



***Via Electronic Submission***

December 19, 2024

Amy Kopleton

Deputy Chief, New Jersey Bureau of Securities, Division of Consumer Affairs  
Chair, Broker-Dealer Market / Regulatory Policy and Review Project Group  
North American Securities Administrators Association

Jim Nix

Administrator, Illinois Securities Department  
Chair, Broker-Dealer Section  
North American Securities Administrators Association

***Re: Proposed Amendments to the NASAA model rule on Dishonest or Unethical Business Practices Of Broker-Dealers And Agents***

Dear Ms. Kopleton and Mr. Nix,

The American Securities Association<sup>1</sup> (“ASA”) is submitting comments in response to the North American Securities Administrators Association’s (NASAA) revised proposal for amendments to the Dishonest or Unethical Business Practices of Broker-Dealers and Agents Model Rule. We recognize that NASAA has attempted to address some of the concerns raised by industry stakeholders, including those outlined in the American Securities Association's (ASA) letter dated December 4, 2023.

Some of the changes reflected in the revised proposal include:

1. The explicit statement that the amendments are not intended to create a fiduciary duty or alter Regulation Best Interest (Reg BI).
2. The emphasis on working within the existing regulatory framework rather than replacing or rewriting it.
3. NASAA's request for public comment on the potential economic impact of the proposed changes.

While these changes are steps in the right direction, we believe there are still areas where the proposal can be further refined to reflect the NASAA’s stated desire for uniformity with federal securities laws. These include:

<sup>1</sup> ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





1. **Regulatory Authority:** Although the revised proposal seeks to align more closely with Reg BI, state regulators cannot on their own modify or re-interpret federal regulations. The National Securities Markets Improvement Act of 1996 (NSMIA) explicitly preempts state regulators from adopting mandates that go beyond federal law and regulation, particularly in areas of recordkeeping. We therefore ask NASAA to provide a detailed legal analysis demonstrating how these amendments comply with NSMIA and do not infringe upon federal regulatory authority.
2. **Harmonization Across States:** NASAA's approach to adopt the language in Reg BI, rather than cite to the statute itself, creates the uncertainty that states will adopt the language without uniformity. It is common for states to adapt language in order to align with specific securities regulations, and the lengthy language in Part 1.d. raises concerns that states might adopt only portions of the language leading to a patchwork of varying state regulations. This could result in financial professionals, who are often licensed in multiple states, having to navigate up to 20 different standards of conduct. For this reason, we ask NASAA to adopt Reg BI strictly by reference to statute in the same manner that Washington State adopted the standard.
3. **Economic Analysis:** The lack of a formal cost-benefit analysis from NASAA raises concerns about potential unintended consequences, particularly for low- and middle-income investors who may lose access to financial advice. We therefore request that NASAA to conduct a thorough economic impact study before proceeding with the amendments.
4. **Titling Provision Alignment:** The current proposal's titling provision should be more closely aligned with Reg BI. Specifically, Reg BI includes the titling provision within its disclosure obligation, which is triggered at the time of making a recommendation to a retail customer. The current NASAA proposal appears to apply the titling and designation restrictions more broadly, potentially affecting broker-dealer representatives and associated persons at all times rather than specifically in the context of making recommendations. We recommend clarifying language to ensure that the titling provision is applied consistently with Reg BI's approach, focusing on the use of titles when making recommendations to retail customers. This alignment would provide consistency between state and federal regulations, reducing confusion for both financial professionals and investors. It is likely that the provision will create additional recordkeeping requirements, especially because associated persons would be required to document different titles based on the individual they are interacting with, something that is prohibited by NSMIA. This approach would help prevent regulatory fragmentation and ensure that investors receive clear, consistent information about the capacity in which they are receiving services.

We would also like to emphasize the importance of adhering to the National Securities Markets Improvement Act of 1996 (NSMIA) when considering these changes. NSMIA was enacted to





create a more efficient regulatory system for the securities industry by establishing a clear division of responsibilities between federal and state regulators. Specifically, NSMIA preempts state securities laws in certain areas, including standards of conduct for broker-dealers that exceed those set by federal law. This preemption is designed to prevent a patchwork of inconsistent state regulations that could hinder the efficient operation of national securities markets. We strongly urge NASAA and state regulators to carefully consider the limitations imposed by NSMIA when drafting and implementing any new rules or amendments. Any attempt to adopt a fiduciary standard or other regulations that go beyond the scope of Regulation Best Interest (Reg BI) could potentially violate NSMIA and be subject to legal challenge. It is crucial that state regulators work within the framework established by federal law to ensure regulatory consistency and avoid creating undue burdens on financial professionals and firms operating across multiple jurisdictions.

Further refinement of NASAA's proposal is necessary to ensure these amendments complement rather than complicate the existing regulatory landscape. We look forward to continued dialogue on these important issues and stand ready to provide additional input as needed.

Sincerely,

*Jessica Giroux*

Jessica R. Giroux  
General Counsel  
American Securities Association

