

April 13, 2020

NASAA

Attn: Kameron Hillstrom

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Washington, DC 20002

SUBMITTED VIA EMAIL: nasaacomment@nasaa.org; cenal@michigan.gov

Re: Comments on Notice of Request for Public Comments regarding a Proposed Investment Adviser Representative Continuing Education Program and an Implementing Model Rule under the Uniform Securities Acts of 1956 and 2002

On February 13, 2020 the North American Securities Administrators Association (NASAA) published a proposed model rule (the Proposal) to provide implement a continuing education (CE) program for investment adviser representatives (IARs). The Proposal seeks to “ensure that investment adviser representatives receive continuing education on the securities business relevant to their duties and obligations.”¹ National Regulatory Services (NRS) appreciates the opportunity to comment on this important proposal. NRS commends NASAA for undertaking these additional efforts and views them as a tremendously positive step towards ensuring that individuals who provide investment advice to retailⁱⁱ clients have sufficient knowledge and training to meet their fiduciary duties.

In general, NRS supports the Proposal, subject to the comments below.

Background on NRS and NRS Clients

NRS serves 6,000 broker-dealers, investment advisers, and investment companies ranging from small institutions to the largest global investment management complexes, private fund managers, and other financial services firms. Many of these firms provide retirement and financial planning advice to retail investors to help them meet their financial planning goals.

Since 1983, NRS has provided its clients with exceptional compliance and consulting services, compliance technology solutions, national conferences, seminars, the NRS Investment Adviser Certified Compliance Professional (IA-CCP) certificate program and, through its FIRE brand, securities exam prep and firm element continuing education. NRS FIRE Solutions is a recognized leader in securities examination preparation. NRS is a division of Accuity, the leading provider of global payment routing data, AML screening software, and services that allow organizations, across multiple industries, to maximize efficiency and facilitate compliance of their transactions. For more than 150 years, Accuity has provided its worldwide clients, including banks, corporations and government organizations located in over 150 countries, with solutions and services packaged in multiple formats to serve their diverse needs.

NRS has divided our comments based on the various headings in the Proposal.

General Structure of the IAR CE Requirement

As noted in the Proposal,

[T]he proposed IAR CE program allows states to leverage the expertise of NASAA and its members collectively in setting standards for approving and evaluating CE providers and content. Similarly, from an industry perspective, an IAR registered in multiple states that have adopted the proposed model rule would be able to satisfy each jurisdiction's IAR CE requirement by completing NASAA- approved courses/content instead of being required to satisfy differing requirements for each state—promoting uniformity and reducing the complexity and cost of compliance. ⁱⁱⁱ

NRS Comments:

NRS supports the framework and structure outlined in the Proposal. Acting as a centralized body eliminates complexity and confusion and reduces the cost of compliance for IARs. IARs will have a clear and uniform set of guidelines without the confusion of following individual state rules like the insurance CE model.

Making this an annual requirement, rather than based on anniversary dates, also simplifies the process and will allow firms to more easily incorporate a comprehensive education plan into their compliance program.

That said, NRS notes that NASAA and/or state regulators will need to coordinate with FINRA and other regulators to minimize redundancy in training. While certain key facts and concepts will be common to all securities examinations, the investing public will benefit if individuals who are both registered representatives and IARs can develop a broad range of knowledge rather than taking what is essentially the same course twice. For example, while CE units for IARs and Registered Representatives on the needs of seniors would both necessarily discuss methods of recognizing elder abuse, the unit for IARs could provide focus on how

fraud can arise in a managed account, and any special concerns for advisers with discretionary authority over those accounts.

NRS also recommends that NASAA implement a CE model that relies on a firm designed and administered program rather than a centrally designed one-size, fits all model. As NRS and the Investment Adviser Association has routinely noted in their annual Evolution/Revolution report, there is great diversity in the business practices of the members of the investment adviser community. FINRA's bifurcated continuing education model effectively strikes a balance between universal, regulator driven education and a program designed by firms to meet their targeted needs. Such a program, complete with a documented needs analysis and written training plan, will be much more effective at meeting NASAA's goals, will afford great flexibility to allow IA firms to address their specific risks and will still be subject to review during regulatory examinations.

A firm-wide CE Needs Analysis provides the following advantages:

- Ensures that IARs receive training applicable to their firm services
- Eliminates IAR self-assessment of training needs – it is the rare individual who is self-aware and conscientious enough to not only identify their own weaknesses but then also select that coursework rather than the easier path
- Allows possible coordination of dual credits/reciprocity with other regulators and professional designations by a person in the firm who is trained to understand the nature and scope of the various exams and designations.
- Incorporates continuing education into the IAR supervision regime

In addition, based on NRS' experience in working with thousands of investment adviser firms, we are convinced that even if IARs bear the responsibility for meeting CE requirements, compliance and registration departments will wind up making sure that IARs know what courses they need, scheduling tests, obtaining study materials, etc. Putting the responsibility for continuing education in the hands of the firm may well make the entire process more efficient.

Moreover, a firm-administered program can guide IARs to those courses that are consistent with the firm's business and will therefore benefit their clients. While an IAR of a firm that provides financial planning to low-net-worth individuals may be very interested in a course in cryptocurrency, that IAR's clients would likely be better off if the firm guides the IAR to something more germane to the firm's business.

Finally, NRS is also concerned by the inefficiencies that are inherent in an IAR self-administered program. Three hundred thousand individuals tracking, purchasing and recording results, not to mention a huge spike in customer service call volume for the content/course providers (and the IARD) will certainly increase the costs providers will be required to charge without the scale, organization and efficiency of an IA firm-administered program.

Approving IAR CE Providers and Courses and Content

The Proposal states, in part:

Under the proposed framework, NASAA will use the data gathered by the industry survey to identify appropriate topics for inclusion in the LAR CE program. NASAA will review and update these topics on a periodic basis to ensure that the LAR CE program covers the most relevant and up-to-date topics and issues in the industry. ...

Under the proposed framework, any individual or company interested in delivering LAR CE courses/content will be required to submit an application and other relevant materials, including a fee, to NASAA for review on a periodic basis. Potential LAR CE course/content providers will also be required to submit an application and other relevant materials, including a fee, for each individual course or other CE content to NASAA for approval prior to offering said course/content for LAR CE credit. NASAA is proposing to utilize a third-party vendor to review and approve courses/content annually, while CE providers will be approved with an initial filing and audited to ensure compliance with NASAA policies and guidelines with course material submissions.^{iv}

NRS Comments:

Under the proposed framework, prospective qualifications course/content providers will be required to fill out an application, pay a fee and then have a third-party review of each course. This proposed process raises several issues that NASAA and/or the third party reviewer will need to address:

- What is the process for selecting a reviewer?
- Will course/content providers work directly with the third-party reviewers or will providers send content to NASAA to forward to the reviewer?
- As it is likely that many course/content providers will be interested in submitting their applications and courses for approval, will NASAA and the third-party reviewer have the resources necessary to handle all of these submissions?
- Is an IA firm eligible to submit self-developed courses for approval?

NRS suggests that NASAA consider following the CFP® Quality Partner framework. This framework allows course/content providers to go through a rigorous approval process upfront to prove that content and materials meet the strict standards of the CFP® Board. Once a provider is approved, they are allowed to submit additional courses/content to the CFP® Board's Admin portal, pay the associated fees and forego another review process. This would simplify the process for both NASAA and the content/course providers, reduce the cost of paying for additional third-party reviews, and allow for more timely development of courses.

Additional questions to be addressed include:

- What is the anticipated turnaround time for the approval of courses?
- Will NASAA or the third-party reviewer use a similar approach to the CFP® Board's word count method to determine the number of credit hours for each course?
- When will the topics identified in the survey be shared with the public?
- With what frequency will NASAA review these topics? Will they be released to approved course/ content providers prior to being released to the public?
- Can a course provider propose and receive interim approval for a new course topic between NASAA's topic reviews?
- Will there be appropriate lead-time so that providers can develop high-quality courses to support new topics?

Finally, NRS has a comment about the nature and scope of the content itself. The courses will be taken by IARs of both state- and SEC-registered advisers. Given that the SEC and states may have different requirements (on custody, for example), and that states themselves may have differing rules and/or interpretations of similarly-worded rules, NRS recommends that NASAA describe the general guidelines for addressing these differences. For example, would a course on custody based entirely on the SEC rules be ineligible for CE credit entirely, or would it be eligible for IARs of SEC-registered advisers only? Would a course on contracts need to address the specific requirements of the various states, or would a review of NASAA model rules be sufficient (even if the IAR is not registered in a state that follows the model rule)?

Reporting and Tracking

The Proposal states, in part:

Under the proposed framework, reporting and tracking for IAR CE would be done by the course providers, though the obligation to ensure IAR CE was reported would ultimately fall on the individual IAR. ... Under the proposed

framework, there would be a small fee charged to the content providers to report IAR CE completion on a per-hour and per-individual basis. NASAA is currently working with FINRA to develop the required functionality in IARD to facilitate this reporting and tracking framework.^v

NRS Comments:

NRS supports the reporting and tracking framework outlined in the NASAA proposal, which in many ways resembles that used by the CFP[®] Board. As providers of educational materials that meet CFP[®] continuing education, requirements, we report course completions to the CFP[®] Board as designees complete their training requirements. NRS calls NASAA's attention to logistical matters inherent in the approach proposed by NASAA that will need to be addressed if the Proposal is adopted:

- The CFP[®] Board assigns a CFF ID to each designee and this is leveraged by content/course providers to report completions. What unique identifier will NASAA use to map completions back to the IAR? Could CRD numbers be used for this purpose?
- The CFP[®] Board does not charge a separate fee to report course completions, but instead charges an annual course renewal fee, sponsor renewal and a separate annual Ethics renewal fee. Has NASAA considered charging more for the initial approval fees and renewals and eliminating the reporting and tracking fees altogether? If the IARD platform will be used by content/course providers to report completions, this process seems to be automated and should not put a burden on NASAA resources. However, content providers like NRS will have to pull completion reports from our platforms and upload those completions to the IARD platform. As this process requires additional resources on the content provider side, it seems counterintuitive to also charge a reporting fee to content providers.
- Will the IARD allow for an API or other interface (similar to WebEFT) to allow for provider systems to efficiently communicate large volumes of courses and receive confirmations of approval/acceptance of each course submission?

General IAR CE Requirements

The Proposal states, in part:

NASAA is proposing an annual IAR CE requirement under which IARs would be required to complete 12 total hours of CE—6 hours focused on Products and Practice and 6 hours focused on Ethics and Professional Responsibility.^{vi}

NRS Comments:

NRS notes that 12 total hours of CE on an annual basis seems high and is more in line with the annual requirements found in most designation programs.

As stated under the heading “General Structure of the IAR CE Requirement,” above, NRS suggests that IA firms could be required to conduct an Annual Continuing Education Needs Analysis and have a written training plan in place. With the regulatory landscape changing so frequently, it seems counterproductive for NASAA to develop a series of topics that could be considered a universal fit for all IARs. A firm-level topic review would be better suited to ensure that the most important regulatory hot topics are being addressed and are part of the annual requirement.

Home State Reciprocity

Section H of the proposed rule states:

[A]n investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual’s Home State is considered to be in compliance with this rule provided that both of the following are true:

A) The investment adviser representative’s Home State has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Education.

B) The investment adviser representative is in compliance with the Home State’s investment adviser representative continuing education requirements.^{vii}

NRS Comments:

While NASAA and its members have made tremendous strides towards achieving uniformity and consistency among states, there are still a sufficient number of states that do not register IARs or have definitions of IARs that differ from NASAA’s model definition. IARs in these states, through no fault of their own, may not be able to avail themselves of the home state reciprocity provisions. Under the current Proposal, an IAR based

in New York could, when registered with other states, face CE requirements in multiple states that are more stringent than those of the model rule.

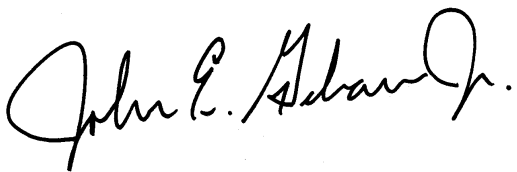
NRS recommends providing reciprocity to any IAR who is registered with, and meets the CE requirements of, any state, other than a state in which the IAR has a place of business, whose requirements are at least as stringent as the Model Rule. The states where an IAR has a place of business will still be able to impose more stringent requirements if they so choose.

Conclusion

NRS continually interacts with investment advisers of all sizes through our client relationships and national conferences. We take great pride in our educational offerings including the Investment Adviser Certified Compliance Professional program and FIRE CE and Exam Prep. NRS applauds NASAA's proposal to create a model rule for the continuing education of investment adviser representatives. We urge NASAA to consider our comments in the spirit in which they were intended – insights and recommendations offered from our unique vantage point that we believe will enhance a thoughtful and well-intentioned continuing education program for investment adviser representatives.

NRS appreciates the opportunity to comment on this proposal. If we may assist further or provide additional information or background on our comments, please let me know.

Respectfully,

A handwritten signature in black ink that reads "John E. Gebauer Jr." The signature is written in a cursive style with a large, prominent "J" at the beginning.

John Gebauer

President

ⁱ Notice of Request for Public Comments regarding a Proposed Investment Adviser Representative Continuing Education Program and an Implementing Model Rule under the Uniform Securities Acts of 1956 and 2002 (Proposal), February 13, 2020 at 1.

ⁱⁱ As the proposed rule will apply to IARs for SEC- and state-registered advisers alike, for purposes of these comments, NRS will define “retail” client as a natural person who is not a “qualified client” as described in Investment Advisers Act rule 205-3(d)(1). *See* Investment Advisers Act rule 203A-3.

ⁱⁱⁱ The Proposal at 3.

^{iv} *Id.*

^v *Id.* at 4.

^{vi} *Id.* at 5.

^{vii} *Id.* at 9