PIABA
PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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Jill Vallely
Washington Dept. of Financial Institutions
jill.vallely@dfi.wa.gov

Re: Proposed Rule Making Regarding Errors and Omissions Insurance and Unethical Business Practices for Advisors

Dear Ms. Vallely:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in disputes with the securities industry. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by both state and federal securities regulators relating to both investor protection and disclosure. As such, PIABA frequently comments upon proposed rule changes and retrospective rule reviews in order to protect the rights and fair treatment of the investing public.

PIABA understands that the Washington Department of Financial Institutions (DFI) is proposing rule changes that relate to investment advisers licensed within the state. Specifically, the rules would add a requirement for errors and omissions insurance and adopt the SEC Marketing rule, continuing education requirements for investment advisers, and revise the unethical practices rule for investment advisers.

Errors and Omissions Insurance

PIABA applauds the DFI's proposal to require adviser to maintain errors and omissions insurance. This proposal addresses the long-standing and well-documented problem of unpaid arbitration awards, which continue to plague the financial services industry and harm investors in every state.

PIABA has heard concerns from securities industry groups that requiring errors and omissions insurance could reduce consumers' access to investment advice. Two states, Oregon and Oklahoma, currently require investment adviser errors and omissions insurance and the statistics prove that there was no impact on the availability of investment advisory services to citizens of those states after enactment of the E&O mandate. In fact, to the contrary, the number of investment advisers increased in both states and did not fall relative to other states without such a mandate[1]. The article further states:

> An in-depth study of the number of investment advisers in Oregon and Oklahoma before and after the introduction of the mandate shows that the insurance

[1] *See* Adam J. Gana & Benjamin P. Edwards, *The Insurance Solution for Financial Advice Failures*, 14 Mich. Bus. & Entrepreneurial L. Rev. 1 (2025).

requirements had no material effect on the number of financial advisers in either state. *Id.*

Likewise, some brokerage firms that provide custodial services to investment advisers already require advisers that utilize their platforms to carry errors and omissions insurance.

Unpaid Arbitration Awards

The rule proposal also seeks to add to the list of "unethical business practices" under WAC 460-24A-220. In particular, the proposed rule will add, as an unethical business practice, when the advisor fails to pay a final judgment or arbitration award, pursuant to proposed subsections 27 and 28.

PIABA supports this rule proposal and believes that it aligns with FINRA Rule 9554, which bars securities salespersons if they fail to pay an arbitration award. Currently, there is no equivalent to FINRA Rule 9554 for investment advisers. PIABA has covered this problem for many years, publishing research and reports.[2] FINRA—and its predecessor self-regulatory organizations—have let this problem continue for far too long. Frequently, PIABA members have experienced financial advisors fail to pay an arbitration award or be suspended by FINRA, give up their brokerage license, and then simply re-license themselves as investment advisers and continue to manage money for clients. These problem brokers do not deserve to continue to be managing other people's money or investments.

The DFI proposed rule will help close the unpaid awards loophole. This rule would provide DFI ammunition to bar an adviser who has not paid a judgment or award and helps protect the investing public from problem brokers and advisers. Moreover, this rule closely aligns with the 2022 North American Securities Administrators Association (NASAA) Model Rule for Unpaid Arbitration Awards Under the Uniform Securities Acts of 1956 and 2002.

PIABA encourages DFI to pass the proposed rules. Thanks again for the opportunity to comment on these important topics.

Very truly yours,

Joseph Wojciechowski
President EVP/Incoming President,
Public Investors Advocate Bar Association

[2] *See*. Hugh D. Berkson, PIABA Report: *Unpaid Arbitration Awards, a Problem the Industry Created — a Problem the Industry Must Fix*((Public Investors Arbitration Bar Ass'n, Feb. 25, 2016), https://piaba.org/wp-content/uploads/2016/02/Unpaid-Arbitration-Awards-A-Problem-The-Industry-Created-A-Problem-The-Industry-Must-Fix-February-25-2016.pdf; Stoltmann, Andrew, and Hugh D. Berkson. *Unpaid Arbitration Awards: The Case For an Investor Recovery Pool (*Public Investors Arbitration Bar Ass'n March 7, 20180, available at: https://piaba.org/wp-content/uploads/2024/07/REPORT-Unpaid-Arbitration-Awards-March-7-2018.pdf.; Berkson, Hugh D., & Meyer, David P. *PIABA Report*: *FINRA Arbitration's persistent unpaid award problem: PIABA's third report concerning FINRA's refusal to tackle the unpaid arbitration award problem head-on (third report)* (Public Investors Advocate Bar Association, September 29, 2021). https://piaba.org/wp-content/uploads/2024/07/PIABA-Report-FINRA-Arbitrations-Persistent-Unpaid-Award-Problem-September-29-2021.pdf).