

Final Clearinghouse Rule 21-057

ORDER OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS – SECURITIES CREATING RULES

The Wisconsin Department of Financial Institutions – Division of Securities by this order creates ch. DFI-Sec 11 of the Wisconsin Administrative Code, relating to continuing education requirements for investment adviser representatives.

The scope statement for this rule was approved by the Administrator of the Division of Securities on February 1, 2021; approved by the Governor on February 19, 2021; and published in *Administrative Register* No. 783A1 on March 1, 2021. Comments from the Legislative Council Rules Clearinghouse were received on August 11, 2021. The proposed rule was approved by the Administrator of the Division of Securities on July 14, 2021, and by the Governor on October 7, 2021.

ANALYSIS

1. Statutes interpreted:

Subchapter IV of chapter 551 of the Wisconsin Statutes.

2. Statutory authority:

Section [551.411 \(8\)](#) of the Wisconsin Statutes .

3. Explanation of agency authority:

The above statute authorizes DFI to promulgate administrative rules requiring continuing education for investment adviser representatives, or “IARs,” who are registered under Wis. Stat. § [551.404](#). See Wis. Stat. § [551.411\(8\)](#) (“[A] rule adopted or order issued under this chapter may require continuing education for an individual registered under § [551.404](#).”).

4. Related statutes or rules:

The below-referenced administrative rules each relate to Chapter 551 of the Wisconsin Statutes, which is the uniform securities law in this state.

5. Plain language analysis:

The proposed order would create ch. DFI-Sec 11 of the Wisconsin Administrative Code governing continuing education for investment adviser representatives (IARs). The text of the proposed rules is consistent with the model rules for state-registered IARs adopted by the North American Securities Administrators Association (NASAA). For IARs who are registered or required to be registered in this state, the proposed rule would implement the following provisions and have the following effects:

- 1) IARs would be required to earn 12 credits of continuing education (CE) each year, including at least 3 hours on the topic of ethics. Other required topics are professional responsibility and products and practice content. These CE requirements will help ensure that professionals' competencies remain up-to-date; inform them of relevant changes in industry practices, products, and governing law; reinforce ethics rules and expectations; and foster public confidence in registered professionals as a whole.
- 2) Some registered IARs who complete CE courses through the Financial Industry Regulatory Authority (FINRA), a self-regulatory organization, may earn up to 6 hours of CE credits that will apply to certain requirements created in this rule. Those IARs, as agents of FINRA member broker-dealers, are subject to FINRA CE requirements.
- 3) An IAR who fails to comply with the proposed rule's CE requirements by the end of a reporting period may renew the IAR's license at the close of that period under the registration status "CE Inactive." The IAR must maintain CE Inactive registration status until the completion of all required CE credits. An IAR with CE Inactive registration status at the close of the next reporting period is not eligible for IAR registration or renewal of an IAR registration.
- 4) An IAR who was previously registered in this state and became unregistered must complete all required CE credits for all reporting periods occurring between the time that the IAR became unregistered and the time that the individual registered again.
- 5) An IAR who is registered as an IAR in the IAR's home state is in compliance with this state's CE requirements if the IAR meets the IAR's home state requirements, which must be at least as stringent as those in Wisconsin.
- 6) An IAR who holds a professional designation that qualifies the IAR for a registration examination waiver under DFI rules is considered to have met the CE requirements under certain specified conditions.
- 7) An IAR who earns more than 12 credits in a reporting period may not carry those credits forward to a future year.

- 8) The proposed rule authorizes the Administrator of the Division of Securities to waive any requirements specified in the rule.

6. Summary of, and comparison with, existing or proposed federal regulation:

IARs are registered with the states in which they transact business. There is no existing or proposed federal regulation concerning continuing education for the registered representatives associated with either state-registered or federal investment advisers.

7. Comparison with rules in adjacent states:

Wisconsin, like every other state in the U.S., is a member of the North American Securities Administrators Association (NASAA), a national organization of state securities regulators. On November 30, 2020, the NASAA membership voted to adopt a model rule to require continuing education by investment adviser representatives. There are at least 12 states that are currently taking steps to adopt the model CE rule during the 2021 calendar year, with 2022 as the first year in which CE will be required. It is likely that virtually all other states will adopt the model rule thereafter. Substantively, the rules adopted by Wisconsin and adjacent states are likely to be identical, or nearly identical, since they are based on the NASAA model rule.

8. Summary of factual data and analytical methodologies:

The proposed changes are based on the NASAA model rules described above, as well as the experience of the Division of Securities staff in regulating IARs in this state. The nature of these changes did not demand or lend itself to analysis of field data.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis:

These proposed rule changes have no material effect on small businesses.

10. Effect on small business:

None.

11. Agency contact person:

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12. Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule order is conducted. Information as to the place, date and time of the public hearing will be published in the Wisconsin Administrative Register.

By mail: Matthew Lynch, Chief Legal Counsel, Department of Financial Institutions, PO Box 8861, Madison, WI 53708-8861.

By e-mail: DFIComments@dfi.wisconsin.gov

Via the department's website: <http://www.wdfi.org/statutes/ProposedRules.htm>

Rule Text

SECTION 1. DFI-Sec 11 is created to read:

DFI-Sec 11 Investment adviser representative continuing education.

DFI-Sec 11.01 **Definitions.**

- (1) "Approved content" means any materials that are approved by NASAA for use by an authorized provider as part of an educational program for an IAR.
- (2) "Authorized provider" means a person approved by NASAA to provide approved content.

- (3) “Broker-dealer” has the meaning given in s. 551.102 (4), Stats.
- (4) “Credit” means a unit of instruction in approved content that is at least 50 minutes long.
- (5) “FINRA” means the Financial Industry Regulatory Authority.
- (6) “Home state” means the state in which the IAR has its primary place of business.
- (7) “IAR ethics and professional responsibility content” means approved content that addresses an IAR’s ethical and regulatory obligations.
- (8) “IAR products and practice content” means approved content that addresses an IAR’s continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.
- (9) “Investment adviser representative” or “IAR” has the meaning given in s. 551.102 (16), Stats.
- (10) “NASAA” means the North American Securities Administrators Association, its designee, or a designee of its Board of Directors.
- (11) “Reporting period” means one 12-month period, as determined by NASAA, during which an IAR is required to meet the credit requirements specified in this chapter.

DFI-Sec 11.02 IAR continuing education, reporting requirements. (1) An IAR who complies with the registration requirements under ss. 551.404 and 551.406, Stats., shall complete all of the following during the IAR’s reporting period:

- (a) *IAR Ethics and Professional Responsibility Requirement.* At least six credits of IAR ethics and professional responsibility content, at least 3 of which shall be ethics content.
- (b) *IAR Products and Practice Requirement.* At least six credits of IAR products and practice content.

(2) An IAR’s initial reporting period begins on January 1 of the first calendar year beginning after the individual is required to comply with the registration requirements as described in ss. 551.404 and 551.406, Stats.

DFI-Sec 11.03 Agent of FINRA-registered broker-dealer compliance. An IAR who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA’s continuing education requirements is in compliance with the products and practice requirement of s. DFI-Sec 11.02 (b) for each applicable Reporting Period if the FINRA continuing education content meets all of the following criteria:

- (1) Focuses on compliance, regulatory, ethical, and sales practice standards.
- (2) Is derived from state and federal investment advisory statutes, rule and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.
- (3) Requires that its participants demonstrate proficiency in the subject matter of the educational materials.

DFI-Sec 11.04 Credentialing organization continuing education compliance. An IAR who holds a professional designation that qualifies the IAR for an examination waiver under s. DFI-Sec 5.01 (4) (d) is in compliance with s. DFI-Sec 11.02 if all of the following are true:

- (1) The IAR completes the credits of continuing education needed as a condition of maintaining the professional designation during the relevant reporting period.
- (2) The credits of continuing education completed by the IAR during the relevant reporting period are mandatory to maintain the professional designation.
- (3) The educational content provided by the credentialing organization during the relevant reporting period is approved content.

DFI-Sec 11.05 IAR continuing education reporting. An IAR is responsible for ensuring that an authorized provider reports the completion of the IAR's continuing education requirements described in s. DFI-Sec 11.02 to NASAA's course reporting database hosted by FINRA. The division of securities may access an IAR's continuing education status through FINRA.

DFI-Sec 11.06 No carry-forward. An IAR who completes continuing education credits during a reporting period in excess of the amount required under DFI-Sec 11.02 may not carry forward excess credits to a subsequent reporting period.

DFI-Sec 11.07 Failure to complete continuing education requirements; registration status. An IAR who fails to comply with this chapter by the end of a reporting period may renew in this state at the close of the calendar year, although the IAR will have the registration status of "CE Inactive", and shall maintain that status until the IAR completes and reports all required IAR continuing education credits for all reporting periods as required by this rule. An IAR who remains in CE Inactive registration status at the close of the next calendar year is not eligible for IAR registration or renewal of an IAR registration.

DFI Sec 11.08 Unregistered periods. An IAR who was previously registered under ss. 551.404 and 551.406, Stats., and became unregistered must complete all required IAR continuing education credits for all reporting periods that occurred between the time that the IAR became unregistered and the time that the individual registered again under ss. 551.404 and 551.406, Stats., unless the IAR takes and passes the examination described in DFI Sec 5.01 (3) or receives an examination waiver as described in s. DFI-Sec 5.01 (4) in connection with the subsequent application for registration.

DFI-Sec 11.09 Discretionary waiver. The administrator of the division of securities may waive any requirements of the rules in this chapter.

DFI-Sec 11.10 Home state. An IAR registered or required to be registered in this state who is registered as an IAR in the IAR's home state is in compliance with the continuing education requirements in this chapter if all of the following are true:

- (1) The continuing education requirements in the IAR's home state are at least as stringent as the requirements in this chapter.
- (2) The IAR is in compliance with the IAR's home state's IAR continuing education requirements.

SECTION 2.

DFI Sec 11.11 Effective date This rule shall take effect on the first January 1 following publication in the Wisconsin *Administrative Register* as provided in s. 227.22 (2) (intro.), Stats.