



April 28, 2020

Ms. Tracy Swalwell
Iowa Insurance Division
Two Ruan Center
601 Locust Street, Fourth Floor
Des Moines, Iowa 50309

Re: Proposed rule making related to best interest standard for insurance securities and professionals and providing an opportunity for public comment

Dear Ms. Swalwell:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("Chamber") along with the Iowa Association of Business and Industry welcome the opportunity to comment on the proposal issued February 27, 2020 by the Iowa Insurance Division ("Division") regarding a best interest standard for insurance securities and professionals ("Proposal").¹

The Chamber strongly supports investors having access to quality, affordable investment advice and believes that investment professionals should be held to appropriate standards when advising retail customers. Last year, the Securities and Exchange Commission ("SEC" or "Commission") adopted Regulation Best Interest ("Reg BI") which set a strong, national standard that prohibits broker-dealers from placing their own interests ahead of their clients when providing advice and making investment recommendations.² Accordingly, the Chamber appreciates efforts by the Division to align standards of conduct for annuity agents in Iowa with the recently adopted Annuity Transactions Model Regulation, issued by the National Association of Insurance Commissioners in February 2020.³

Harmonization between SEC and state rules avoids a scenario where multiple states adopt differing standards, creating a patchwork of conflicting state and federal rules that would increase costs and reduce access to recommendations and products for investors.⁴ The Chamber has opposed such efforts by states because they undermine critical investor protections and make it

¹ <https://www.legis.iowa.gov/docs/aco/arc/4998C.pdf>

² Regulation Best Interest: The Broker-Dealer Standard of Conduct. 84 FR 33669 (June 5th, 2019). ("Reg BI Adopting Release")

³ https://content.naic.org/article/news_release_naic_takes_action_protect_annuity_consumers.htm

⁴ See e.g. Massachusetts (Final fiduciary standard of conduct rule adopted February 21, 2020); Nevada (Draft regulations to implement SB 383 issued on January 21st, 2020); New Jersey (NJ Division of Consumer Affairs proposal regarding fiduciary standard for broker-dealers and investment advisers, April 15th, 2019); Iowa (Iowa Insurance Division Best Interest Regulation, February 27th, 2020).

difficult for providers to serve their clients across state lines. Our overall concern is that the definition of “best interest” will become subjective—depending on the state a provider or investor resides. This has a negative impact on retail investors who deserve to benefit from strong and consistent protections, regardless of where they reside.

While the Chamber is supportive of many facets of the Proposal, we believe that certain changes are necessary in order to fully align the regulations with Reg BI. Moreover, we believe the Division should not move forward at this time with a final rulemaking to give firms time to bring themselves fully in compliance with Reg BI. The SEC recently reaffirmed that Reg BI will go into effect on June 30, 2020.⁵ The economic shutdown and work-from-home orders have imposed an additional layer of complexity upon broker-dealers that are working to come into compliance by that date. While we fully expect the broker-dealer community to meet this deadline, we believe that any additional rulemakings implemented by states in the interim could potentially lead to further costs and delays. We respectfully urge the Division to delay any final rulemaking until Reg BI has gone into effect and affected firms are back to normal operations.

In terms of the substance of the Proposal, our general recommendations are as follows.

- **The Chamber generally supports Rule 191-15.72(507B) that would align the best interest standard for insurance producers with Reg BI and the NAIC Model when making annuity recommendations.**
- **The proposed changes related to managing broker-dealer conflicts of interest under section 191-50.104 would create inconsistencies with Reg BI.** Specifically, the Proposal would require broker-dealers to have policies and procedures reasonably designed to identify, mitigate, eliminate, or at a minimum disclose *all* conflicts of interest associated with a recommendation. This language differs from Reg BI which requires disclosure of the “material facts about conflicts of interest.” Additionally, the Proposal does not provide clear guidance as to what constitutes “reasonably designed” policies and procedures regarding conflicts of interest. We respectfully urge the Division to incorporate by reference or align language regarding conflicts of interest in the Proposal with Reg BI in order to avoid unnecessary confusion.
- **The provisions under section 191-50.104(3)a(5) related to requirements prior to a recommendation should be removed to avoid any conflict with Reg BI.** This provision could be read as a requirement that brokers provide – *on a trade-by-trade basis* – disclosures affirming that they “reasonably informed” investors about the basis for recommendations. Such a mandate would be highly costly and counterproductive and would conflict with the care obligation in Reg BI that mandates financial professionals take into consideration risks, rewards, and costs, when making a recommendation.
- **We recommend that the Division add language under section 191-50.104 – similar to language included in proposed section 15.75(5) – that would allow a broker-dealer that is fully compliant with Reg BI to be deemed compliant with the best interest**

⁵ <https://www.sec.gov/news/public-statement/statement-clayton-investors-rbi-form-crs>

standard under section 191-50.104. This would be consistent with language included for insurance producers and encourage overall consistency with Reg BI.

- **The Division should make clear that the proposed language related to compensation for sales contests and quotes does not apply to certain activities such as asset gathering.** Asset gathering – the practice of bringing in new client assets or additional assets from existing clients – is not correlated to the sale of any specific investment product and therefore does not meet the type of incentive that the SEC and other regulators have sought to eliminate. We recommend that in adopting any final rule, the Division make clear – as the SEC did in the text of Reg BI – that activities such as asset gathering do not fall under this prohibition.
- **The Division should make clear under section 191-50.104 that none of the provisions under these rules create a private right of action.** The SEC recognized the need for an explicit statement that Reg BI did not create a private right of action and included such a statement in the final text of Reg BI.⁶ We believe the Proposal would benefit by adding language affirming that these rules are not intended to create any private right of action.

The proposed changes related to managing broker-dealer conflicts of interest under section 191-50.104 would create some inconsistencies with Reg BI

The Proposal requires broker-dealers to “establish, maintain, or enforce policies and procedures reasonably designed” to 1) identify all conflicts of interest associated with recommendations; 2) eliminate or, at a minimum, disclose all conflicts of interest; and 3) mitigate any conflicts of interest associated with recommendations that create an incentive for a broker to place their interest ahead of a customer. While the Chamber agrees that robust regulation and disclosure regarding conflicts of interest is an important component of investor protection, it is not entirely clear how the Division intends to apply this standard in practice. We encourage the Division either to incorporate by reference to Reg BI what constitutes “reasonably designed” policies and procedures or to align language in the proposal with Reg BI to provide certainty for broker-dealers and their customers.

Additionally, the requirement to identify and disclose “all” conflicts of interest potentially differs in scope from Reg BI, which requires that material facts related to conflicts be disclosed. The “all” standard is ambiguous and may lead to the disclosure of immaterial information that is not useful and could overload investors. We strongly recommend that the Division fully align the conflict of interest disclosure requirements under the Proposal with Reg BI.

The provisions under section 191-50.104(3)a(5) related to requirements prior to a recommendation should be removed to avoid any conflict with Reg BI

The care obligation under the Proposal generally aligns with the care obligation under Reg BI, for example by requiring that brokers know and understand a client’s investment profile, as well as the risks, rewards, and costs associated with a recommendation prior to making it. However,

⁶ Reg BI at 43

proposed section 191-50.104(3)a(5) could be read as a requirement that in addition to what is obligated under Reg BI, a broker would also have to demonstrate and disclose that they have “reasonably informed” an investor about the basis for a recommendation. This requirement would appear to apply on a *trade-by-trade* basis, and there is no context as to what constitutes an investor being “reasonably informed.” We believe that the other aspects of the Proposal’s care obligation are sufficient to ensure that brokers consider a number of factors and act in the best interest of investors prior to making a recommendation.

We recommend that the Division add language under section 191-50.104 – similar to language included in proposed section 15.75(5) – that would allow a broker-dealer that is fully compliant with Reg BI to be deemed compliant with the best interest standard under section 191-50.104

We appreciate the statements from the Division accompanying the Proposal that made clear the Division’s intent to align standards for brokers and insurance producers in Iowa with those of Reg BI. To facilitate full harmonization between state and federal rules, we believe the Division should add language under section 191-50.104 that deems a broker to be in compliance with the best interest standard in Iowa if they can demonstrate they are already in full compliance with Reg BI. Such an addition would not compromise any investor protections; rather it would both ensure consistency with the Division’s initiative and Reg BI and reduce unnecessary compliance costs, particularly for smaller broker-dealers. We suggest that language already included under section 15.75(5) for insurance producers be adopted under section 191-50.104.

The Division should make clear that the proposed language related to compensation for sales contests and quotes does not apply to certain activities such as asset gathering

Both the Proposal and Reg BI deem it a violation of the best interest standard to engage in any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sale of specific securities or the sale of specific types of securities within a limited period of time. As the SEC stated in the Reg BI adopting release, such practices “create high pressure situations for associated persons to engage in sales conduct contrary to the best interest of retail customers.”⁷

However, Reg BI also noted that certain practices, such as asset growth or accumulation, do not fall under this prohibition.⁸ Broker incentives related to the gathering of assets from new or existing clients do not raise the same types of concerns as those related to high-pressure sales contests related to specific products. We believe that the Division should make clear that incentives related to asset gathering would not be prohibited.

The Division should make clear under section 191-50.104 that none of the provisions under these rules create a private right of action

In its final Reg BI rulemaking, the SEC acknowledged the utility of explicitly stating their belief that no provisions under Reg BI create any new private right of action.⁹ Any ambiguity on this

⁷ Reg BI at 352

⁸ Reg BI at 354

⁹ <https://www.sec.gov/rules/final/2019/34-86031.pdf>

point could create harmful and unnecessary uncertainty for broker-dealers and other financial services providers. We believe the Division should include language in a final rulemaking that makes it abundantly clear these rules are not intended to create any new private right of action.

Conclusion

The Chamber and our members share the Division's goal of aligning the best interest standard in Iowa with federal standards under Reg BI. We believe that by incorporating the recommendations above into the Proposal, the Division will be able to harmonize its standards with that of the SEC. We are happy to discuss these comments further with you and the Division, and we are pleased to answer any questions.

Sincerely,



Tom Quaadman
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Center for Capital Markets Competitiveness
U.S. Chamber of Commerce



JD Davis
Vice President, Public Policy
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