASAA Model Rule on Private Fund Adviser Registration and Exemption

Dear Mr. Brady:

On December 10, 2010, the North American Securities Administrators Association (NASAA) published and requested comment on a Proposed Model Rule on Private Fund Adviser Registration and Exemption (Proposed Model Rule).¹ The Proposed Model Rule seeks to address changes called for in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).² Specifically, the Proposed Model Rule will provide guidance to NASAA's members³ in creating rules governing the registration and reporting requirements for advisers to private funds. The Proposed Model Rule is designed to follow certain provisions in the Dodd-Frank Act as implemented by the Securities and Exchange Commission (SEC), and, therefore, are contingent in many respects on how the SEC moves forward on implementation in this area.

The Financial Services Institute (FSI)⁴ welcomes this opportunity to comment on the Proposed Model Rule. We believe that providing model rules to NASAA members is critically important to ensure uniform application of state securities rules and regulations. However, we have concerns related to the timing of the Proposed Model Rules. Our concerns are addressed in more detail below.

Background on FSI Members

FSI represents independent broker-dealers (IBD) and the independent financial advisors that affiliate with them. The IBD community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and

¹ See Proposed NASAA Model Rule on Private Fund Adviser Registration and Exemption, available at http://www.nasaa.org/content/Files/Exempt_Report_Adviser_Model%20Rule.pdf.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No: 111-20, available at http://docs.house.gov/rules/finserv/111_hr4173_finsrvcr.pdf.

³ As of the writing of this comment letter, NASAA's membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Canada, and Mexico.

⁴ The Financial Services Institute is an advocacy organization for the financial services industry – the only one of its kind – FSI is the voice of independent broker-dealers and independent financial advisors in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for their members through aggressive and effective advocacy, education and public awareness. FSI represents more than 120 independent broker-dealers and more than 15,000 independent financial advisors, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, D.C.

objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 financial advisors – or 64% percent of all practicing registered representatives – operate as self-employed independent contractors, rather than employees, of their affiliated broker-dealer firm.⁵ These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisors affiliated with IBDs is clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁶ Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients’ investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisors. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisors play in helping Americans plan for and achieve their financial goals. FSI’s mission is to ensure our members operate in a regulatory environment that is fair and balanced. FSI’s advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments on the Proposed Rule

As stated above, FSI believes that providing model rules to NASAA members is critically important to ensure uniform application of state securities rules and regulations. We do not offer detailed comments related to the substance of the Proposed Model Rule. However, we do offer comments related to the timing of the Proposed Model Rule.

- **Timing of the Proposed Model Rules** – As mentioned in NASAA’s release of the Proposed Model Rule, the Dodd-Frank Act made changes to the Investment Advisers Act of 1940 (‘40 Act) related to the regulation of investment advisers to hedge funds and other private funds. In response to these changes, the SEC published Release No. IA-3110⁷ and Release No. IA-3111⁸ soliciting comments related to, among other things,

⁵ Cerulli Associates at <http://www.cerulli.com/>.

⁶ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

⁷ See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3110, (Nov. 19, 2010) (to be codified at 17 C.F.R. §§ 275 and 279) (the “Implementing Release”), available at <http://sec.gov/rules/proposed/2010/ia-3110.pdf>.

⁸ See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3111 (Nov. 19, 2010) (to be codified at 17 C.F.R. § 275), available at

amendments to the '40 Act that deal with the registration and exemption of private fund advisers. Comments in response to Release No. IA-3110 and Release No. IA-3111 were due to the SEC on or before January 24, 2011. As of the writing of this comment letter, the SEC has not approved the rules outlined in Release No. IA-3110 or Release No. IA-3111, and has not published another iteration of the Rules contained therein.

While we appreciate and understand the desire of NASAA to be proactive and to create model rules for its members in the event the rules outlined in Release No. IA-3110 and Release No. IA-3111 are adopted and approved by the SEC, we believe that the Proposed Model Rule is premature given the pending nature of the SEC's proposed rules. We urge NASAA's Board of Directors to withhold approval of the Proposed Model Rule until the SEC finalizes their rules related to the registration and exemption of private fund advisers. In the mean time, we urge NASAA to engage the SEC in open dialog about the registration and exemption of private fund advisers in an effort to be prepared for the release of the final version of the rules.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to comment on the Proposed Model Rule.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8493.

Respectfully submitted,



Matthew L. Schwartz, Esq.
Government Affairs Counsel