



VIA ELECTRONIC MAIL TO NASAACOMMENTS@NASAA.ORG

November 26, 2018

Andrea Seidt, Investment Adviser Section Chair
Elizabeth Smith, Investment Adviser Regulatory Policy and Review Project Group Chair
NASAA Legal Department
750 First Street, NE, Suite 1140
Washington, DC 20002

Re: Comments Regarding NASAA's Proposed Investment Adviser Model Rule for Information Security and Privacy Under the Uniform Securities Acts of 1956 and 2002

Dear Ms. Seidt and Ms. Smith,

On September 23, 2018, the North American Securities Administrators Association, Inc. ("NASAA") published its request for public comment on its proposed investment adviser model rule to address information security and privacy. The proposal includes a proposed amendment to the investment adviser NASAA model Recordkeeping Requirements rule, and a proposed amendment to the NASAA model Unethical Business Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Advisers rule.¹

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives.³ These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their

¹ Notice of rule proposal, available at, <http://www.nasaa.org/wp-content/uploads/2018/09/NASAA-Request-for-Public-Comment-on-Information-Security-and-Privacy.pdf>

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

³ The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term "investment adviser" or "advisor" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

FSI appreciates the opportunity to comment on NASAA's proposed Investment Adviser Model Rule for Information Security and Privacy Under the Uniform Securities Acts of 1956 and 2002 ("the Model Rule"). We join our member firms in appreciation of the important work state securities regulators have done to raise cybersecurity awareness among financial firms and to ensure that even the smallest firms understand their cyber risk. FSI has enjoyed collaborating with NASAA on cybersecurity issues stretching back to the Investment Adviser Section Pilot Survey in 2014. We look forward to continuing these collaborations. Our thoughts are discussed in greater detail below.

I. FSI Believes the Model Rule Strikes the Right Balance

A. Introduction

Registered firms and advisers, such as FSI's members, as well as investors and regulators all share an interest in avoiding cyber incidents. Given the potential reputational harm to a firm that is unable to protect its client's personal information, there is a business imperative to have in place strong cybersecurity policies. To that end, we appreciate that NASAA's Model Rule strikes an appropriate balance between not trying to burden those firms that already are focused on their cyber risk but nudges and compels any that seek to avoid the responsibility.

B. The Model Rule Achieves Balance in Three Key Areas

In terms of striking this appropriate balance, FSI would highlight three things. First, several state security regulators have already passed cybersecurity rules, and we appreciate NASAA's efforts to construct a model to ensure that future rulemaking is uniform. Second, we appreciate NASAA's use of existing cybersecurity frameworks – specifically, Regulation S-P and the NIST Framework – to construct a standard that requires firms manage their cybersecurity risk without reinventing the wheel. Third, we appreciate that the rule is principles-based and not overly prescriptive. Given that, as noted above, the vast majority of financial firms are already focused on mitigating their cybersecurity risk because they understand the business risk it poses, this principles-based approach is key.

C. The Balanced Enforcement Approach is Best

Finally, FSI appreciates the light touch taken in the Model Rule related to enforcement (i.e. grounding enforcement authority under the unethical business practices rule rather than as an anti-fraud provision). NASAA has consistently struck the correct balance of helping firms to try to understand and address their cyber preparedness rather than using cyber imperfections as an enforcement cudgel. We note in this regard the pilot survey of cybersecurity practices taken back

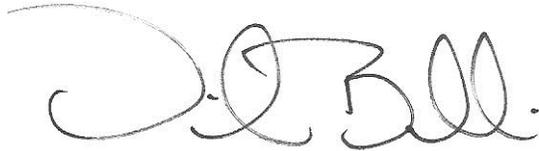
in 2014 to raise awareness of cyber risks, the exam findings report in 2017, and particularly the Cybersecurity Checklist released in 2017. We are confident, therefore, that NASAA intends to reserve the unethical business practice rule for the rare instances in which a firm has made literally no effort to address its cybersecurity risk or where a firm has consistently failed to remediate basic cybersecurity issues brought to its attention – not to use it to punish every cyber imperfection.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with NASAA on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact my colleague, Michelle Carroll Foster, Vice President of State Affairs, at (202) 517-6464.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel