

**REQUEST FOR PUBLIC COMMENT ON A PROPOSED NASAA MODEL RULE FOR AN INVESTMENT ADVISER REPRESENTATIVE EXAMINATION VALIDITY EXTENSION PROGRAM UNDER THE 1956 AND 2002 UNIFORM SECURITIES ACTS**

**December 2, 2022**

**Deadline for Public Comment: January 3, 2023**

The Investment Adviser Representative Continuing Education Committee (“Committee”) of the North American Securities Administrators Association, Inc. (“NASAA”) is seeking public comment on a proposed *NASAA Investment Adviser Representative Examination Validity Extension Program Model Rule* (the “EVEP Rule”). The EVEP Rule would create a program to permit an investment adviser representative (“IAR”) to maintain the validity of their Series 65 or Series 66 examination for a period of up to five years after terminating employment with an investment advisory firm provided the IAR completes investment adviser representative continuing education (“IAR CE”) and otherwise meets the requirements of the proposed rule. A copy of the proposed EVEP Rule is attached to this request for comment.

Comments on the proposed EVEP Rule should be submitted on or before the deadline above. We are only accepting comments by electronic mail. Comments should be emailed to NASAA at [NASAAComments@nasaa.org](mailto:NASAAComments@nasaa.org), with copies to Linda Cena ([cenaL@michigan.gov](mailto:cenaL@michigan.gov)), chair of the Committee, Stephen Brey ([breys@michigan.gov](mailto:breys@michigan.gov)), Chair of the Investment Adviser Section’s Regulatory Policy and Review Project Group, and Natasha Hurt, ([nhurt@nasaa.org](mailto:nhurt@nasaa.org)), Senior Manager of Regulatory Services for NASAA. All comments received in response to this request will be posted to NASAA’s website ([www.nasaa.org](http://www.nasaa.org)) without edit or redaction after the close of the comment period, though inappropriate comments will not be posted. Accordingly, please do not include any information in your comment letter that you do not wish to become publicly available. After the close of the comment period, the Committee will review all comments received and consider whether to recommend the proposed EVEP Rule, in its current or revised form, to the NASAA Board of Directors for potential adoption by vote of the NASAA membership.

**I. Background**

On February 18, 2022, The Financial Industry Regulatory Authority (“FINRA”) issued [Regulatory Notice 20-05: Continuing Education Program Transformation](#) seeking input on whether to implement certain recommendations of the Securities Industry/Regulatory Council on Continuing Education to FINRA’s continuing education (“FINRA CE”) program for broker-dealer agents. Among those changes, and relevant here, was a proposal to allow broker-dealer agents to maintain examination validity following termination from registration beyond the existing two-year validity period, so long as the individual met annual FINRA CE requirements.

Ultimately, FINRA submitted, and the United States Securities and Exchange Commission (“SEC”) approved, changes to the FINRA CE program through amendments to FINRA Rules 1210 and 1240 that created the FINRA [Maintaining Qualifications Program](#) (“MQP”). MQP allows individuals who terminate certain FINRA registrations to maintain those registrations by completing annual FINRA CE. MQP allows individuals who opt into and comply with the requirements of the program a maximum of five years to reregister with a FINRA member without having to requalify by examination or having to obtain an examination waiver.

FINRA stated in Regulatory Notice 20-05 (cited above):

Registered persons of broker-dealers may terminate one or more of their registrations for a variety of reasons, such as life events, career changes or business reorganizations [...]. While registered persons of broker-dealers are subject to continuing education, they are unable to extend that continuing education in order to maintain their qualification following the termination of any of their registrations. The same is not true for other professionals who are required to complete continuing education, including lawyers and accountants.

While the MQP was created by FINRA to allow individuals to extend FINRA examination validity, it did not extend the validity of exams required by state securities regulators. NASAA, in an effort to promote uniformity among federal, FINRA, and state requirements, promptly proposed and requested public comment on proposed [Model Rules to Extend the Validity Periods of Certain Examinations](#) on June 22, 2022. Public commenters supported this proposal, and NASAA adopted the proposed model rules on September 18, 2022.<sup>1</sup> Public commenters also strongly recommended NASAA develop a similar program to extend the validity of state IAR examinations.

The Committee worked with members of NASAA’s Investment Adviser Section to develop a framework that would largely mirror the examination validity extension program for broker-dealer agents, but would rely on IAR-specific educational content provided through the [NASAA Model Rule on Investment Adviser Representative Continuing Education](#) (“IAR CE Model Rule”) adopted by the NASAA membership in November of 2020.

## **II. IAR Exam Validity Extension Program**

The Committee sought to create a program for IARs that is consistent with the program available to broker-dealer agents. The result of those efforts is the EVEP Rule proposed here.

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<sup>1</sup> These model rules consist of the [Examination Requirements for Broker-Dealer Agents](#) model rule and the [Examination Requirements for Investment Adviser Representatives](#) model rule.

The EVEP Rule begins with NASAA Model Rule 2002 412(e)-1, which imposes examination requirements for IARs, and states that an examination is valid while the IAR is employed by or associated with an investment adviser or federal covered investment adviser, and for two years after termination of the registration's effectiveness. Under the current regime, an IAR's examinations expire once two years have elapsed after termination of the registration's effectiveness.

The EVEP Rule, if adopted, would allow an IAR to maintain the validity of the examination or combination of examinations (as applicable) without being employed by or associated with an investment adviser or federal covered investment adviser for up to five years following the termination of the effectiveness of the IAR registration provided the individual complies with the requirements of the proposed rule.

The EVEP Rule will have eight subsections, which will include seven requirements and one partial waiver of a requirement for IARs who are also in compliance with FINRA's MQP program. Subsections (1) through (7) are intended to ensure that the program is only available to IARs who have previously passed a necessary examination, were recently employed, are not statutorily disqualified, actively elect to participate in EVEP, and perform their required IAR CE both before and after termination. These requirements are intended to prevent bad actors from relying on the program and to ensure that those who wish to maintain qualifications through EVEP actually take the necessary IAR CE both before and after electing to participate in the program. Specifically, the seven requirements of the EVEP Rule are:

1. That the IAR has previously passed the examination or examinations required by NASAA Model Rule 2002 412(e)-1;
2. The IAR was registered for at least one year immediately preceding the termination of their IAR registration;
3. The IAR is not statutorily disqualified under the Securities Exchange Act of 1934;
4. The person elects to participate in EVEP within two years of the termination of the IAR registration;
5. The individual does not have an IAR CE deficiency when their registration becomes ineffective;
6. The person annually complies with (a) the IAR CE ethics requirements and (b) the IAR CE products and practices requirements for each calendar year they are in the EVEP program; and
7. Since the person can enter within two years of termination, the person, if they

enter the program after a year has elapsed, must also “make up” the IAR CE credits required for year one.

In addition to these basic requirements, the Committee believes the EVEP Rule should accommodate FINRA’s MQP program and align with the IAR CE Model Rule. With that in mind, the Committee proposes to include in subsection (8) of the EVEP Rule a standard that would permit an MQP participant to be in compliance with the products and practices requirements imposed by subsection (6)(b) of the EVEP Rule provided the individual is in good standing with the MQP. This would be consistent with the IAR CE Model Rule, which treats FINRA CE as compliant with IAR CE Products and Practices requirements, and the Committee believes there is no reason to deviate from this treatment of FINRA CE in the EVEP Rule.

The implementation of the EVEP Rule will be accomplished through FINRA’s Central Registration Depository (“CRD”) system and its [Financial Professional \(“FinPro”\) Gateway](#). IARs from any state will be able to elect to participate in the program using the FinPro Gateway; however, exam validity extensions will only occur in states that have adopted and implemented the EVEP Rule. If an IAR’s home state has not adopted the EVEP Rule, the CRD system will not extend the person’s exam validity in that jurisdiction. That person’s exam validity may, however, be extended pursuant to the EVEP program in other jurisdictions that have adopted the rule should the person apply for IAR registration in one of those states in the future.

States that do not adopt the EVEP Rule and participate in the program would need to rely on general waiver authority to waive the IAR’s examination requirement on an ad hoc basis or maintain their existing exam validity periods.

The Committee is requesting public comments on the proposed EVEP Rule, a copy of which is attached. The Committee welcomes all feedback on the proposal.

**NASAA Investment Adviser Representative Examination Validity  
Extension Program Model Rule**

Adopted [\_\_\_\_\_]

Notwithstanding NASAA Model Rule 2002 412(e)-1 [or state rule imposing IAR examination requirement], an individual who terminates their registration as an investment adviser representative may maintain the validity of their Series 65/ Uniform Investment Adviser Law Examination (“Series 65 Examination”) or the investment adviser representative portion of the Series 66/ Uniform Combined State Law Examination (“Series 66 Examination”), as applicable, without being employed by or associated with an investment adviser or federal covered investment adviser for a maximum of five years following the termination of the effectiveness of the investment adviser representative registration if the individual meets all of the following:

1. The individual previously took and passed the examination for which they seek to maintain validity under this rule;
2. The individual was registered as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser representative registration;
3. The individual was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while registered as an investment adviser representative or at any period after termination of the registration;
4. The person elects to participate in the Exam Validity Extension Program (“EVEP”) under this paragraph within two years from the effective date of the termination of the investment adviser representative registration;
5. The individual does not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective;
6. The person completes annually on or before December 31 of each calendar year in which the person participates in the IAR EVEP:
  - a. six (6) Credits of IAR CE Ethics and Professional Responsibility Content offered by an Authorized Provider, including at least three (3) hours covering the topic of ethics, and
  - b. six (6) Credits of IAR CE Products and Practice Content offered by an Authorized Provider;
7. An individual who elects to participate in EVEP is required to complete credits required by subsection (6) of this rule for each calendar year that elapses after the individual’s

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investment adviser representative registration became ineffective regardless of when the individual elects to participate in EVEP; and

8. An individual who complies with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c) shall be considered in compliance with Section (6)(b) of this rule.