



*Electronically Submitted to [NASAAComments@nasaa.org](mailto:NASAAComments@nasaa.org)*

December 19, 2024

North American Securities Administrators Association, Inc. (NASAA)

Attn: Amy Kopleton, Project Group Chair, Broker-Dealer Market and Regulatory Policy and Review Project Group, and James Nix, Chair, Broker-Dealer Section  
750 First Street, N.E., Suite 990  
Washington, D.C. 20002

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

On behalf of our members, the Insured Retirement Institute (IRI)<sup>1</sup> writes to provide comments on the updated proposed amendments to NASAA’s Dishonest or Unethical Business Practices of Broker-Dealers and Agents Model Rule (the “2024 Proposal”). We appreciate NASAA’s review over the last year of all the public comments received on the proposal released in 2023, and we would like to express our general support for the approach taken in the 2024 Proposal, which is more aligned with an incorporation of the principles in the U.S. Securities and Exchange Commission’s Regulation Best Interest (“Reg BI”). In the spirit of alignment with Reg BI and to avoid any ambiguity, however, we offer some recommended edits for consideration that will better reflect NASAA’s stated intention to adopt Reg BI by reference, which are outlined below:

**1) Proposed Revision A. New Section 1.6.: Best Interest Standard:**

As indicated above, we support the efforts made to incorporate the principles of Reg BI and NASAA’s ongoing dialogue with members of the securities industry to refine the proposal. In the last year, additional states have moved forward with either adopting or proposing language incorporating Reg BI in a way that avoids ambiguity, and we’d recommend that this new section align with those states.

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<sup>1</sup> The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

For example, Washington adopted language in October 2024, that would make it a dishonest or unethical practice for a broker-dealer or agent to make a recommendation of any security transaction or investment strategy involving securities to a retail customer “if the recommendation does not comply with the obligations set forth in Regulation Best Interest (17 C.F.R. 240.121-1 as amended effective September 10, 2019).”<sup>2</sup> Texas also recently released a proposed rule to incorporate Reg BI, the language of which makes clear that the best interest obligation shall be satisfied if the broker-dealer or agent complies with the obligations set forth in Reg BI.<sup>3</sup>

In order to avoid ambiguity about how states could interpret the language, we ask that NASAA finalize language similar to either Washington’s current statute or Texas’s proposed language, which would eliminate the ambiguity and provide a simple blueprint for individual state adoption.

## **2) Proposed New Section 1.e.: Use of the Term “Adviser” or Advisor” Without Licensure:**

Our members have concerns that the proposed language does not fully align with Reg BI, since Reg BI also permits individuals who are registered as, or supervised persons of an investment advisor to use the title “advisor” or “adviser.” We believe that a provision that incorporates Reg BI, as discussed above, would be sufficient to address any retail customer confusion due to use of these titles, since any improper use of “Adviser” or “Advisor” would be a violation of the capacity disclosure requirement under the Disclosure Obligation in Reg BI. We request that NASAA consider this alternative approach instead.

## **3) Inclusion of a Savings Clause to Address ERISA**

Finally, our members request reinstatement of a savings clause that would address ERISA fiduciaries. Such language was in NASAA’s proposal released last year and was helpful for our members in clarifying that any principles incorporated in the Business Practices Rule do not apply to or supplant the fiduciary duties that apply to recommendations of ERISA plan fiduciaries.

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<sup>2</sup> WAC 460-20C-210 and WAC 460-20C-220

<sup>3</sup> Proposed New Rule: 7 TAC §115.24(a) (“Each dealer or agent, as defined by §4001.052 or §4001.056 of the Securities Act, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interests of the dealer or agent making the recommendation ahead of the interest(s) of the retail customer. The best interest obligation shall be satisfied if the dealer or agent complies with the obligations set forth in SEC Regulation Best Interest (17 CFR §240.15I-1, as amended”) (<https://ssb.texas.gov/texas-securities-act-and-board-rules/board-rules/recent-changes-board-rules/november-8-2024>)

We appreciate your consideration of these recommended changes, and we want to acknowledge the updated approach NASAA is taking with these updated amendments. As you may recall, in our December 3, 2023, comment letter, we encouraged NASAA to consider the fact that 40 states (and of December 19, 2024, now 48 states) had adopted enhancements to the National Association of Insurance Commissioner's Suitability in Annuity Transactions Model Regulation ("NAIC Model") updates that aligned the model with Reg BI. We continue to encourage NASAA to remain aligned with Reg BI and the NAIC Model. Having aligned standards across regulatory agencies, both at the federal and state level, minimizes investor confusion and ensures consistent protection.

Thank you for your consideration of these comments, and please do not hesitate to reach out with questions or if additional information is needed.

Sincerely,

*Sarah E. Wood*

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