

December 19, 2024

Via Email Only @ nasaacomment@nasaa.org; KopletonA@dca.njoag.gov; and jnix@ilsos.gov.

North American Securities Administrators Association, Inc.
Amy Kopleton, Market & Regulatory Policy and Review Project Group Chair
Jim Nix, Broker-Dealer Section Chair
750 First Street NE, Suite 990
Washington, DC 20002

Re: Proposed Revisions to NASAA’s Broker-Dealer Conduct Model Rule

Dear Ms. Kopleton and Mr. Nix:

I write on behalf of the Public Investors Advocate Bar Association (“PIABA”), an international bar association comprised of attorneys who represent investors in disputes with the securities industry. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority (“FINRA”) to govern the conduct of securities firms and their representatives. Our members and their clients have a strong interest in FINRA rules relating to FINRA’s Code of Arbitration Procedure.

Background

In response to the Securities and Exchange Commission’s Regulation Best Interest (“Reg BI”) and other developments in the securities industry, NASAA is proposing an update to the model rule entitled “Dishonest or Unethical Business Practices of Broker-Dealers and Agents” (“Business Practices Rule”). Specifically, we understand that the Market & Regulatory Policy and Review Project Group of NASAA’s Broker-Dealer Section proposes amending the rule to (1) add a best interest conduct standard applicable to broker-dealer and agents; and (2) prohibit the misleading uses of the title “advisor” or “adviser.” PIABA supports both proposals.

Discussion/Position

In keeping with the association's overriding goal of investor protection, PIABA views any proposed rule amendment in terms of how it will promote that mission. PIABA believes these proposals are in keeping with that goal and is in favor of the proposed amendments.

First, PIABA supports the proposed language detailing the protections of Regulation Best Interest in the Business Practices Rule. Specifically, we agree that retaining the existing suitability provision in Part 1.c is useful to detail how the suitability rule extends further in various respects than Reg BI (*e.g.*, the suitability rule applies to all broker-dealer and agent recommendations whereas Reg BI applies only to recommendations made to retail customers).

Second, PIABA supports the proposed language for new Section 1.e regarding the use of the term “adviser” or “advisor” without licensure. PIABA has long believed it is a dishonest and unethical business practice for financial professionals to use a purported credential or professional designation that misleadingly indicates or implies that such a person has a special expertise, certification, or training.¹ The overwhelming majority of main street investors generally do not understand the different standards of advice from someone who owes them a fiduciary duty versus someone who only owes them the lesser suitability standard. This “blurring” as described in NASAA Request for Public Comment Letter – specifically, the usage of the term “adviser” or “advisor” without proper licensure - is no different than other iterations of similar, deceptive designations (*e.g.* “wealth management specialist, vice-president of investments, *etc.*).² NASAA's addition to the Business Practices Rule for this language enhances investor protection and we therefore strongly support the proposal.

In sum, PIABA supports amending the two proposals to the Business Practices Rule. I want to thank you for the opportunity to comment on this important issue.

Sincerely,



Adam Gana, President
Public Investors Advocate Bar Association

¹ See, e.g. PIABA Comment Letter to Massachusetts Securities Division Re: Amendment to Regulation 950 CMR 12.200 (April 23, 2007), at https://www.sec.state.ma.us/divisions/securities/download/piaba_comment.pdf.

² See, e.g. PIABA Comment Letter to Employee Benefits Security Administration, DOL, Definition of the Term “Fiduciary”; Conflict of Interest Rule — Retirement Investment Advice (July 21, 2015), at <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/03038.pdf>.