

December 4, 2023

Amy Kopleton
Broker-Dealer Market and Regulatory Policy and Review Project Group Chair
James Nix, Chair
Broker-Dealer Section

Dear Ms. Kopleton and Mr. Nix,

The undersigned regulators appreciate the opportunity to comment on the Proposed Revisions to NASAA's Dishonest or Unethical Business Practices of Broker-Dealers and Agents Model Rule ("Proposal"). We strongly support Revision 1, paragraph 1(d), and we believe Revision 2 should be shelved indefinitely until we cease seeing progress implementing Regulation Best Interest.

State securities regulators have and will continue to be integral to making Regulation Best Interest ("Reg BI") as effective a regulation as it can be. When the Securities and Exchange Commission ("SEC") was still formulating Reg BI, NASAA's strong advocacy for the inclusion of "cost" helped ensure that the rule "expressly requir[es] that a broker-dealer understand and consider the potential costs associated with its recommendation. . . ." as part of the care obligation.¹ More recently, state securities regulators have highlighted the importance of considering a retail investor's debt as a part of the customer profile information.² The SEC agreed, noting in its Staff Bulletin on the Care Obligation, that firms should seek to obtain information on "assets and debt," among other items, as part of a customer profile.³ This Guidance is significant given that previous NASAA initiatives suggested that fewer than half of the industry was collecting this information.⁴

More recently, NASAA released the results of State securities regulators Coordinated National Regulation Best Interest Examination Initiative. The exam results both demonstrate that Regulation Best Interest has meaningfully improved many firm processes while also highlighting areas where further improvements are needed. For example, the exams found that firms have been updating their investor profile forms and enhancing their policies and procedures to focus more directly on Reg BI obligations. The exams also found that firms recommending costly, complex and risky products are generally imposing product-specific restrictions based on age, net income/worth, and risk profiles and are using exception reports to monitor compliance with those restrictions. On the other hand, the exams found several areas where more work remains to be done. First, the progress noted above is not universal, and there are firms at which examiners did not observe this progress. Second, state securities regulators continue to see issues related to the requirement to consider reasonably available alternatives. Generally, exams did not find policies and procedures that guided registered representatives to consider lower cost products and investment strategies when recommending high-cost products to retail customers and to consider lower-risk products and investment strategies when recommending speculative and high-risk products.

¹ See Regulation Best Interest; The Broker-Dealer Standard of Conduct, SEC Rel. No. 34-86031 (Jun. 5, 2019), available at <https://www.sec.gov/rules/final/2019/34-86031.pdf>, p. 38.

² See, e.g., NASAA Regulation Best Interest Implementation Committee National Examination Initiative Phase One Report, p. 9.

³ Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligation, available at <https://www.sec.gov/tm/standards-conduct-broker-dealers-and-investment-advisers>, Item 5.

⁴ NASAA Regulation Best Interest Implementation Committee National Examination Initiative Phase One Report, p. 9.

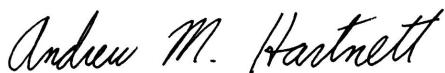
In short, firms have made progress implementing Reg BI, but there is more work to be done. To our knowledge, only one state has implemented a rule akin to Revision 1, paragraph 1(d). States should move to adopt Revision 1, paragraph 1(d) en masse immediately as a show of force that states will continue to aggressively enforce Reg BI and ensure that it lives up to the lofty rhetoric that accompanied its adoption.

Given this view, the undersigned regulators opposes Revision 2. Through advocacy and examinations, states have meaningfully improved Reg BI itself and its implementation, and, as a result, the investing lives of retail investors across the country. If the progress being made through examinations, advocacy, and FINRA and SEC enforcement stalls out, states can revisit the ideas in Revision 2. While that progress continues, however, the better, lower cost approach is for states to implement Reg BI to make it as simple as possible for states to commence enforcement actions where firms and agents fall short of the standard of care and to avoid the distraction of Revision 2.

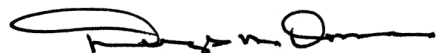
Finally, the undersigned regulators have fewer concerns about Revision 3. This prohibition appeared in the Regulation Best Interest Adopting Release as a presumption and embodies the common sense idea that you cannot call yourself an “advisor” if you are not one. To align with the Adopting Release, the model language appropriately allows a broker-dealer agent who is also a municipal adviser to continue to use the term.

Again, we appreciate the opportunity to comment on the proposed Model Rule and urges the Project Group and Section to immediately recommend Revision 1 to the Board for a membership vote while reviewing comments on Revision 3 and tabling Revision 2 unless and until progress on implementing Reg BI ceases.

Very truly yours,



Andrew Hartnett
Deputy Commissioner for Securities
Iowa Insurance Division
Department of Insurance and Financial Services
1963 Bell Avenue, Suite 100
Des Moines, IA 50315
515-654-6600
andrew.hartnett@iid.iowa.gov



Doug Ommen
Commissioner
Department of Insurance and Financial Services
1963 Bell Avenue, Suite 100
Des Moines, IA 50315
515-654-6600
doug.ommen@iid.iowa.gov

A handwritten signature in blue ink that reads "Vicki Schmidt". The signature is written in a cursive style and is positioned above a horizontal line.

Vicki Schmidt

Commissioner

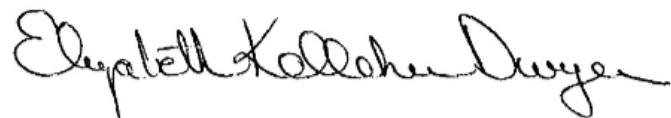
Kansas Insurance Department

1300 SW Arrowhead Road


Topeka, KS 66604

785-296-3071

Vicki.Schmidt@ks.gov

A handwritten signature in black ink that reads "Elizabeth Kelleher Dwyer". The signature is written in a cursive style with a large initial 'E' and a long, sweeping tail on the 'y'.

Elizabeth Kelleher Dwyer
Director
Department of Business Regulation
1511 Pontiac Avenue, Building 69-2
Cranston, RI 02920
401-462-9520
elizabeth.dwyer@dbr.ri.gov



Travis Jordan
Assistant Director, Securities Regulation
Division of Insurance
124 S. Euclid Avenue, 2nd Floor
Pierre, SD 57501
605-773-3563
travis.jordan@state.sd.us



Larry Deiter
Director
Division of Insurance
124 S. Euclid Avenue, 2nd Floor
Pierre, SD 57501
605-773-3563
larry.deiter@state.sd.us