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December 5, 2024

Via Email  
NASAAComments@nasaa.org

**Ms. Amy Kopleton**

KopletonA@dca.njoag.gov  
*Chair of the Market and Regulatory Policy and Review Project Group*

**Mr. Jim Nix**

jnix@ilsos.gov  
*Chair of the Broker-Dealer Section*

North American Securities Administrators Association, Inc. (“NASAA”)  
750 First Street NE, Suite 900  
Washington, DC 20002

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

Dear Ms. Kopleton and Mr. Nix:

The Alternative and Direct Investment Securities Association<sup>1</sup> (“ADISA”) is writing to respond to the North American Securities Administrators Association, Inc. (“NASAA”) request for comment on the Proposed Amendments to the NASAA Model Rule, Dishonest or Unethical Business Practices of Broker-Dealers and Agents (the “Proposal”).

ADISA’s membership includes retail broker-dealers as well as managing broker-dealers involved in the marketing of alternative investments, including non-listed REITs, BDCs, interval funds, closed end funds, and private placements, among others. As such, this ADISA membership constituency is particularly impacted by the Proposal.

***The Proposal Improperly Conflates Form CRS with Reg BI Violations.***

The Proposal states that the amendments “are intended to update the model rule in light of the U.S. Securities and Exchange Commission’s (“SEC”) 2019 adoption of Regulation Best Interest, 17

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<sup>1</sup> ADISA is the nation’s largest trade association for the non-traded alternative investment space (i.e., retail vs. institutional). Through its 5,000 financial industry members (over 1,000 firms), ADISA reaches over 220,000 finance professionals, with sponsor members raising in excess of \$200 billion annually, serving more than 1 million investors. ADISA is a non-profit organization (501c6), registered to lobby, and also has a related 501c3 charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

C.F.R. 240.151-1 ('Reg BI'), and other developments in the securities industry” by adding a new Part 1.d to NASAA’s Dishonest or Unethical Business Practices of Broker-Dealers and Agents Model Rule (the “Model Rule”) applicable to broker-dealers. Specifically, the Proposal, if adopted, would prohibit “failing to comply with the obligations set forth in Regulation Best Interest, as set forth in rule 17 C.F.R. 240.151-1, ***including, but not limited to 17 C.F.R. 240.17a-14***” (emphasis added). In doing so, the Proposal elevates a violation of 17.C.F.R 240.17a-14 (“Form CRS”) to a violation of Reg BI. But equating these obligations—which impose distinct requirements on broker-dealers—would cause confusion and, more importantly, would prove inconsistent with SEC guidance. We believe that the Model Rule should take a slightly different approach and avoid any such potential confusion.

Reg BI went into effect on June 30, 2020 after a significant proposal, comment, and adoption process. The Reg BI final rule release provides further guidance from the SEC, as it responds to various comments and concepts regarding Reg BI, including harmonization with Form CRS requirements.<sup>2</sup> Notably, the SEC did not discuss or otherwise indicate that a violation of Form CRS requirements was in itself tantamount to a Reg BI violation. To the contrary, the SEC expressly distinguished Form CRS and Reg BI based on when the respective obligations attach to a broker-dealer:

While the definitions have generally been harmonized across the package of rulemakings, ***they differ to reflect differences between the Relationship Summary delivery requirement and the obligations of broker-dealers under Regulation Best Interest, including that the Relationship Summary is required whether or not there is a recommendation and covers any prospective and existing clients and customers*** (i.e., a person who ‘seeks to receive or receives services’) of investment advisors as well as broker-dealers. For the reasons discussed in the Proposing Release and in response to commenters who requested clarification on whether Regulation Best Interest applies to prospective customers, we would like to clarify that the definition of ‘retail customer’ does not apply to prospective customers who do not receive and use recommendations from a broker-dealer, as discussed above. ***This distinction reflects differences between the point in time the Relationship Summary is delivered to an investor and when the obligations of broker-dealers pursuant to Regulation Best Interest attach.***

Final Rule at 124 (emphasis added).

Because the stated reason for the Proposal is to “update the model rule in light of the U.S. Securities and Exchange Commission’s (‘SEC’) 2019 adoption of Regulation Best Interest,” we recommend removing the words “including, but not limited to 17 C.F.R. 240.17a-14” from Part 1.d of the Proposal. Doing so would, in our view, help ensure that the distinction between Reg BI and Form CRS is maintained in the resultant Model Rule.

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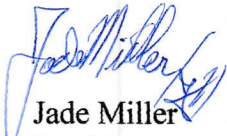
<sup>2</sup> Final Rule, Regulation Best Interest: The Broker-Dealer Standard of Conduct, Rel. No. 34-86031 (June 5, 2019), available at <https://www.sec.gov/files/rules/final/2019/34-86031.pdf> (“Final Rule”).

**NASAA Should Move Form CRS Violations to an Independent Section.**

In the event NASAA believes it necessary to expressly incorporate a violation of Form CRS into the Model Rule, we recommend creating a new sub-part (Part 1.e or even Part 1.z) to separately include violations of 17 C.F.R. 240.17a-14. This approach would avoid potential confusion for acts or omissions that are not violations of both Form CRS and Reg BI and minimize the chance for differing interpretations or enforcement outcomes that we believe could come about with the approach set out in the Proposal.

As always, ADISA stands ready to assist further as needed. We appreciate the work NASAA and others do on behalf of the securities administrators, and we appreciate the opportunity to contribute in any way you deem appropriate.

Sincerely,

  
Jade Miller  
President

cc: ADISA Legislative & Regulatory Committee (C.Bowman and J.Grady, co-chairs; K.Bendix, Drafting)