



Securities Arbitration Clinic  
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Via email to [NASAAComments@nassa.org](mailto:NASAAComments@nassa.org)  
North American Securities Administrators Association, Inc.  
750 First Street NE, Suite 990  
Washington, DC 20002

**Re: Proposed Revisions to NASAA's Dishonest or Unethical Business Practices of Broker-Dealers and Agents Model Rule**

To Whom It May Concern:

Thank you for the opportunity to comment on NASAA's proposed revisions to the model rule on *Dishonest or Unethical Business Practices of Broker-Dealers and Agents* (the "Business Practices Rule"). We are writing this comment on behalf of the Securities Arbitration Clinic at St. John's University School of Law (the "Clinic"). The Clinic is part of the St. Vincent de Paul Legal Program, Inc., a not-for-profit legal services organization. The Clinic represents aggrieved investors with small dollar claims and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the Business Practices Rule furthering the protection of investors.

The proposed revisions to the Business Practices Rule seek to account for revisions to the federal conduct standard for broker-dealers and agents arising out of the adoption of Regulation Best Interest ("Reg BI") by the SEC, and to distinguish between the brokerage and advisory models and address the emergence of fintech and other digital investing platforms. NASAA's proposed revisions to the Business Practices Rule seek: (1) to acknowledge and incorporate by reference the SEC's recent federal conduct standard applicable to broker-dealer and agents pursuant to Reg BI; (2) to define and clarify various obligations and components of this new conduct standard for purposes of state interpretation and enforcement; and (3) to prohibit misleading uses of the titles "Advisor" and "Adviser."

### 1. Acknowledgement and Incorporation of Reg BI

The Clinic supports this proposed revision to the Business Practices Rule, which would require that broker-dealers and agents not place their own interests ahead of their customer's interests. It explicitly states that failure to comply with Reg BI would be considered contrary to high standards of commercial honor and just and equitable principles of trade. This will help unify the state and federal standards of conduct.

### 2. Defining, Clarifying, and Emphasizing Components of the Business Practices Rule

The Clinic is especially supportive of the Business Practices Rule's efforts to define, clarify, and emphasize certain obligations for states' interpretations. The proposed revisions accomplish this by elevating and incorporating SEC guidelines for Reg BI, as NASAA expressly states in its Request for Public Comment that "[t]he language set forth in the . . . revisions was written to align with the principles of Reg BI and incorporate SEC's related interpretive guidance." In doing this, NASAA unifies the conduct standard of broker-dealers and their agents. These proposed revisions should be beneficial to broker-dealers and agents by helping to prevent any misunderstanding of their obligations to investors.

For example, the proposed revision to subpart 1d(1), which addresses compliance and disclosures, is explicit in requiring broker-dealers and agents to take an affirmative step beyond simply disclosing Business Practices Rule obligations to investors. Subpart 1d(5) attempts to clarify what qualifies as a "recommendation," by making clear that when a broker-dealer or agent uses any means, method, or mechanism to feature or promote an account type, specific security, or investment strategy, it will be deemed a recommendation. Both of these are captured in the SEC's guidance related to Reg BI, and makes it clear to broker-dealers and their agents that these obligations are incorporated into the rule.

However, the Clinic believes that NASAA can go further. Because one of the goals of the Request for Public Comment is to address the emergence of fintech, the Clinic suggests that NASAA explicitly state that it intends to capture digital engagement practices when referencing "any means, method or mechanism to feature or promote an account type, specific security or investment strategy to a retail customer." This would help firms, agents, and customers understand how fintech is captured by the Business Practices Rule.

### 3. The Use of Adviser and Advisor

While the Clinic is supportive of the revision that attempts to prohibit misleading usage of the terms "advisor" and "adviser," the Clinic recommends that NASAA clarify when a dual registrant may use the title advisor or adviser. Presently, brokers who are dually registered may use either title, even when not acting in the capacity of an adviser. Therefore, brokers could end up misleading customers about the capacity in which they are providing their services. Investors should never have a misunderstanding of the capacity in which a broker is providing their

services. Therefore, the Clinic suggests that NASSAA only permit brokers to use the title advisor or adviser when acting in an advisory capacity with a client.

In conclusion, while the Clinic believes NASAA may go further in its amendments, the Clinic supports the proposed revisions to the Business Practices Rule. The Clinic thanks NASAA for the opportunity to comment on these important revisions.

Respectfully submitted,

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