



August 28, 2025

NASAA Regulatory Policy & Review Project Group
North American Securities Administrators Association, Inc.
750 First Street, N.E., Suite 990
Washington, D.C. 20002

Submitted electronically to nasaacomment@nasaa.org

Re: Proposed amendments to NASAA Model Rules *Unethical Business Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers Model Rule 102(a)(4)-1; Prohibited Conduct of Investment Advisers, Investment Adviser Representatives and Federal Covered Investment Advisers Model Rule 2002 502(b); and Recordkeeping Requirements for Investment Advisers Model Rule 203(a)-2 and USA 2002 411(c)-1.*

Dear Mr. Bashi and Mr. Brey,

I am writing on behalf of XY Planning Network¹ ("YYPN") to comment on the North American Securities Administrators Association, Inc. ("NASAA") proposed amendments to the model rules related to investment adviser advertising. We appreciate the work NASAA and the Regulatory Policy & Review Project Group ("Project Group") have done preparing these proposed amendments and we value the opportunity to share our comments in response to a few of the questions presented in the proposal.

YYPN supports NASAA's proposed model rule amendments and believes that aligning state regulation with the SEC's Rule 206(4)-1 ("SEC Marketing Rule") is crucial in order to create stronger regulatory harmony not only between state and federal regulation but also between the states themselves. The SEC Marketing Rule was last overhauled in December 2020 to modernize the rules governing investment adviser marketing communication and it created a robust framework, supplemented by additional SEC guidance and FAQs, to facilitate compliance as well as effective examination and enforcement of the requirements under the rule now and into the future.

Many jurisdictions are, understandably, awaiting NASAA's model rule amendments before considering updates to their advertising regulations. In the meantime, state-registered investment advisers (IAs) in 20+ states remain prohibited from using the same modern marketing practices that are permitted for SEC-registered firms complying with the SEC Marketing Rule. As a result, an SEC-registered firm may lawfully promote testimonials, endorsements, and third-party reviews in a state that has not yet updated

¹XY Planning Network is a national advisor support network providing education, practice management, technology, and compliance support to over 2,100 individual members representing nearly 2,000 registered investment advisers (RIAs) across all 50 states and comprised primarily of Generation X and Generation Y financial planners. Approximately 98 percent of YYPN members are affiliated with state-registered investment advisers ("state RIAs").

its rules, while a state-registered firm across the street cannot. This places state-registered advisers at a distinct and unwarranted disadvantage, undermines the small local firms that serve their communities, increases the difficulty for new IAs to build a sustainable client base, and effectively channels new-business opportunities to larger SEC-registered firms that can market across multiple states or nationwide with little or no local presence.

This regulatory disparity presents additional consequences for state-registered firms that seek to operate across multiple jurisdictions when one or more of the additional states has substantively different or more restrictive marketing rules than the firm's home state². In states with regulation already incorporating or consistent with the amended Rule 206(4)-1, state-registered IAs have invested time and financial resources to integrate the use of testimonials, endorsements, and third-party ratings or reviews on their websites and other marketing material while ensuring compliance with their home state's regulation. Despite compliance with the rules of their primary jurisdiction, these IAs continue to face issues when registering with other states that still prohibit those marketing practices and often require the IA to update their websites and/or social media pages to remove all forms of advertising that remain prohibited by the additional state, forcing them to either revert back to more restrictive advertising practices or drop clients in that additional state to avoid being subject to registration in that jurisdiction. This negatively impacts not only those IAs but the individual investors seeking their advisory services.

Providing the model rule framework for states to bring these amendments to state-registered IAs, particularly with respect to the use of testimonials, endorsements, and third-party ratings is an important step toward promoting much-needed uniformity across jurisdictions. Stronger alignment between state and SEC regulation not only provides state-registered IAs with increased clarity and reduced compliance burdens but will also help level the playing field for state-registered IAs as they promote their business not just in their home state but in other jurisdictions, they wish to operate in.

Incorporating The SEC Marketing Rule As A Long-Form Model Rule & The Option to Incorporate by Reference.

While we support NASAA's long-form incorporation of the SEC Marketing Rule as proposed we also believe that incorporating the SEC Marketing Rule by reference in a manner that allows for continued compliance with future amendments to the referenced rule, would simplify future rulemaking across states while preserving necessary investor protections and would minimize unnecessary burden and lack of regulatory clarity for many IAs, especially those operating in multiple states. Therefore, we encourage NASAA to retain the incorporation-by-reference option with one critical adjustment: please include

²An example of the cross-state issue would include Missouri based firms, especially those in areas like Kansas City or St Louis (large cities near the state's border), seeking to serve clients in neighboring states, Kansas and Illinois, which do not permit the use of testimonials and endorsements despite firms following the home state's applicable rules. Missouri state regulation requires compliance with Rule 206(4)-1 as amended but Kansas requires compliance with the SEC Rule as it was in 2015 when their applicable rule was last published. Illinois rule language still follows the old model rule and expressly prohibits the use of testimonials of any kind.

model language for states to consider that would enable reliance on future iterations of Rule 206(4)-1 by default should it change.

The manner in which some states currently incorporate certain SEC rules by reference has led to confusion and unnecessary costs for IAs resulting from the lack of clarity in the limitations for relying on Rule 206(4)-1 within some states' existing regulation. For example, Kansas securities regulation incorporates Rule 206(4)-1 by reference but only as it existed on May 12, 2015 (when Kansas last amended their applicable regulation)³. The lack of consistency in how references to this rule are currently being incorporated make it unnecessarily difficult for state-registered IAs to ensure compliance with the rules of multiple jurisdictions.

We would like NASAA to consider including the following language in the Model Marketing Rule that is consistent with how the NASAA Recordkeeping Requirements For Investment Advisers Model Rule addresses compliance with specific SEC Rules referenced within that model rule:

To the extent that the U.S. Securities and Exchange Commission promulgates changes to Rule 206(4)-1 under the Investment Advisers Act of 1940, an investment adviser in compliance with such rule, as amended, shall not be subject to enforcement action by the [Administrator] for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended federal rule.

Remove existing prohibitions on various advertising practices such that the only available NASAA model rules are consistent with the SEC Marketing Rule

We support amending the model rule to remove the current prohibitions on testimonials, endorsements, third-party ratings, and various forms of performance advertising such that the only available NASAA model rules are consistent with the SEC Marketing Rule. While we recognize the risks associated with various advertising practices, most notably with respect to performance claims and the potential for misleading information or disclaimers, aligning NASAA's model with the SEC Marketing Rule provides a robust, principles-based framework as well as guardrails that mitigate these risks and enable effective enforcement against non-compliant practices. Moreover, the practical use of testimonials, endorsements, and third-party ratings by most state-registered IAs does not present the same level of risk as performance advertising especially given that the internet has made such reviews common across most service-based business and industries and as noted in the SEC's adopting release of the Marketing Rule may provide valuable and relevant information for investors as they evaluate their options and who to work with.

³(c) SEC rules and regulations. The following rules and regulations of the securities and exchange commission, as in effect on May 12, 2015, except as otherwise specified, are hereby adopted by reference: ... (20) rule 206(4)-1, 17 C.F.R. 275.206(4)-1." https://sos.ks.gov/publications/pubs_kar_Regs.aspx?KAR=81-2-1

Additionally, there are an increasing number of online platforms, used for promoting testimonials and endorsements or gathering this information from individuals, that have either been built around compliance with the SEC Marketing Rule, or at minimum, have existing features in place that reasonably protect against the misuse of each of those practices and/or make it easier to comply with applicable rules and regulations.

Established business review platforms such as those found on Yelp and Google allow individuals to review and rate the businesses they engage with and do not allow businesses to influence the order or presentation of those reviews. Industry-specific financial professional directories and online review platforms, such as Wealthtender, have enabled investors to search for an advisor based on their needs and provide a framework for advisors to collect and promote client reviews in a manner built around compliance the SEC Marketing Rule.

Additional suggestions: Encourage states to also permit reliance on SEC Guidance

Following the SEC's December 22, 2020 adoption of amendments to Rule 206(4)-1, the SEC has published and periodically updates its Marketing Rule FAQs⁴. The SEC has also published a Small Entity Compliance Guide⁵ that explains key requirements of the Marketing Rule. These resources are instrumental in easing compliance burdens as advisers adapt to evolving requirements.

We recommend that NASAA encourage states to reference the available SEC guidance in order to promote consistency in interpretation and supervision. It is important that states allow IAs to rely on guidance issued by the SEC on these referenced rules to ensure uniform interpretations and effective compliance.

Sincerely,



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CC: Jonathan Bashi (Jonathan.Bashi@ag.ny.gov) and Stephen Brey (breys@michigan.gov), Co-Chairs of the Regulatory Policy & Review Project Group.

⁴ <https://www.sec.gov/rules-regulations/staff-guidance/division-investment-management-frequently-asked-questions/marketing-compliance-frequently-asked-questions>

⁵ <https://www.sec.gov/resources-small-businesses/small-business-compliance-guides/investment-adviser-marketing>