

Submitted electronically

December 19, 2024

North American Securities Administrators Association, Inc.
Attn: Amy Kopleton, Chair, Project Group and James Nix, Chair, Broker-Dealer Section
750 First Street N.E., Suite 990
Washington, D.C. 20002

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

Dear Ms. Kopleton and Mr. Nix,

LPL Financial (“LPL”) appreciates the opportunity to provide comments on the North American Securities Administrators Association (“NASAA”) proposed amendments to the NASAA Model Rule, *Dishonest or Unethical Business Practices of Broker-Dealers and Agents* (the “Proposal”). We have also appreciated the ongoing dialogue over the past year as NASAA has carefully reviewed the comments received in response to the previous proposed amendments to the same model rule. This dialogue has resulted in a new proposal that is better aligned with the U.S. Securities and Exchange Commission’s (“SEC”) Regulation Best Interest (“Reg BI”) to provide a uniform best interest standard for retail investors and financial professionals across the country.

While this Proposal is closer to Reg BI, there are several areas discussed below that should be further refined to achieve NASAA’s stated intent of full alignment with Reg BI.

I. Overview of LPL Financial; support for trade association comments

LPL is a retail investment advisory firm, independent broker-dealer and registered investment adviser (“RIA”) custodian operating in all 50 states. We are steadfast in our belief that Americans deserve access to personalized guidance from a financial professional. LPL serves as a trusted partner to more than 28,000 financial professionals and the wealth management practices at approximately 1,200 financial institutions, servicing and custodialing approximately \$1.7 trillion in brokerage and advisory assets on behalf of approximately 8 million Americans.

We provide our financial professionals with the technology, research, clearing and compliance services and practice management programs they need to serve their clients and create thriving businesses. Our financial professionals offer investment and financial education, financial planning, access to investment products and brokerage services, and personalized investment advice to investors seeking wealth management, retirement planning, financial planning and asset management solutions. The majority of our affiliated financial professionals are located in rural and suburban areas, and as such are viewed as local providers of independent financial advice.

LPL is a member of the Securities Industry and Financial Markets Association (“SIFMA”), the Insured Retirement Institute (“IRI”) and the American Securities Association (“ASA”). We incorporate their comments along with the comments submitted by Kent Mason, Partner at Davis & Harman into this letter.

II. Comments on the Proposal

The SEC’s Reg BI, which became effective in 2020, has meaningfully changed the way that financial professionals and retail investors interact by ensuring that financial professionals are always acting in the best interest of their clients. Shortly after its enactment, the National Association of Insurance Commissioners (“NAIC”) adopted changes to Model #275, “Suitability in Annuity Transactions Model Regulation” to align the existing model with Reg BI. This has now been adopted by 48 states¹ with uniformity, solidifying Reg BI as the consistent standard of conduct across the country.

We recognize that NASAA intends to align the *Dishonest or Unethical Business Practices of Broker-Dealers and Agents Rule* (the “Business Practices rule”) with Reg BI, with the goal of preserving uniformity. This single standard provides predictability and consistency, so that retail investors can clearly understand the ways in which they interact with a financial professional regardless of their geographic location. In that spirit, there are several instances where the Proposal’s language should be updated to achieve better alignment with Reg BI.

Simplify the proposed New Section 1.d.: Best Interest Standard

NASAA’s revised Proposal seeks to incorporate a best interest standard reflecting Reg BI, using language previously adopted by Ohio in 2021. Since then, several other states have updated their statutes to incorporate Reg BI by reference using more straightforward language. In particular, Washington adopted Reg BI under its Business Practices Rule in October 2024 using a simple reference to Reg BI:

Making a recommendation of any security transaction or investment strategy involving securities (including account recommendations) to a retail customer if the recommendation does not comply with the obligations set forth in Regulation Best Interest...²

Washington’s incorporation of Reg BI is clear, concise and free of any ambiguity surrounding the obligations of Reg BI. Importantly, it also incorporates the adopting release that accompanied Reg BI and provides guidance on the nuances of the rule. This approach has also been used by Florida and Texas to update existing statutes in light of Reg BI.³

We recognize that each state has a unique process to adopt model rules and that certain amendments must be made to align the model rule language to existing statute, which also varies state-by-state. The proposal’s superfluous language creates the risk that the model rule language could be misinterpreted or altered during the adoption process, thereby disrupting national uniformity. For this reason, LPL asks that NASAA use Washington’s language instead of the current language in the final amendments to the Business Practices Rule.

The new titling provision should be better aligned with Reg BI and existing state practices

In addition to proposing to add Section 1.d., the Proposal adds Section 1.e., to address the use of titles by financial professional. Although this provision is unnecessary given the titling provision included in Reg BI, as

¹ See “State Adoption Map – Model 275” available at <https://content.naic.org/sites/default/files/cmte-a-annuity-suitability-wg-state-adoption-map-model%20275.pdf>

² WAC 460-20C-210(4) and WAC 460-20C-220(9)

³ Florida adopted Reg BI by reference into Rule 69W-200.002(30), effective October 1, 2024, and Texas proposed to adopt Reg BI by reference on November 8, 2024 in 49 TexReg 8797, 8821-8822

well as the guidance issued by the SEC regarding titling, and therefore incorporated in Section 1.d., we understand that NASAA is hoping to address investor confusion around the use of titles.

A new, state-specific standard could inadvertently create additional confusion regarding the use of titles, credentials and designations because the proposed language conflicts with Reg BI and longstanding state practices of credentials and designations issued by the appropriate licensing body. We recommend that NASAA amend this provision to clarify that it does not apply to associated persons of a broker-dealer who are supervised persons.

The Proposal should include an ERISA exemption

Last year's Proposal contained language providing an Employee Retirement Income Security Act (ERISA) exemption. We believe that this is important to clearly delineate the differences between the regulatory construct of ERISA and interactions with retail investors. For additional information on the nuances of the ERISA exemption, we refer to the letter submitted by Davis & Harman, which addresses both the need for an ERISA exemption and additional detail on why the previous ERISA savings clause did not fully address the need.⁴

III. Conclusion

LPL values the commitment of NASAA to continue to work on a model rule that strengthens investor protection, harmonizes state and federal securities laws, and modernizes the existing suitability standards to reflect Reg BI. We look forward to continuing our efforts as NASAA considers stakeholder comments on this Proposal. Please contact John Cronin at John.Cronin@lplfinancial.com with any questions.

Kind regards,



Althea Brown
Chief Legal Officer

⁴ See letter to NASAA from Kent Mason, Davis & Harman dated December 19, 2024