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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 441
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
FINANCE AND SECURITIES REGULATION

FILED

10/31/2022 4:47 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Securities update: Continuing Education

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/22/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/15/2022

TIME: 12:30 PM

OFFICER: TBD

ADDRESS: Labor & Industries Building

350 Winter St. NE

Basement, Conf Rm E

Salem, OR 97301

SPECIAL INSTRUCTIONS:

This is a hybrid meeting conducted in-person and virtually via Microsoft Teams:

Join on your computer, mobile app or room device

Meeting ID: 222 519 525 104

Passcode: WbxMbW

Or call in (audio only)

+1 503-446-4951,,900431862# United States, Portland

Phone Conference ID: 900 431 862#

NEED FOR THE RULE(S)

Since the last update to Oregon's Securities Law there have been changes at the federal level that impact Oregon's laws. Additionally technological and business model changes have prompted a number of policy statements by the North American Securities Administrators Association (NASAA) and new rules promulgated by the SEC and FINRA (the self-regulatory organization that oversees exchange markets and brokerage firms). Due to the large scope of the proposed rulemaking, the division is proposing to break up the proposed amendments into several smaller rulemakings. This proposed rulemaking is to adopt a continuing education requirement for investment advisor representatives in order to

ensure representatives are able to uphold their fiduciary obligations under the Investment Adviser Act of 1940.

Continuing Education: Broker Dealers are required by FINRA to obtain a certain amount of continuing education to ensure competence in the field. NASAA recently adopted a model continuing education rule for investment advisers. Under the model, administration of the rules is divided between four parties. A NASAA approved contractor approves the courses; FINRA tracks the hours through the IARD licensing database; NASAA provides resources; and the state provides the general communication oversight for licensees.

This proposed rulemaking would adopt the NASAA model rule. Under the model, investment advisers have 12 months to accumulate credits. If the proposed rule is adopted, adviser representatives would be required to accumulate credits prior to December 31, 2023. Currently, 12 states have adopted the model or are working toward a January 1, 2023 adoption.

Under ORS 59.285, the director has the authority to adopt rules necessary to carry out the provisions of the Oregon Securities Law if the director finds the action is "necessary or appropriate in the public interest or for the protection of investors."

This proposed rulemaking will help promote heightened regulatory compliance while also helping investment adviser representatives better serve Oregon investors by remaining knowledgeable of current regulatory requirements and best practices.

The Rule Advisory Committee (RAC) contains representatives from National Association of Investment and Financial Advisers (NAIFA), Oregon Bankers Association (OBA), Securities Industry and Financial Markets Association (SIFMA), Certified Financial Planners (CFP), it contained persons that represent investors, investment advisors and broker-dealers, as well as advisors using a special designation, and professionals that represent small issuers. Members of the advisory group represent businesses of various sizes including some that would be considered small businesses under ORS 183.310, as well as minority and women owned business. Members of the RAC also represent persons involved in cases regarding senior financial exploitation.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:
<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This proposed rule should not have a disparate impact on one group over another. There are provisions in the proposed rules that could improve the equitable outcomes. For example, the proposed rules would allow the director to waive the requirements of the rule in cases of demonstrated hardship. The RAC noted that this could benefit caretakers. Likewise, the waiver authority may assist persons that face obstacles to timely obtaining continuing education credits. The proposed rule may have a positive impact on traditionally underserved communities if education providers offered ethics courses exploring adverse treatment of particular groups.

FISCAL AND ECONOMIC IMPACT:

The department has, as of October 24, 2022, approximately 6,300 advisers that would be subject to the proposed rules. It is unknown at this time how many may already be subject to continuing education requirements due to their registration with FINRA, registration with another state requiring continuing education, or subject to continuing

education dues to a professional accreditation. The proposed rules apply to individual advisers rather than investment advisory firms. While a firm may pay for continuing education for its affected employees, it is unknown at this time how many of those firms would qualify as a small business under ORS 183.310.

Based on information received from NASAA and other jurisdictions that have adopted the requirement advisers will be subject to a reporting fee of \$3 per credit hour in addition to what an approved provider may charge. The range of costs seen in other jurisdictions is between \$5 and \$30 for classes and between \$60 to \$65 for a "package" of classes.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The department will likely see a nominal impact as it is required to send out communications regarding the continuing education requirements. There is likely to be a minor impact on workload as the department responds to questions and requests for waivers. Investment advisers will be impacted by the cost of continuing education. Investors may see a positive impact as investment advisers attend courses related to products and practices.

(2)(a) The proposed rules apply to individual advisers rather than investment advisory firms. While a firm may pay for continuing education for its affected employees, it is unknown at this time how many of those firms would qualify as a small business under ORS 183.310.

(2)(b) There will likely be an impact to advisers or advisory firms as they track their continuing education credits to ensure credits have been recorded and are adequate to meet the requirements of the proposed rules. Because FINRA will track hours automatically through the IARD and provide a FINpro portal for the purposes of viewing credit hours, the impact is likely to be nominal.

(2)(c) There will be an impact to advisers or advisory firms as they are required to obtain continuing education. The proposed rules require a total of 12 hours per year. An adviser or advisory firm would be impacted by the time away from serving clients. Advisers and advisory firms may be impacted as they track their continuing education credits to ensure credits have been recorded and are adequate to meet the requirements of the proposed rules. FINRA will track hours automatically through the IARD and provide a portal for the purposes of viewing credit hours.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Persons serving on the RAC represent small businesses either as a part of a professional organization or as clients. Some members of the RAC would meet the definition of a small business under ORS 183.310.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

441-175-0190, 441-175-0195

ADOPT: 441-175-0190

RULE SUMMARY: This rule defines key terms for OAR 441-175-0195.

CHANGES TO RULE:

441-175-0190

Definitions for Investment Adviser Continuing Education

As used in OAR 441-175-0190, the following definitions apply unless context requires otherwise.¶

(1) "Approved IAR Continuing Education Content" means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this rule. ¶

(2) "Authorized Provider" means a person that NASAA or its designee has authorized to provide continuing education content to meet the requirements of 441-175-0190. ¶

(3) "Credit" means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction. ¶

(4) "FINRA" means the Financial Industry Regulatory Authority. ¶

(5) "IAR Ethics and Professional Responsibility Content" means approved IAR continuing education content that addresses an investment adviser representative's ethical and regulatory obligations. ¶

(6) "IAR Products and Practice Content" means approved IAR continuing education content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry. ¶

(7) "Investment adviser representative" or "IAR" means an individual who meets the definition of "investment adviser representative" in ORS 59.015 and an individual who meets the definition of "investment adviser representative" under 17 CFR 275.203A3. ¶

(8) "Home state" means the state in which the IAR has its primary place of business. ¶

(9) "NASAA" means the North American Securities Administrators Association or a committee designated by its Board of Directors. ¶

(10) "Reporting Period" means one twelve (12) month period as determined by NASAA. An investment adviser representative's initial Reporting Period with this state commences the first day of the first full Reporting Period after the individual is licensed or required to be licensed with this state.

Statutory/Other Authority: ORS 59.285

Statutes/Other Implemented:

RULE SUMMARY: This rule contains the requirements that an investment adviser representative obtain 12 hours of continuing education each calendar year. It also lays out instances where continuing education obtained in another state or as a prerequisite for accreditation meet the requirements of the rule.

CHANGES TO RULE:

441-175-0195

Investment Adviser Representative Continuing Education

(1) Every investment adviser representative licensed or required to be licensed under ORS 59.175 must complete the following continuing education requirements each reporting period: ¶

(a) An investment adviser representative must complete six (6) credits of IAR regulatory and ethics content offered by an authorized provider, with at least three (3) hours covering the topic of ethics; and ¶

(b) An investment adviser representative must complete six (6) credits of IAR products and practice content offered by an authorized provider. ¶

(2) 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 subsection (1)(b) for each applicable reporting period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA: ¶

(a) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards; ¶

(b) 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; and ¶

(c) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials. ¶

(3) Credits for continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under OAR 441-175-0120(6) comply with subsections (1)(a) and (1)(b) of this rule provided:¶

(a) The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant reporting period; ¶

(b) The credits of continuing education completed during the relevant reporting period by the investment adviser representative are mandatory to maintain the credential; and¶

(c) The continuing education content provided by the credentialing organization during the relevant reporting period is approved IAR continuing education content. ¶

(4) Every investment adviser representative is responsible for ensuring that the authorized provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements. ¶

(5) An investment adviser representative who completes continuing education credits in excess of the amount required for the reporting period may not carry forward excess credits to a subsequent reporting period. ¶

(6) 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 who is CE inactive at the close of the calendar year following the "CE Inactive" renewal is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration. ¶

(7) The director may waive any requirements of this rule upon finding undue hardship.¶

(8) An investment adviser representative licensed or required to be licensed in this state who is registered or licensed as an investment adviser representative in the IAR's home state is considered to be in compliance with this rule provided:¶

(a) The continuing education requirements in the IAR's home state are at least as stringent as the NASAA Model Rule on investment adviser representative education; and¶

(b) The investment adviser representative is in compliance with the IAR continuing education requirements of their home state state. ¶

(9) An investment adviser representative who was previously licensed in Oregon and became unlicensed must complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative became unlicensed and when the person became licensed in this state again unless the investment adviser representative takes and passes the examination or receives an examination waiver under OAR 441-175-0120(6) in connection with the subsequent application for licensure.

Statutory/Other Authority: ORS 59.285

Statutes/Other Implemented: