

SUMMARY & COMPARISON CHART: NASAA PROPOSED BROKER-DEALER MODEL RULE AND SEC REGULATION BEST INTEREST

Appendix to Comment Letter by the Securities Industry and Financial Markets Association (SIFMA)

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Background: The following chart analyzes and compares Regulation Best Interest (“Reg BI”) and the Proposed Revisions to NASAA’s Dishonest or Unethical Business Practices of Broker-Dealers and Agents Model Rule, published September 5, 2023 (“Proposal” including the proposed rule text, referred to as “Proposed Rule”). The analysis also includes references to several types of Reg BI guidance, including Commission guidance and staff bulletins.^[ii] This chart was included as Appendix 2 of SIFMA’s comment letter in response to the Proposal, beginning on page 21 of the letter. For consistency, the footnotes in the attachment refer to the same footnote numbers included in the letter.

Methodology: The analysis reflected in the chart takes into account accepted differences in state versus federal securities laws (e.g., the use of the word agent instead of associated person) and focuses on the interconnection of a federal rule – Reg BI – and a potential NASAA model rule.

Summary: Reg BI consists of *four obligations*: Disclosure, Care, Conflict of Interest and Compliance. In contrast, the Proposed Rule creates a new business practice standard that consists of *three main components*:

1. The Proposed Rule’s Conflicts Obligation;
2. The Proposed Rule’s Care Obligation; and

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3. Incorporation of the lack of compliance with SEC Reg BI.

Revision Set #2 of the Proposal further modifies and expands on the above three components, resulting in a Proposed Rule that materially differs from Reg BI. Lack of alignment is further described in SIFMA's letter and the enclosed. Material differences between the Proposal and Reg BI include, but are not limited to:

- The Proposal's Care and Conflicts obligations draw their labels from Reg BI, but are comprised of different requirements from the corresponding components;
- Definitional disagreements for key concepts such as "recommendation" and "retail investor;"
- Misaligned approaches to "reasonably available alternatives" and "costs;" and
- Variations in information to be collected as part of customer profiles.

[i] Valerie was a member of NASAA's legal department from 2012 to 2019, serving as General Counsel from 2015 to 2019. She gratefully acknowledges the contributions of Margaret Mudd, Partner, and Noelle Mack, Associate, at the firm.

[ii] Staff bulletins represent the views of the staff of the Securities and Exchange Commission ("Commission") and are not a rule, regulation, or statement of the Commission. The Commission neither approves nor disapproves the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.