



December 19, 2024

Submitted electronically via email to NASAAComments@nasa.org

North American Securities Administrators Association
750 First Street NE
Suite 990
Washington, DC 20002

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

To Whom It May Concern:

CFP Board, the Financial Planning Association (“FPA”), and the National Association of Personal Financial Advisors (“NAPFA”) together respectfully submit these comments on the North American Securities Administrators Association, Inc.’s (“NASAA”) proposed revisions to the model rule on “Dishonest or Unethical Business Practices of Broker-Dealers and Agents” (the “Business Practices Rule”).¹ We applaud NASAA for proposing to acknowledge and incorporate Regulation Best Interest (“Reg BI”) principles into the Business Practices Rule. We also support the proposed prohibition of the titles “advisor” and “adviser” without appropriate licensure. However, NASAA should go further to eliminate investor confusion and prohibit a dually registered financial professional from using these titles (and similar terms) when providing only brokerage services.

I. Who We Are

A. *CFP Board*

CFP Board consists of two affiliated non-profit organizations, the Certified Financial Planner Board of Standards, Inc. and the Certified Financial Planner Board of Standards Center for Financial Planning, Inc. (collectively, “CFP Board”). CFP Board operates the CFP® certification program, which sets high standards of competency and ethics for financial planning in the United States. Today, more than 102,000 CFP® professionals (approximately one-third of retail financial professionals) voluntarily commit as a part of their certification to act as a fiduciary, and therefore, *to act in the best interests of the client at all times when providing financial advice.*² The CFP® professionals who make this commitment to CFP Board operate under various

¹ https://www.nasaa.org/wp-content/uploads/2024/11/FINAL_Request-for-Public-Comment_Amendments-to-DU-Nov.-2024.pdf

² The *Code of Ethics and Standards of Conduct* defines Financial Advice broadly. See <https://www.cfp.net/ethics/code-of-ethics-and-standards-of-conduct>.

business and compensation models (including commission-based compensation and fee compensation) and provide professional services on behalf of investment advisers, broker-dealers, and insurance companies, among other business types.

B. The Financial Planning Association

FPA is the nation's leading membership organization for CFP® professionals and those engaged in the financial planning process. FPA supports nearly 17,000 members and 79 chapters and state councils. FPA encourages high standards of professional competence, ethical conduct, and clear, complete disclosure when serving clients. FPA's members work with clients on topics ranging from budgeting, debt management, student loans, credit card debt, insurance, taxes, retirement, investments, and estate planning.

FPA's core members are CFP® professionals. The majority of FPA's members, by virtue of holding the CFP® professional designation, voluntarily commit to act in the best interests of their clients under CFP Board's fiduciary standard.

C. The National Association of Personal Financial Advisors

NAPFA was founded in 1983 and is the nation's leading organization of fee-only, comprehensive financial planning professionals. There are more than 4,600 NAPFA members across the country serving clients from all backgrounds. NAPFA members adhere to standards of professional conduct that are widely recognized as among the highest in the financial planning profession. A "NAPFA-Registered Financial Advisor" must be registered with the Securities and Exchange Commission ("SEC"), or with a state securities regulator, as a "registered investment adviser" or "RIA." A "NAPFA-Registered Financial Advisor" also must hold the CERTIFIED FINANCIAL PLANNER® designation from CFP Board, and therefore, must commit to high standards of competency and ethics.

II. NASAA's Proposed Revisions to the Business Practices Rule

A. The proposed revisions acknowledging and incorporating the principles of Reg BI properly provide state regulators with important enforcement tools

The undersigned organizations support the proposed revisions to the Business Practices Rule that acknowledge and incorporate the duties of loyalty and care found in Reg BI. We further support the explicit statement that a broker-dealer or agent's failure to comply with Reg BI's obligations is considered contrary to the high standards of commercial honor and just and equitable principles of trade and may constitute grounds for denial, suspension or revocation of registration or such other action authorized by statute.

The proposed revisions will enable state regulators to enforce these important principles for the protection of investors. Indeed, state regulators are often in a better position than either the SEC or the Financial Industry Regulatory Authority ("FINRA") to deter, detect, and prosecute unethical conduct and fraud affecting their citizens. The revised provisions will add a substantial "tool" to a state's proverbial "enforcement toolbox" to accomplish these goals. Moreover, given

that these proposed revisions will apply to broker-dealers and agents who already are responsible for complying with Reg BI, the proposed revisions should not increase their regulatory compliance burdens.³

B. We support the restrictions on the use of the titles “advisor” and “adviser” but NASAA should do more to address investor confusion

The other proposed revision is to prohibit use of the professional titles “advisor” or “adviser” without licensure as either an investment adviser or an investment adviser representative, unless otherwise permitted by law. The proposing release states that the revision will help “ameliorate investor confusion stemming from the blurring of brokerage and advisory services” and that “it is a deceptive and unethical practice for broker-dealers to mislead investors into believing the broker-dealers are acting in a fiduciary capacity with an ongoing duty of loyalty through misuse of the ‘advisor’ and ‘adviser’ title.”

Our organizations agree with the reasons for the proposal. There is considerable investor confusion in the marketplace regarding the disparate standards of conduct that apply to investment advisers and broker-dealers and their agents or representatives. To allow financial professionals to market themselves in a manner that suggests a relationship of trust and confidence while avoiding fiduciary responsibility results in investor confusion and contributes to investor harm. Therefore, restricting the use of the titles “adviser” or “advisor” to investment advisers or investment adviser representatives is an important and welcome step in the right direction.

However, NASAA should go further.

First, the NASAA proposal also should prohibit use of these titles when a dually registered person is acting in their capacity as an agent of a broker-dealer. The restrictions in the current proposal apply only to brokers and agents who are not dually registered. Dual registrants would continue to be able to refer to themselves as “advisors” or “advisers” even when they are acting only in a broker-dealer capacity. That presents a challenge for investors who may not know when a person is *acting* in their capacity as a broker-dealer and when a person is *acting* in their capacity as an investment adviser. Therefore, the NASAA proposal should permit use of the titles “adviser” or “advisor” only when a dually registered person is acting in their capacity as a registered investment adviser or investment adviser representative. Accordingly, the NASAA proposal should also require that a dually registered person, when acting as an agent of a

³ In response to the prior proposed revisions to the Business Practices Rule, several commentators noted that NASAA should ensure that model rules are aligned with federal regulators, citing several then-proposed rules by the SEC and the U.S. Department of Labor and stating, for example, that NASAA should allow these “major developments to play out to conclusion prior to drafting new rules that may ultimately prove to be misaligned and/or inconsistent with those efforts.” Letter from K. Carroll, Deputy General Counsel, SIFMA, to NASAA at (December 1, 2023). Because these rulemakings are either subject to litigation or have not been repropoed after initial comment periods, this is the appropriate moment for NASAA to adopt the proposed revisions.

broker-dealer, affirmatively disclose to the client that the dually registered person is not acting as an investment adviser or investment adviser representative in that circumstance.

Second, the proposal should impose a similar restriction on use of terms that incorporate the words “advisor” or “adviser.” If NASAA does not do so, then those subject to the Business Practices Rule may use clever drafting to circumvent it. For example, it would be counterintuitive to permit a person who is not dually registered to use the term “advisory services” or other similar derivatives of the titles “advisor” or “adviser.” And yet, that is precisely what the proposal would allow.

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We appreciate the opportunity to comment on the proposed revisions to the Business Practices Rule. If you have any questions regarding this comment letter, please contact the undersigned individuals.

Sincerely,



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