

December 4, 2023

Submitted electronically to NASAAComments@nasaa.org

Ms. Amy Kopleton
Acting Chief
New Jersey Bureau of Securities
153 Halsey Street, 6th Floor
Newark, NJ 07102

Mr. Stephen Bouchard
Associate Commissioner for Securities
District of Columbia Department of Insurance, Securities and Banking
1050 First Street NE, 801
Washington, DC 20002

Mr. Jim Nix
Administrator
Illinois Securities Department
41 E. Capitol Avenue, 2nd Floor
Springfield, IL 62701

RE: Request for Public Comment on Proposed Revisions to NASAA's Dishonest and Unethical Business Practices of Broker-Dealers and Agents Model Rule

Dear Ms. Kopleton, Mr. Bouchard, and Mr. Nix,

On behalf of LPL Financial LLC ("LPL"), I am writing to express our concerns with the North American Securities Administrators Association (NASAA) proposal to adopt revisions to the Dishonest and Unethical Business Practices of Broker-Dealers and Agents Model Rule (the "Proposal"). As discussed below, we believe that the proposal will create a patchwork of state-by-state regulations that harms investors by reducing access to personalized financial guidance and advice.

We understand that NASAA is seeking to align existing state rules with the Securities and Exchange Commission ("SEC") Regulation Best Interest ("Reg BI") and believes that the proposed amendments mirror Reg BI. However, this is not the case. The Proposal represents a significant departure from existing state and federal securities regulations, without justification, and provides a menu of options that would create operational complexity without providing meaningful investor protections. For these reasons, LPL believes that NASAA should withdraw this proposal.

I. Overview of LPL Financial; Support for Trade Association Comments

LPL is a leading retail investment advisory firm, independent broker-dealer and registered investment adviser ("RIA") custodian operating in all 50 states. We are steadfast in our belief that Americans deserve access to personalized guidance from a financial professional, and we serve as a trusted partner to approximately 22,000 financial professionals across the country, including financial professionals at over 1,100 banks and credit unions and approximately 500 registered investment advisers.

We provide our financial professionals with the technology, research, clearing and compliance services and practice management programs they need to serve their clients and create thriving businesses. Because LPL does not have any proprietary investment products, our financial professionals are able to offer lower-conflict, personalized advice to investors seeking wealth management, retirement planning, financial planning, and asset management solutions.

LPL is a member of the Securities Industry and Financial Markets Association. We support their comments and amendments submitted in response to the Proposal.

II. Recommendation to Adopt Reg BI by Statute

In the years since the SEC adopted Reg BI, several states have adopted Reg BI by statute¹. This enables securities administrators to enforce the best interest standard for retail customers, rather than a suitability standard, and aligns state law with federal law. The NASAA proposal's "Revision #1", which adds a new Part 1d, provides states with the option to amend state rules to include language recognizing Reg BI. LPL supports this provision in the proposal and believes that NASAA should replace the current Proposal with a simplified proposal that only includes Revision #1. Harmony amongst state and federal securities laws is paramount to ensuring that investors can easily understand the protections extended to them under the existing regulatory regime and we believe that this harmony can be achieved when states adopt language offered in "Revision #1".

III. Concerns with the Proposal

While we are supportive of state adoption of Reg BI by statute, LPL is concerned with the Proposal's remaining provisions. These proposed revisions, if adopted by any state, have the potential to reduce access to products and services that enable investors to receive personalized financial guidance and advice by creating a patchwork of rules that would be challenging to comply with. Further, we believe that the Proposal is preempted by federal securities laws as outlined in SIFMA's comment letter² and is inconsistent with Reg BI. The overall effect of state adoption of this proposal is likely to be a depersonalization of advice, with clients being pushed into a one-sized-fits-all approach for investment services and reduced access to much needed financial solutions for all customers except the most sophisticated investors.

The Proposal Undermines Reg BI

The SEC is the financial services industry's prudential regulator, with responsibility for maintaining well-functioning markets and protecting those who invest in the capital markets. Reg BI, which became effective in 2020, is a strong national standard for ensuring that financial professionals are always acting in the best interest of their clients and that clients have insight into the functions of the brokerage and advisory advice models.

LPL believes that the Proposal undermines Reg BI by providing new definitions for a "recommendation," treatment of "cash or non-cash compensation," ignoring the long-standing practice of disclosing conflicts in favor of "neutralizing or eliminating" conflicts. These are three critical areas of Reg BI, where the SEC has the investigative and enforcement resources needed to appropriately ensure that firms are complying with the rule.

The Proposal Will Create Investor Confusion

The financial services industry is highly regulated, both by federal and state securities regulators, to ensure that the markets remain well-functioning and appropriately protect investors. This regulatory structure is sound, allowing financial professionals to understand the obligations and licensing required to operate a financial planning practice while allowing clients to understand the regulatory framework. Uniformity, particularly amongst state securities regulations, is paramount for reducing investor confusion and not creating unnecessary administrative burdens.

The Proposal's misguided approach to offer a "menu" for states to adopt various subparts is likely to lead to states adopting some, but not all, provisions without harmonization. Ultimately, this leads to compliance challenges that

¹ The states of Ohio and Kentucky have adopted language incorporating Reg BI by reference in their securities statutes. Florida has proposed an amendment to securities regulations to adopt a similar reference.

² See comment submitted by Kevin Carroll on behalf of SIFMA.



will cause certain firms to reduce services offered in states that have particularly complex compliance burdens. While we understand that the goal of proposing various options for adoption was to allow flexibility for states to adopt provisions that align with their statutes, we do not believe that it is the right approach. This Proposal has the potential to radically alter the financial services industry. Uniformity is critical to allow firms to operationalize and educate financial professionals and investors on the various requirements that stem from a new standard of conduct.

A Reduction in Products and Services Will Hurt Investors

As noted above, the complexities of compliance with the Proposal will lead broker-dealers to review and update the products and services offered in each state. It is likely that the cost of servicing small brokerage accounts will become hard to absorb, resulting in financial professionals deciding not to offer services to low- and middle-income savers. Additionally, the Proposal will limit compensation for brokerage businesses to level fees, effectively eliminating the various forms of compensation that have been permissible in the brokerage industry for decades. This will have a chilling effect on the availability of brokerage services, with many financial professionals only being able to offer advisory services or deciding to implement account minimums which would make financial advice unattainable to low-and middle-income savers.

Financial professionals frequently build long-term relationships with their clients, growing assets and establishing responsible savings habits to meet short- and long-term savings goals. Often, this means beginning a relationship with a small saver and introducing a variety of products and services as their financial resiliency, goals and income grow over the course of the relationship. This approach builds trust between the financial professional and their client over a long period of time. If access to personalized financial advice is reduced for individuals who are beginning to save, it will be damaging for consumers overall. LPL believes that the Proposal, when adopted by states, will mean that fewer individuals will be able to invest in the markets and receive personalized savings advice.

When drafting Reg BI, the SEC conducted a series of stakeholder meetings to carefully consider the various business models and the implications that a new standard of care would have on the availability of services to investors. The SEC made a conscious decision to protect the broker-dealer business models, by adopting a best interest standard and not a fiduciary standard, to preserve firms' abilities to offer a full suite of products and services available to investors. This was an important decision that requires careful consideration and which should be protected as states contemplate adopting an additional standard of care.

IV. Conclusion

Thank you for your consideration of this letter. LPL appreciates the opportunity to comment on the Proposal, and we look forward to further discussions and revisions that will ensure the continued prosperity and well-being of investors and the financial services industry. Please contact John Cronin, Head of State Government Relations, at John.Cronin@lplfinancial.com with any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Althea Brown".

Althea Brown
Chief Legal Officer
Managing Director, Legal and Government Relations

CC: Joseph Brady, Executive Director, NASAA
Vince Martinez, General Counsel, NASAA