



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** · COMMISSIONER **Clothilde V. Hewlett**

**NOTICE OF MODIFICATIONS TO PROPOSED REGULATION
AND ADDITION OF DOCUMENTS RELIED UPON AND
DOCUMENT INCORPORATED BY REFERENCE**

**INVESTMENT ADVISER REPRESENTATIVE CONTINUING EDUCATION
PRO 07-21**

To Interested Persons:

On December 2, 2022, the Commissioner of Financial Protection and Innovation (“Commissioner”) published a Notice of Rulemaking Action to adopt Section 260.236.2 of Title 10 of the California Code of Regulations (see California Regulatory Notice Register 2022, No. Z-2022-1116-01). The proposed section relates to the implementation of continuing education requirements for Investment Adviser Representatives (“IARs”).

The Department filed the rulemaking file with the Office of Administrative Law (“OAL”) on October 24, 2023. On December 8, 2023, the OAL disapproved the rulemaking file for failure to comply with the clarity standard of the Administrative Procedure Act.¹ The Commissioner is now proposing changes to the regulations. A copy of the proposed revisions is being made available to the public in accordance with the requirements of Government Code section 11346.8, subdivision (c). The text showing modifications to proposed Section 260.236.2 is attached. The originally proposed text is shown in single underline, and the changes proposed by this notice are shown by double underlining of additions and double strike-outs of deletions. Also, the modified text of the proposed regulation now incorporates by reference pages 7-11 and 20-27 of the NASAA IAR CE Program Handbook, January 2023 Edition. The rulemaking record has also been updated to include three documents relied upon. The public may submit comments on the proposed changes to the text of the regulation, the document incorporated by reference, and the documents being added to the record, as described more fully below.

Addition of Documents Relied Upon and Document Incorporated by Reference

The rulemaking record has been updated to include the following documents relied upon: (1) the NASAA 2021 IA Section Report, (2) the NASAA Member Survey Results, and (3) the NASAA IAR CE FAQs.

These documents are available by contacting the following person:

Department of Financial Protection and Innovation
Attn: Regulations Coordinator, DeEtte Phelps

¹ Cal. Code of Regs., tit. 1, sec. 16.

2101 Arena Blvd
Sacramento, CA 95834
Telephone: (916) 839-8995
E-mail: regulations@dfpi.ca.gov

The documents are also available on the Department's website at www.dfpi.ca.gov. To access the documents from the Department's website, select the "Laws and Regulations" tab under the "Licensees" dropdown menu on the home page, select the "Regulations/Rulemaking" link, and select the "Corporate Securities Law of 1968" link.

The modified text of the proposed regulation incorporates by reference pages 7-11 and 20-27 of the NASAA IAR CE Program Handbook, January 2023 Edition which is available at: <https://www.nasaa.org/wp-content/uploads/2023/01/NASAA-CE-Program-Handbook-V3.pdf>.

15-Day Comment Period

Any interested person, or his or her authorized representative, may submit written comments regarding the changes from the originally proposed text by any of these means:

Postal Mail

Department of Financial Protection and Innovation
Attn: Regulations Coordinator, DeEtte Phelps
2101 Arena Blvd
Sacramento, CA 95834

Electronic Mail

Comments may be submitted electronically to regulations@dfpi.ca.gov. Please identify the comments as PRO 07-21 in the subject line.

Comments must be received by **March 1, 2024**. If the final day for the acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close on the next business day.

All written comments received by March 1, 2024, which pertain to the indicated changes will be reviewed by the Department and will be summarized and responded to in the Final Statement of Reasons. Please limit your comments to the modifications to the text, the pages of the document incorporated by reference, and the documents being added to the record.

The proposed changes to the Commissioner's rules in the text accompanying this notice are not yet effective, and will not be effective, until approved by the Office of

Administrative Law and filed with the Secretary of State in accordance with Government Code Section 11349.3. Questions regarding the content of this notice may be directed to Pamela Hernandez at pamela.hernandez@dfpi.ca.gov or DeEtte Phelps at regulations@dfpi.ca.gov.

Dated: February 15, 2024
San Francisco, California

STATE OF CALIFORNIA
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

MODIFIED TEXT OF PROPOSED REGULATION
UNDER THE CORPORATE SECURITIES LAW OF 1968

Title 10. Investment
Chapter 3. Commissioner of Financial Protection and Innovation
Subchapter 2. Corporate Securities

Rule 260.236.2. Investment Adviser Representative Continuing Education

(a) **Definitions.** As used in this rule, the following terms mean:

- (1) “Approved IAR eContinuing eEducation content Course” means ~~the materials, written, oral, or otherwise, that have been a course approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this rule.~~ at the time the IAR takes the course and that is approved in accordance with the process set forth on pages 20 through 27 of the NASAA IAR CE Program Handbook, January 2023 Edition, herein incorporated by reference with the following clarifications:
 - A. On page 21 of the NASAA IAR CE Program Handbook, January 2023 Edition, the terms “audience,” “behavior,” “condition,” and “degree” constitute elements that NASAA shall consider in determining whether a course has a defined objective and outcome, and have the following meanings:
 - i. “Audience” means the course identifies the intended recipients of the course material.
 - ii. “Behavior” means the course identifies the knowledge or skills that a student obtains at the completion of the course.
 - iii. “Condition” means the course identifies the conditions under which a student demonstrates knowledge or skills at the end of the course.
 - iv. “Degree” means the course includes measurable standards to assess a student’s performance.
- (2) “Authorized pProvider” means a person that is authorized by NASAA ~~or its designee~~ ~~has authorized~~ to provide continuing education ~~content~~ courses required by this rule in accordance with the process set forth on pages 7 through 11 of the NASAA IAR CE Program Handbook, January 2023 Edition, herein incorporated by reference.
- (3) “CE #Inactive” means a registration status that indicates the #Investment #Adviser #Representative has not satisfied the continuing education requirement for the previous #Reporting #Period and serves as notice that the #Investment #Adviser #Representative will not be eligible for registration renewal at the close of the calendar year unless all continuing education requirements are brought current.

- (4) “Credit” means a unit ~~that has been~~ designated by NASAA ~~or its designee~~ as at least 50 minutes of educational instruction in accordance with the process set forth on page 24 of the NASAA IAR CE Program Handbook, January 2023 Edition.
- (5) “FINRA” means the Financial Industry Regulatory Authority.
- (6) “Home ~~s~~State” means the state in which the ~~i~~Investment ~~a~~Adviser ~~r~~Representative has its principal office and place of business. Principal office and place of business means the location reported in the Central Registration Depository (CRD) database.
- (7) “IAR ~~e~~Ethics and ~~p~~Professional ~~r~~Responsibility ~~c~~ontent Course” means approved IAR ~~e~~Continuing ~~e~~ducation ~~c~~ontent Course that addresses an ~~i~~Investment ~~a~~Adviser ~~r~~Representative’s ethical and regulatory obligations.
- (8) “IAR ~~p~~Products and ~~p~~Practice ~~c~~ontent Course” means an approved IAR ~~e~~Continuing ~~e~~ducation ~~c~~ontent Course that addresses an ~~i~~Investment ~~a~~Adviser ~~r~~Representative’s continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.
- (9) “Investment ~~a~~Adviser ~~r~~Representative” or “IAR” means an individual who meets the definition of “~~i~~Investment adviser representative” under Corporations Code section 25009.5.
- (10) “NASAA” means the North American Securities Administrators Association or a committee designated by its Board of Directors.
- (11) “Reporting ~~p~~Period” means one ~~twelve month (12) period~~ calendar year starting on January 1 and ending on December 31. An ~~i~~Investment ~~a~~Adviser ~~r~~Representative’s initial reporting period with this state commences the first day of the first full ~~reporting period~~ calendar year after the individual is registered or required to be registered with this state.
- (12) “Reporting Period for 2024” means the period starting on the date this rule becomes effective and ending on December 31, 2024.

(b) IAR Continuing Education. Every ~~i~~Investment ~~a~~Adviser ~~r~~Representative registered, reported, or licensed under the Corporate Securities Law of 1968 must complete the following IAR continuing education requirements in the Reporting Period for 2024 and each ~~r~~Reporting ~~p~~Period thereafter:

- (1) **IAR Ethics and Professional Responsibility Requirement.** An ~~i~~Investment ~~a~~Adviser ~~r~~Representative must complete six (6) Credits of IAR ~~e~~Ethics and ~~p~~Professional ~~r~~Responsibility ~~c~~ontent Courses offered by an ~~a~~Authorized ~~p~~Provider, with at least three (3) ~~e~~Credits covering the topic of ethics; and

- (2) **IAR Products and Practice Requirement.** An ~~Investment~~ ~~Adviser~~ ~~Representative~~ must complete six (6) ~~Credits~~ of IAR ~~Products~~ and ~~Practice~~ ~~content~~ ~~Courses~~ offered by an ~~Authorized~~ ~~Provider~~.
- (c) **Agent of FINRA-Registered Broker-Dealer Compliance.** An ~~Investment~~ ~~Adviser~~ ~~Representative~~ who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA’s continuing education requirements is ~~considered to be in~~ compliance with the subdivision (b)(2) IAR ~~Products~~ and ~~Practice~~ ~~Requirement~~ for each applicable reporting period so long as ~~the FINRA continuing education~~ ~~content~~ ~~course~~ also meets NASAA criteria set forth on pages 20 through 27 of the NASAA IAR CE Program Handbook, January 2023 Edition. ~~meets all of the following baseline criteria as determined by NASAA:~~
- (1) ~~The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards.~~
 - (2) ~~The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.~~
 - (3) ~~The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.~~
- (d) **Credentialing Organization Continuing Education Compliance.** Credits of continuing education completed by an ~~Investment~~ ~~Adviser~~ ~~Representative~~ who was awarded and currently holds a designation that qualifies for an examination waiver under California Code of Regulations, title 10, section 260.236, subdivision (c)(3), comply with subdivisions (b)(1) and (b)(2) of this rule provided all of the following are true:
- (1) ~~The~~ ~~Investment~~ ~~Adviser~~ ~~Representative~~ completes the ~~Credits~~ of continuing education as a condition of maintaining the credential for the relevant ~~Reporting~~ ~~Period~~.
 - (2) ~~The~~ ~~Credits~~ of continuing education completed during the relevant ~~Reporting~~ ~~Period~~ by the ~~Investment~~ ~~Adviser~~ ~~Representative~~ are mandatory to maintain the credential.
 - (3) ~~The~~ continuing education ~~content~~ ~~course~~ provided by the credentialing organization during the relevant ~~Reporting~~ ~~Period~~ is an ~~Approved~~ IAR ~~Continuing~~ ~~Education~~ ~~content~~ ~~Course~~.
- (e) **IAR Continuing Education Reporting.** Every ~~Investment~~ ~~Adviser~~ ~~Representative~~ is responsible for ensuring that the ~~Authorized~~ ~~Provider~~ reports to FINRA the ~~Investment~~ ~~Adviser~~ ~~Representative~~’s completion of the applicable IAR continuing education requirements.

- (f) **No Carry-Forward.** An Investment Adviser Representative who completes Credits of continuing education in excess of the amount required for the Reporting Period may not carry forward excess Credits to a subsequent Reporting Period.
- (g) **Failure to Complete or Report.** An Investment Adviser Representative who fails to comply with this rule by the end of a reporting period will renew as “CE Inactive” at the close of the calendar year in this state until the Investment Adviser Representative completes and reports all required IAR continuing education Credits for all Reporting Periods as required by this rule. An Investment Adviser Representative who is CE Inactive at the close of the next calendar year is not eligible for Investment Adviser Representative registration or renewal of an Investment Adviser Representative registration.
- (h) **Home State.** An 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:
- (1) 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 Continuing Education~~ the same as the requirements in subdivisions (b)(1) and (b)(2) of this rule.
 - (2) The Investment Adviser Representative is in compliance with the Home State’s Investment Adviser Representative continuing education requirements.
- (i) **Unregistered Periods.** An Investment Adviser Representative who was previously registered under California Code of Regulations, title 10, section 260.236.1 and became unregistered must complete IAR continuing education for all reporting periods that occurred between the time that the Investment Adviser Representative became unregistered and when the Investment Adviser Representative was registered again under California Code of Regulations, title 10, section 260.236.1, unless the Investment Adviser Representative takes and passes the examination or receives an examination waiver as required by California Code of Regulations, title 10, section 260.236, subdivision (b), in connection with the subsequent application for registration.
- ~~(j) **Exemption.** Any reported Investment Adviser Representative employed by or engaged by an investment adviser only to offer or negotiate for the sale of investment advisory services of an investment adviser is not subject to continuing education requirements.~~

Note: Authority cited: Section 25610, Corporations Code. Reference: Section 25236, Corporations Code.