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*Invested in America*

April 9, 2020

**Submitted via e-mail:** cenal@michigan.gov
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Linda Cena, Chair
NASAA IAR CE Committee
750 First Street, NE, Suite 1140
Washington, DC 20002

**RE: 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**

Dear Chair Cena:

The Securities Industry and Financial Markets Association[1] is a national trade association which brings together the shared interests of more than 350 broker-dealers, investment banks and asset managers. Many of our members have a strong presence throughout the country where they provide services to investors, including advisory services and investment opportunities. SIFMA member firms employ many people who are dually registered as both broker-dealer agents and investment adviser representatives, and our below comments are focused on the treatment of these dual registrants.

SIFMA truly appreciates the opportunity to provide feedback on the proposed model rule from the Investment Advisor Representative ("IAR") Continuing Education ("CE") Committee, which would create a CE program for IARs. SIFMA and its member firms recognize the importance of CE programs and are committed to providing robust training opportunities to our professionals. As an example, a survey of SIFMA members revealed that the typical dual registrant averaged more than 30 hours of CE per year. While this figure includes participation in the FINRA CE program, it notably does not include other CE programs such registrants complete in order to fulfill various certification requirements (e.g., as Certified Financial Planners, etc.).

We appreciate the Committee's recognition of these long-standing sources of CE, particularly those which provide credit towards the IAR CE requirement for agents of FINRA-registered broker-dealers and those which comply with CE requirements of credentialing organizations.

As you assess how to best approach the creation of this program, we respectfully urge you to consider the following, which we believe could effectively achieve your goals, while avoiding placing unnecessary burdens on industry participants and their firms:

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

I. **Harmonizing with FINRA's Continuing Education Program**. As drafted, Section 2 of this proposal would provide up to 6 IAR CE Credit Hours for dual registrants who are in compliance with FINRA CE requirements, so long as the FINRA CE requirements meet certain conditions. We have several thoughts and concerns about the specific structure of this proposal:

- Wait for FINRA to Complete Changes to its CE Program – or Ensure Flexibility in NASAA's Rule. As you know, FINRA recently issued Regulatory Notice 20-05, proposing significant changes to its CE Program, and is seeking comments by May 31, 2020. Since FINRA's rulemaking process is ongoing, we urge NASAA to wait for the final FINRA rule to assure that NASAA's potential model does not conflict with FINRA's final CE requirements.

  For instance, FINRA may choose not to implement an annual regulatory requirement, which would potentially create operational conflicts with NASAA's proposed annual requirement (e.g., would an agent still receive 6 hours of IAR CE Credit if they completed the FINRA requirements in the previous year?). We suggest either waiting for FINRA to finalize its new program in order to ensure that the NASAA model fully harmonizes with the program, or – in the alternative – removing the conditions in Section 2(A) – (C) of the proposal.

- Clarify That Compliance with "FINRA's continuing education requirements," Refers Only to the Regulatory Element. It appears that the intent of Section 2 is to grant 6 hours of IAR CE Credit to agents who comply with the Regulatory Element of FINRA's CE requirements. FINRA also requires firms to develop and provide an additional Firm Element of CE, which varies from firm to firm and can include many hours of training in addition to the Regulatory Element. In the interest of fairness and uniformity, we suggest explicitly referring to compliance with FINRA's Regulatory Element in Section 2 of the proposed model.

- Recognize the Firm Element of FINRA's Requirements and Internal Firm Training. In its current form, it appears there is no consideration given to credit for CE courses completed as part of the Firm Element, investment advisory training or other trainings provided by firms. As you may know, SIFMA's broker-dealer firms prepare an annual training needs analysis for FINRA's Firm Element requirements and provide extensive training to their advisors, regularly updating their programs to match well-settled or emerging best practices in CE and making sure the training specifically addresses the business model, experience and institutional knowledge of the firm. As previously mentioned, dual registrants are already completing dozens of hours of CE, including tailored investment advisory training, each year as part of these programs. Arguably, it would be excessive to require an additional 6 hours of general training – which could require some advisors to complete more than 40 or even 50 hours of training per year,[2] when many firms are already providing relevant and meaningful training consistent with the educational goals of NASAA's proposed model rule.

II. **Acknowledge Firm Training or Provide an Efficient Alternative Accreditation Process.** As noted above, SIFMA member firms, as opposed to external training providers, are the most common source of CE and training programs that dual registrants must complete. Our members have a strong interest in continuing to provide such important training and do not believe an additional 6 hours of general training is necessary or even helpful to individual advisors. As you move forward with this program, we ask you to consider the following:

[2] For comparison's sake, attorneys licensed in New York State (one of the more CE intensive jurisdictions), are required to complete an average of 12 credits per year.

- Concerns About a Potential Firm Accreditation Process. Under the current proposal, in order for advisers to receive credit towards a potential IAR CE requirement, each firm would have to seek accreditation through NASAA. Our members have several concerns about a potential accreditation process:

  - SIFMA represents hundreds of financial services firms. If each seeks individual accreditations, that could place a significant burden on – and create a resulting slowdown in – any approval process, placing our members and their associated persons at regulatory risk.

  - Similarly, a short renewal schedule – or requiring updates to approved training materials to be "re-certified" – could further place unnecessary strain on an accreditation process.

  - If approvals require the sharing of specific training materials, many of these materials contain proprietary information on specific firm strategies, products or services, protections for which could arguably be waived by disclosure. SIFMA member firms could then be forced to choose between not seeking accreditation or sharing proprietary information and potentially violating internal firm policies. Moreover, accrediting agencies have, likely unintentionally, previously made such proprietary information publicly available without permission. Perhaps a submission along the lines of the FINRA "Needs Analysis Training Plan" could be sufficient for accreditation. The plan could serve as a roadmap detailing how firms intend to meet the requirements of the model rule.

  - The proposed requirement that IARs must "demonstrate proficiency" as part of the training is also a concern for SIFMA member firms. Given the different sizes and business models across the brokerage industry, this requirement would likely force firms toward more narrow and standardized subject matter and evaluations. Firms currently have flexibility to determine how to best implement quality controls related to each training (e.g., exams, course completion metrics, order entry blocks and other controls) based on the specific business needs of the firm and the current best practices for information retention. This requirement may even – in some instances – inadvertently limit the effectiveness of certain training or restrict the use of new innovations in IAR training.

  - Separately, we note that firms with approved CE content would be required to upload the completion of approved CE content into IARD. Our members would greatly appreciate additional information regarding what automation would be available to ease any administrative burden in this respect.

- Consider Moving Away from Credit Hours. As mentioned above, firms rigorously incorporate long held or emerging best practices into their training materials. One of these is providing a constant cadence of shorter trainings throughout the year (e.g., trainings on specific topics that could last from 10 to 40 minutes). This increases both the learning capacity and retention capability of participants. However, this could be difficult to measure in terms of "credit hours."

We note that the comment notice and the specific questions asked therein often refer to "12 hours" or "6 hours" of training content while the proposed rule language itself generally refers to "credits." The term "hours" is used in Section 1(A) of the proposed language. We urge NASAA to use consistent language and to not implement a strict "hour" requirement. Alternatively, we ask you to consider the following:

1) Co-ordinate with FINRA to provide an IAR-focused CE program that could be incorporated into the FINRA Regulatory Element for Dual Registrants and tracked through the FINRA Gateway;

2) Provide a list of required topics each year for firms to include in their internal training programs; or,

3) Implement a unit system that would require completion of credits with a range of times for the completion of those credits – similar to how most state continuing legal education programs are run.

For instance, a requirement that focuses less on hours completed and more on new issues each year for veteran advisors, while establishing a foundational component for new advisors, might have a more effective impact on advisors.

**III. Structural Suggestions.** In the request for comments, NASAA specifically sought feedback on several questions. The below points either respond directly to some of those questions or raise general questions that have come about in discussion amongst SIFMA member firms:

- CE as Part of Certifications. The proposal includes ways for IARs to receive credit for CE completed through accrediting organizations (such as the Certified Financial Planning Board), which SIFMA strongly supports. However, many of these operate on multi-year cycles, while the proposed IAR CE requirement would operate annually. Any clarification or guidance on how that would function would be greatly appreciated. There have been several concerns raised about the administration of this process, the unique requirements regarding reciprocal credit, and the fees related to getting courseware approved.

- Ethics Component. Having a separate regulatory/ethics component set at 6 credits – with three hours of an ethics-focused requirement – would not allow firms to integrate ethics as part of its other topical training. Ethics is something that should be an aspect of training that – in some way – is incorporated into subject matter or skills training. Separating ethics from subject matter requirements and combining it with the regulatory requirement seems a little awkward on its face and implies that an ethics component could not be merged with other trainings, when ethics training is an integral part of specific subject matter. Ethics are also a mandatory piece of FINRA's firm element trainings and would be duplicative for dual registrants.

- Grace Period. It would be helpful if NASAA could clarify whether there is a proposed grace period and what the consequences would be of being out of compliance at the end of such grace period.

- Inconsistencies in Implementing Regulations. Should NASAA choose to go forward with an IAR CE program, we note that any inconsistencies in adopting regulations could create significant challenges and undermine the efficacy of the program.

- Coordination among Agencies. We also reiterate the importance of coordination between NASAA and FINRA, as well as other agencies (e.g., the Municipal Securities Rulemaking Board), to eliminate unnecessary duplication in both content and regulatory requirements.

Finally, we are not sure what your timing might be but we respectfully suggest that NASAA and individual states take into account the extraordinary times we are currently in and adopt a timetable that is reflective of that.

We appreciate your willingness to consider our concerns and suggestions. If you have any questions, please contact me at kchamberlain@sifma.org or 202-962-7411.

Sincerely,

Kim Chamberlain
Managing Director & Associate General Counsel
SIFMA