

MEMO# 31579

January 25, 2019

Nevada Proposes Fiduciary Duty Regulations Applicable to Broker-Dealers and Investment Advisers; Comments Requested by Feb. 15

[31579]

January 25, 2019 TO: ICI Members
Investment Company Directors
Bank, Trust and Retirement Advisory Committee
Broker/Dealer Advisory Committee
Investment Advisers Committee
Operations Committee
Pension Committee
Pension Operations Advisory Committee
SEC Rules Committee
Transfer Agent Advisory Committee SUBJECTS: Investment Advisers
Operations
Pension RE: Nevada Proposes Fiduciary Duty Regulations Applicable to Broker-Dealers and Investment Advisers; Comments Requested by Feb. 15

Earlier this month, Nevada's Securities Division released proposed regulations to implement revisions made in 2017 to the State's Financial Planners Act (the "Act"). These revisions resulted in the Act imposing a fiduciary duty on broker-dealers, state licensed investment advisers, and their representatives.[\[1\]](#) Comments on the proposed regulations are due by March 1, 2019.

Background

Nevada has long had an Act that imposed a fiduciary duty on financial planners.[\[2\]](#) While the Act previously excluded broker-dealers and investment advisers from its scope, in 2017 it was revised to eliminate these exclusions. As a result, effective July 1, 2017, the Act imposes a fiduciary duty on such persons. The 2017 amendments that eliminated these exclusions also authorized Nevada's Securities Division (the "Division") to adopt rules under the state's securities act to implement this new fiduciary duty applicable to broker-dealers and investment advisers.

Prior to issuing proposed rules for comment, the Division sought input from interested

persons regarding what rules were necessary to implement the changes to the Act. In October 2017, ICI, along with the Investment Adviser Association, filed a comment letter, reminding the Division that the National Securities Markets Improvement Act of 1996 (NSMIA) limited the Division's authority over broker-dealers and investment advisers, including Federally-registered investment advisers.^[3] Our letter requested that the Division be cognizant of NSMIA's preemption when it proposed rules to implement the Act to ensure that such rules did not run afoul of the State's authority under NSMIA.

Proposed Regulations

As noted above, earlier this month the Division released the long-awaited proposed regulations. Significantly, Section 10 of them expressly addresses NSMIA's preemption by stating that the regulations "shall be interpreted and applied in harmony with the Securities Exchange Act of 1934, as amended by [NSMIA] relating to state regulation of broker-dealer's books and records." While we are pleased to see this provision, it fails to (1) address NSMIA's preemption relating to out-of-state advisers and (2) expressly clarify that, because the Act only applies to state-registered advisers, Federally-registered advisers are outside of its scope and the scope of the proposed regulations.

The Institute plans to file a comment letter on the Division's proposed regulations. We expect our letter to recommend that the Division address our two concerns with Section 10. We also plan to recommend that the Division clarify how it intends for Section 10 to apply to various discrete provisions in the regulations that, to comply with, would require a broker-dealer or out-of-state investment adviser to maintain records that the Division cannot require them to maintain under NSMIA's preemptive provisions.

If any members have additional issues they want us to consider including in our letter, please provide the issue and your proposed recommendation to address it to Tami Salmon of the Institute (tamara@ici.org) **no later than Friday, February 15th**.

Tamara K. Salmon
Associate General Counsel

endnotes

[1] The proposed regulations are available at <https://www.nvsos.gov/sos/home/showdocument?id=6156>.

[2] For more details on the fiduciary duty imposed by the Act and how Federal law preempts state regulation of SEC-registered advisers, see ICI Memorandum No. 30834, dated August 14, 2017. Available at https://www.ici.org/my_ici/memorandum/memo30834.

[3] See ICI Memorandum No. 30897, dated October 4, 2017. Available at https://www.ici.org/my_ici/memorandum/memo30897.

Source URL: <https://icinew-stage.ici.org/memo-31579>

Copyright © by the Investment Company Institute. All rights reserved. Information may be

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.