



VIA ELECTRONIC MAIL

August 10, 2016

Director Mark Quandahl
Nebraska Department of Banking and Finance
1526 K Street
Suite 300
Lincoln, NE 68508

Re: Notice of Request for Comments Regarding Proposed Changes to Title 48 of the Nebraska Administrative Code

Dear Director Quandahl:

On June 29, 2016, the Nebraska Department of Banking and Finance (Department) issued a notice hearing of rulemaking regarding proposed changes to Title 48 of the Nebraska Administrative Code for public comment (Proposal). The Proposal amends and updates Nebraska's current set of regulations which govern the sale of securities in the state. The Financial Services Institute (FSI) appreciates the opportunity to comment on this important Proposal.¹

FSI's members are strongly committed to working with all stakeholders to help ensure clarity for financial advisors and broker-dealers when complying with state and federal securities laws and regulations. FSI commends the Department's determination to amend its current policies to address changes in federal law and promote increased uniformity in regulations amongst the fifty states.

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% producing registered representatives. 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.

¹ 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.

Independent financial advisors are small-business owners who typically have strong ties to their 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 the Proposal. The Proposal updates Nebraska's securities regulations ensuring that all references to federal laws and regulations are accurate. The Proposal specifically updates all references from the outdated National Association of Securities Dealers (NASD) to its successor organization the Financial Industry Regulatory Authority (FINRA). The Proposal makes significant effort to harmonize Nebraska regulations with the North American Securities Administration Association, Inc. (NASAA) model rules through the adoption of the following NASAA Statements of Policies:

- Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Securities Holders;
- Promotional Shares;
- Loans and Other Material Transactions;
- Impoundment of Proceeds;
- Specificity in the Use of Proceeds;
- Preferred Stock;
- Real Estate Investment Trusts;
- Real Estate Programs;
- Registration of Oil and Gas Programs;
- Registration of Publicly Offered Cattle Feeding Programs;
- Registration of Commodity Pool Programs;
- Omnibus Guidelines; Asset Backed Securities; and
- Church Extension Fund Securities.

We support the Proposal and provide specific supportive comments below.

I. Succession Plans for Investment Advisers

The Proposal requires state registered investment advisers to have a succession plan. "The plan shall be based upon the facts and circumstances of the investment adviser's business model including the size of the firm, type(s) of services provided, and number of locations of the investment adviser."² Since many FSI members already have internal procedures to ensure a clear plan is in place and our members' firms vary greatly in size and services provided, we appreciate that the succession planning requirement provides flexibility through a principles based approach. This approach provides the necessary flexibility to ensure that all investment advisers, irrespective

² Chapter 7 §13 Business Continuity and Succession Planning, available at <http://www.ndbf.ne.gov/legal/NACprop/48-07.pdf>.

of business model, services, or size, will be able to create and adopt an effective succession plan which will ensure their clients see little to no disruption of service.

II. Business Continuity Plan for Investment Advisers

The Proposal also requires state registered investment advisers to have a business continuity plan that addresses five considerations. Those considerations are:

- protection and back up of books and records,
- alternate means of communication,
- office relocation,
- assignment of duties, and
- other ways to minimize service disruptions for the client.

Again, FSI commends the Department for providing considerable flexibility for investment advisers to adopt a business continuity plan that would both be in compliance with the Proposal and well-suited to the individualized needs of their businesses. FSI's members are small business owners, oftentimes located in the same communities where they reside. Providing flexibility to advisers enables them to develop a plan that is best suited to their business model, location, and clients.

FSI commends the Department for this undertaking and believes the Proposal will increase uniformity in regulations governing financial advisors and financial services firms among the states. FSI encourages and supports the development of uniform regulatory requirements between the states, NASAA, FINRA, and the SEC in order to promote more effective compliance by regulated entities, including FSI members.

Conclusion

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

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

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" and a distinct "Bellaire" ending.

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