

# Morgan Stanley

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December 1, 2023

North American Securities Administrators Association, Inc. (NASAA)  
Attn: Amy Kopleton, Group Chair, Broker-Dealer Market and Regulatory Policy and Review  
Project, and Stephen Bouchard, Chair, Broker-Dealer Section  
750 First Street, N.E., Suite 990  
Washington, D.C. 20002

**Re: Morgan Stanley Comment on Proposed Revisions to NASAA’s Dishonest  
Or Unethical Business Practices of Broker-Dealers Model Rule**

Dear NASAA, Ms. Kopleton and Mr. Bouchard:

Morgan Stanley appreciates the opportunity to comment on the North American Securities Administrators Association, Inc. (“*NASAA*”) proposed revisions to its “Dishonest or Unethical Business Practices of Broker-Dealers and Agents” (the “*Proposal*”).<sup>1</sup> We support the comments of the Securities Industry and Financial Markets Association (“*SIFMA*”) and respectfully submit the following additional comments and recommendations for your consideration.

Morgan Stanley is a leading full-service global financial services firm.<sup>2</sup> Since our founding in 1935, Morgan Stanley has been a client-focused organization providing a range of financial services and advice to individuals, corporations, and institutions. Our employee code of conduct stresses the primacy of client interests over those of the company or individual employees, and five “Core Values” guide our business approach, two of which are “Do the Right Thing” and “Put Clients First.”<sup>3</sup>

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<sup>1</sup> <https://www.nasaa.org/wp-content/uploads/2023/09/Request-for-Public-Comment-on-BD-Best-Interest-Model-Rule.pdf>.

<sup>2</sup> Morgan Stanley (NYSE: MS) is a global financial services firm that maintains significant market positions in each of its business segments, Institutional Securities, Wealth Management, and Investment Management, and through its subsidiaries and affiliates, provides products and services to a large and diversified group of clients and customers, including corporations, governments, financial institutions, and individuals. Morgan Stanley Smith Barney LLC (doing business as “Morgan Stanley Wealth Management,” which includes the E\*TRADE from Morgan Stanley business) is an SEC-registered broker-dealer and investment adviser, Morgan Stanley Investment Management Inc.’s several wholly-owned subsidiaries are SEC-registered investment advisers and broker-dealers, and Morgan Stanley & Co. LLC is an SEC-registered broker-dealer.

<sup>3</sup> The other Core Values are “Leading with Exceptional Ideas,” “Giving Back,” and “Commit to Diversity and Inclusion.”

In accordance with our Core Values, Morgan Stanley acknowledges and agrees with NASAA's objective of protecting retail investors. However, we respectfully believe the Proposal need not be adopted as is in order to attain that goal. In our view, the Proposal, if adopted without changes, may cause investor confusion, discourage investor education, increase costs and curtail investor choice.

***The Proposal is inconsistent with SEC Regulation Best Interest ("Reg BI") and will result in a patchwork of regulation that will expand over time.***

While intended to create consistency with Reg BI, the Proposal incorporates non-binding SEC staff guidance, interpretations of Reg BI that depart from the rule text and accompanying Adopting Release, differing definitions and subjective standards that are likely to result in varying state interpretations. In addition, because the Proposal is presented as a menu of choices for states to adopt, it is unlikely to result in uniformity even in those states that adopt some form of the final rule. Thus, firms will need to adjust various aspects of their business on a state-by-state basis; from marketing and client communications to product availability, investor education, supervisory controls, record keeping and the necessary information technology systems tracking it all.

It will be difficult not just for the firms tasked with interpreting and implementing the Proposal, but for the registered representatives and the clients they serve. Most registered representatives service clients in many states, which will inevitably add complexity to client conversations as in the course of a day a representative may be required to address a dozen different standards depending on where the client they are speaking to happens to reside. This complexity will be compounded for those clients who inevitably move from state to state. As you can imagine, clients who form close relationships with registered representatives keep those relationships for many years, through retirement and other life events that often accompany one or more moves. The sheer level of confusion and cost arising from efforts to comply with this patchwork should not be underestimated. Avoidance of this level of inconsistency is exactly what the federal securities laws were intended to address.

***The Proposal may discourage firms from providing investor education.***

The Proposal's broad definition of what constitutes a recommendation is a departure from what has historically been viewed by regulators and the industry as a recommendation, what constitutes a recommendation under Reg BI and is arguably a departure from what the average investor would view as a personalized investment recommendation. Mere mention of a product, even where the context makes clear it is not a personalized recommendation or "call to action" could be viewed as such under the Proposal, creating a clear disincentive for firms to provide educational information to investors about products, services or investment topics for fear one or more states may view the communication as a recommendation. Such a re-definition could easily be construed as stifling beneficial education that investors need to make informed decisions. It

could also discourage self-directed brokerage platforms, one of the most cost-effective ways for investors with limited assets to access our capital markets.

***The Proposal may increase cost and limit investor choice.***

The compliance costs for tracking and implementing varying regulatory requirements in potentially dozens of jurisdictions could be substantial. These costs will inevitably be passed along to investors in the form of higher prices for products and services. In addition, the complexity and cost could be so high, firms may be incentivized to exit certain business lines or decline to service certain client segments altogether. Such an outcome would surely not serve investors, particularly those buy and hold investors who benefit from the lower costs associated with receiving periodic brokerage recommendations from their registered representatives that are required to be in their Best Interests under Reg BI. We firmly believe a regulatory approach that encourages a variety of business models in order to maintain client choice is essential in any regulatory action intended to increase investor protection.

***States should adopt Reg BI into their regulatory framework to protect investors.***

We encourage NASAA to create consistency and broad protection for all investors by amending the proposal to incorporate Reg BI's substantial protections, rather than attempting to re-write Reg BI in a way that ultimately could be harmful to investors, increase costs, reduce education and limit choice. Under Reg BI, retail investors are entitled to receive recommendations that are in their Best Interests and do not place the interests of the person making the recommendation or their firm above those of the investor. Surely, uniformly adopting this high standard of care offers investors the protection they deserve while at the same time continuing to allow the broad access to information, products and services that investors need.

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Morgan Stanley looks forward to continuing to engage with NASAA and other stakeholders on this important topic, and we thank you for consideration of our comments.

Sincerely,



Anne Tennant  
General Counsel  
Morgan Stanley Wealth Management