April 16, 2020

Via Electronic Mail

Linda Cena
Chair
IAR CE Committee
North American Securities Administrators Association, Inc.
750 First Street, NE, Suite 1140
Washington, DC 20002

Re: Proposed Investment Adviser Representative Continuing Education Program

Dear Ms. Cena:

The Investment Adviser Association[1] (**IAA**) appreciates the opportunity to comment on the proposal by the North American Securities Administrators Association (**NASAA**) to establish a continuing education (**CE**) program for investment adviser representatives (**IARs**).[2] Our comments are intended as constructive feedback should NASAA determine to move forward with an IAR CE program.

The IAA is a not-for-profit association that represents the interests of investment adviser firms registered with the Securities and Exchange Commission (**SEC**). Our members manage assets for a wide variety of institutional and individual clients, including public pension plans, trusts, investment funds, endowments, and foundations. The proposed CE framework would apply to IARs associated with SEC- and state-registered investment advisory firms[3] who are registered in states that adopt IAR CE. Collectively, SEC-registered investment advisers employ

[1] The IAA is the largest organization dedicated to advancing the interests of SEC-registered investment advisers. For more than 80 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. For more information, please visit www.investmentadviser.org.

[2] *See* NASAA *Notice of Request for Public Comment Regarding a Proposed Investment Adviser Representative Continuing Education Program and an Implementing Model Rule under the Uniform Securities Acts of 1956 and 2002* (Feb. 12, 2020) (**Notice**), available at https://www.nasaa.org/wp-content/uploads/2020/02/IAR-CE-Public-Notice-and-Request-for-Comment-02-13-20.pdf.

[3] Our comments and recommendations are limited to SEC-registered investment advisers and their IARs. For purposes of this letter, therefore, unless stated otherwise, references to investment advisers or advisers relate solely to SEC-registered investment advisers.

approximately 312,471[4] out of the approximately 360,000 IARs.[5] Thus, the proposed CE framework would significantly affect our member firms that employ IARs. These professionals – as stated in the Notice – play an important role in the financial lives of millions of Americans by providing advice on important financial decisions such as retirement planning.[6] The IAA strongly supports the principle that IARs be competent and that they should maintain and grow their knowledge base, consistent with their fiduciary duty to their clients.

We broadly support the overarching goals of the proposed CE requirements and commend NASAA for issuing a thoughtful proposal that attempts to create an effective CE program that will maximize flexibility and leverage existing CE efforts to minimize duplication and compliance burdens. We agree that the proposed CE framework should be effective and valuable for IARs and not simply be a "check-the-box" compliance exercise. Among our recommendations, therefore, is that the final framework be principles-based and allow an IAR to pursue CE Content (defined below) that is relevant to the services provided by the IAR and that the IAR have maximum flexibility as to how to pursue that content. We urge NASAA to provide an opportunity for public input before it finalizes any eligibility criteria for approved CE Providers (**CE Providers**) and CE courses/content (**CE Content**).[7] We also strongly support exemptions for relevant professional designations and uniformity among the states that adopt IAR CE requirements.

We agree that minimizing unnecessary compliance burdens and costs – for individual IARs and the advisers that employ them – is a vital objective. In this regard, we are also recommending a streamlined process for allowing investment advisers to leverage existing in-house training and education programs and for allowing IARs to utilize these programs to satisfy CE requirements.

We believe that our recommendations are consistent with NASAA's stated goals and are intended to ensure that any CE program for IARs that NASAA may adopt appropriately

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[4] *2019 Evolution Revolution, A Profile of the Investment Adviser Profession* by the IAA and NRS, at 35, available at https://www.investmentadviser.org/publications/evolution-revolution.

[5] Notice at 5.

[6] A number of our member firms are either dually registered as investment advisers and broker-dealers or have related firms that are registered as broker-dealers and are members of FINRA and thus employ dually-registered IARs.

[7] We also urge NASAA to carefully consider the costs that would be associated with the proposed criteria relative to any benefits from creating a structured program for continuing education to IARs. As part of this cost/benefit analysis, NASAA should consider not only the costs that would be imposed on individual IARs but also on their employer investment advisers that elect to become CE Providers or otherwise determine to assist IARs in satisfying CE requirements (*e.g.*, paying for CE Content).

addresses both investor protection concerns and the potential impact on investment advisers and their IARs.

A. Background

According to the Notice, the overall goal of the CE program is to ensure that IARs receive CE on the securities business relevant to their duties and obligations for investment advisers and their clients. While IARs are not subject to specific CE requirements to maintain their state licenses or registrations, we strongly disagree with the implication that IARs of SEC-registered advisers are not presently receiving any type of education or training. In fact, we believe that the final CE framework should appropriately incorporate existing education and training IARs are currently receiving consistent with the regulatory framework under the Investment Advisers Act of 1940 (**Advisers Act**).

All adviser personnel are subject to a range of compliance requirements and already receive training on the laws, regulations, and fiduciary obligations applicable to advisers. Advisers must supervise and train their employees under both Section 203(e)(6) of the Advisers Act and the SEC's compliance program rule.[8] The statutory requirement to supervise advisory personnel under Section 203(e)(6) and the compliance program rule separately require advisers to adopt and implement written policies and procedures reasonably designed to prevent violation – by the adviser and its supervised persons – of the Advisers Act and the rules thereunder. Advisers are obligated to ensure appropriate supervision of their personnel, and as part of their compliance program requirements, generally require all personnel when hired, and at least annually thereafter, to receive training covering the firm's policies and procedures – including covering the firm's code of ethics and its fiduciary obligations to clients – and to certify that they understand those obligations. With respect to knowledge and competency related to investment products and strategies, many advisers also conduct topical training in areas relevant to the firms' advisory business, in addition to the more generalized compliance training.

Moreover, we believe an adviser's fiduciary duty inherently requires IARs employed by advisers to understand the investment products and strategies they are advising, including ensuring the suitability of such products and strategies for a particular client both individually and as part of a portfolio. Specifically, the duty of care under the fiduciary duty requires advisers to provide investment advice in the best interest of the client, based on the client's objectives. Advisers are also required to identify and explain certain risks involved in their investment strategies and the types of securities they recommend. An investment adviser needs to consider those same risks in determining whether their recommendations are in the best interest of each client. Thus, advisers and their IARs must understand and be able to explain methods of analysis

[8] *See* Rule 206(4)-7 under the Advisers Act.

and investment strategies and the associated risks of investment recommendations and must, therefore, ensure that they have the competence to do so.

While we agree that any CE framework should be clearly articulated and uniform, we believe that IARs presently receive a high level of education and training as discussed above that should be appropriately considered as an integral part of any new CE framework.

B. Discussion

1. SEC-registered advisers should be subject to a streamlined process for becoming a CE Provider.

According to the Notice, investment advisers meeting established criteria will be able to apply to become an approved CE Provider. We strongly agree with permitting advisers to become CE Providers. However, we urge NASAA to adopt a more streamlined process for SEC-registered advisers to become a CE Provider than that outlined in the proposal.

As proposed, NASAA would develop and implement clearly defined criteria to evaluate potential CE Providers and individual courses/content provided by such providers. Individuals or companies that are interested in becoming a CE Provider will be required to *periodically* submit an application and other relevant material, including a fee, to NASAA for approval. CE Providers will also be required to go through a similar review process by NASAA with respect to any individual CE Content they would like to provide (*i.e.*, requiring prior review for CE Content). NASAA is proposing to utilize a third-party vendor to review and approve CE Content annually, while CE Providers will be approved with an initial filing and *audited* to ensure compliance with NASAA policies and guidelines with course material submissions. Under the proposed framework, reporting and tracking for IAR CE would be done by the CE Provider. However, the obligation to ensure IAR CE is reported remains solely with the individual IAR.

The IAA makes the following comments and recommendations with respect to these requirements:

a) Consistent with its goals of minimizing duplicative CE requirements, compliance burdens, and costs, NASAA should explicitly recognize the training and education of IARs provided to them by their SEC-registered adviser employers under the Advisers Act framework;

b) SEC-registered advisers that provide relevant training and education to their IARs under this framework should be approved as CE Providers upon notification to NASAA and without payment of a fee;

c) Since SEC-registered advisers are subject to ongoing regulatory obligations under the Advisers Act framework, they should not be required to be audited by a third

party; indeed, it would be inconsistent with the National Securities Markets Improvement Act of 1996 (**NSMIA**)[9] for states to require such an audit;

d) NASAA should streamline the review and approval process for CE Content to make it more workable;

e) NASAA should publish proposed eligibility requirements for CE Providers and CE Content for public comment before it adopts them; and

f) NSMIA does not permit states to impose any reporting, tracking, or recordkeeping obligations on SEC-registered advisers, and NASAA thus should not include such a requirement for these advisers.

a) NASAA should explicitly recognize the training and education of IARs provided to them by their SEC-registered adviser employers under the Advisers Act framework.

As outlined above, investment advisers already provide relevant training and education to IARs and do so in a variety of ways. As with their compliance programs generally, advisers have flexibility to determine specific content that is relevant to their business and client base as well as the method of delivery (*e.g.*, in-person, webinars, e-learning courses, and conferences). In some cases, the training provided to IARs may be tailored to that specific IAR (*e.g.*, investment professionals and sales professionals may be trained differently based on their role or their client base). Advisers may choose to conduct training in-house, including developing training materials internally or utilizing externally-developed content (*e.g.*, content prepared by compliance consultants or attorneys). The adviser remains ultimately responsible for the delivery and content.

Leveraging existing training and education programs offered by advisers would substantially reduce duplication and minimize costs to both IARs and advisers that elect to assist IARs in satisfying their CE requirements. Moreover, we believe that the regulatory objectives and goals relating to the ongoing training presently provided by advisers is in alignment with NASAA's stated goals of providing timely, relevant, and substantive continuing education to IARs. In our view, NASAA should explicitly recognize and encourage SEC-registered advisers to become CE Providers for IARs.

[9] Pub. L. No. 104-290.

b) SEC-registered advisers that provide relevant training and education to their IARs should be approved as CE Providers upon notification to NASAA and without payment of a fee.

For investment advisers, providing training and education to their employees is a regulatory obligation and business imperative requiring substantial firm resources and money. It is not a source of revenue for these firms. We believe that the proposed procedural requirements and fees for achieving and maintaining CE Provider status would impose significant and unnecessary burdens and costs on investment advisers without a compelling justification.

The proposal would require investment advisers to initially submit an application, fee, and other relevant material to and be "audited" by NASAA (or a third party retained by NASAA) in order to become a CE Provider. The Notice also suggests that an adviser would have to re-apply *periodically* to NASAA in a similar manner to maintain its status as a CE Provider. While it is unclear from the Notice as to how regularly this process would be required, it would appear to represent an ongoing obligation requiring a commitment of additional time and resources.

As discussed above, the robust Advisers Act framework makes advisers responsible for the supervision of their IARs, including an obligation to ensure that their IARs understand their ethical and fiduciary responsibilities as well as competency to advise clients with respect to the investments and strategies they recommend. NASAA should recognize that SEC-registered advisers that choose to provide education and training to their IARs are sufficiently incentivized to do so in order to satisfy their regulatory responsibilities subject to SEC oversight. Accordingly, we urge NASAA to adopt a streamlined process for SEC-registered advisers to become CE Providers that would permit such advisers to notify NASAA of their intent to provide CE to their IARs. NASAA could require advisers to submit such a notification on a periodic basis, although we believe an annual requirement would be unnecessarily burdensome.

Given that investment advisers do not generate income from their internal training of their employees and that such training typically involves significant cost for advisers, we do not believe that advisers should be required to pay a fee to NASAA to be considered CE Providers. The streamlined notification process that we recommend should in any event reduce costs to NASAA associated with managing the CE program and obviate the need to impose a fee on advisers for them to be considered competent to train their IARs.

c) It would not be appropriate for NASAA to audit SEC-registered advisers to determine whether they are competent to be a CE Provider.

The Notice suggests that NASAA plans to use a third-party vendor to audit CE Providers to ensure they are in "compliance with NASAA policies and guidelines with course material submissions." We strongly object to this proposed requirement.

We do not believe it would be consistent with the division of jurisdiction under NSMIA for NASAA to audit SEC-registered advisers as a condition for them to be approved as CE Providers.[10] While states may require the registration, licensing, or qualification (and related payment of state filing fees) of any individual IAR with a place of business in the state, and also require the filing with the state of documents filed with the SEC (but only for notice purposes), states may not adopt any regulations, interpretations, or guidance that would have the effect of substantively regulating SEC-registered investment advisers. States also may not examine SEC-registered advisers. Including an audit by NASAA (or third-party vendor hired by NASAA) as a condition for approval of an SEC-registered adviser as a CE Provider would, in our view, be an effort to do indirectly what is not permitted to be done directly and would be inconsistent with the principles underlying NSMIA.[11] We also do not believe that SEC-registered advisers would need to be audited in order to maintain their status as CE Providers since, as long as they are registered with the SEC, they are subject to the ongoing regulatory obligations under the Advisers Act framework discussed above.

d) NASAA should streamline the review and approval process for CE Content to make it more workable.

Under the proposal, CE Providers would be required to go through another review process (including paying a fee) with respect to any individual CE Content they would like to provide. As proposed, content would need to be approved prior to being offered, and would need to be approved on an annual basis. We believe that this process is too cumbersome to be workable in practice and recommend that it also be streamlined with respect to CE Content that is provided by SEC-registered advisers.

First, it may not always be feasible for advisers to seek and obtain approval for CE Content before being able to provide training on a particular topic. While advisers typically provide training on an ongoing scheduled basis, often issues may arise requiring *ad hoc* or immediate training and IARs should not have to obtain duplicative training simply because their adviser employer determined that it was not practicable to wait for NASAA approval before providing important training. The proposed requirements would be unnecessarily restrictive for

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[10] *See also Rules Implementing Amendments to the Investment Advisers Act of 1940*, Rel. No. IA-1633 (May 14, 1997) (**1997 Release**). We also take issue with the statement in the Notice that "Investment adviser representatives are regulated by, and generally must register with, state securities regulators pursuant to state securities laws." While IARs associated with SEC-registered advisers generally must register with the states in which they do business, they are not regulated by those states.

[11] We would also strongly object if the third party NASAA determines to retain to conduct any CE Provider audit and/or to review and approve CE Content is FINRA. The IAA has long opposed the idea that FINRA should, in any way, oversee SEC-registered advisers, which are subject to direct SEC oversight and which do not have a self-regulatory organization. FINRA does not and should not have the authority to audit advisers.

advisers that seek to provide timely, relevant, and substantive training pursuant to well-established regulatory obligations.[12] We recommend that advisers should have the option of (i) seeking pre-approval of content, or (ii) submitting a notice informing NASAA of their intent to provide training to IARs that adheres to NASAA's established criteria for CE Content and then later submitting the content for review.[13] If the content is not approved in the after-the-fact review, we recommend that NASAA provide a grace period for IARs who count such content towards their required CE, as we discuss below.

Second, we also believe that annual approval of CE Content would be unnecessarily burdensome. Instead, we would generally support that all new CE Content be approved, but suggest that CE Content that has already gone through the approval process should not need to be resubmitted until the earlier of three years or a change in applicable regulatory requirements. This does not mean that advisers would not update their training materials in the interim, as appropriate, but it would meaningfully reduce the compliance and operational burden on advisers, many of which provide training on a very large range of topics, while still achieving NASAA's goal of ensuring high quality CE Content.

Finally, we also request that NASAA not charge advisers a fee for submission for approval of the CE Content they plan to provide. As noted above, advisers provide education and training to their IARs as part of their business. Their CE Content does not produce revenue for them; indeed, it is a substantial expense for advisers. We do not believe that they should be charged an additional fee for training their employees.

e) NASAA should publish its proposed CE Provider and CE Content eligibility criteria for public input.

We appreciate NASAA's efforts to collect input from stakeholders to inform the proposal. The proposal does not, however, propose eligibility criteria either for CE Providers or for CE Content and it also does not consider the direct and indirect costs associated with the proposed program. We believe it is critical for stakeholders to be able to react to eligibility criteria before they are finalized. We thus urge NASAA to publish the criteria it develops so that

[12] We need only look to the current COVID-19 situation for an example of the need for advisers to provide prompt and meaningful training to their employees on a myriad of important issues.

[13] As recommended above, we would also suggest that the criteria for CE Content explicitly incorporate the types of education and training advisers already provide to IARs and be generally consistent with adviser regulatory and fiduciary obligations, including types of services offered.

it can consider public input. We also urge NASAA to include a cost/benefit analysis in its publication to help inform public comments.

f) NSMIA does not permit states to impose any reporting, tracking, or recordkeeping obligations on SEC-registered advisers, and NASAA thus should not include such a requirement for these advisers.

The proposed reporting and tracking obligations under the CE framework would raise significant concerns as applied to investment advisers, beyond the additional costs and compliance burdens that would be imposed. As proposed, the IAR CE model rule places the obligation to complete and report CE on the IAR. Although the Notice states that "[b]ecause the obligation to complete CE falls only to the IAR as a part of the registration/renewal process, there is no obligation on an investment adviser to create or maintain any new or additional records," it also states that reporting and tracking for IAR CE would be done by the CE Providers: "To facilitate the reporting and tracking of IAR CE, NASAA-approved course providers would be given access to IARD either directly or via an intermediate system through which they would be required to report when an IAR has completed an approved course or program. Under the proposed framework, there would be a small fee charged to the content providers to report IAR CE completion on a per hour and per individual basis."

This reporting obligation would effectively impose an obligation on investment advisers that elect to be a CE Provider to have procedures in place to track CE Content delivery to IARs and report such content delivery to NASAA. For tracking and reporting to be effective and accurate, advisers that would like to become CE Providers would also have to maintain additional records. Because these requirements would amount to indirect substantive regulation of SEC-registered advisers, they would be contrary to NSMIA. While advisers may undertake to track and report CE on behalf of their IARs, we do not believe that NASAA has the authority to require that they do so as a condition of permitting them to be CE Providers.[14]

[14] The obligation to keep track of and report CE should ultimately be the IAR's. We note that this is consistent with how states generally administer CE requirements for attorneys. *See, e.g.*, the State of Connecticut's continuing legal education requirements: "You keep track of the courses and hours that you take each year, maintain records to prove compliance with the rule for seven years (*see* Practice Book §2-27A(d)), and certify on your annual registration form that you have complied with the rule or are exempted from compliance." https://jud.ct.gov/mcle/MCLE_FAQs.htm#Q6.

2. The final CE requirements for IARs should be principles-based, flexible, and reasonable, and should permit IARs to tailor their education and training to their specific needs.

The proposal contains several specific requirements for IARs, including that they complete 12 total hours of CE per year – six hours focused on Products and Practice and six hours focused on Ethics and Professional Responsibility. It also requires IARs to ensure that their CE is completed and reported and, if it is not, it provides that their registration will become inactive at the close of the applicable calendar year. The proposal would not permit a grace period and also would not permit any CE to be carried forward year-to-year. The proposal contemplates providing credit for certain certification programs and for FINRA dual-registrants. It asks for comment on each of these aspects of the proposal.

In general, the IAA recommends that the final CE framework not be highly prescriptive but rather be principles-based and flexible and permit IARs to tailor their education and training to their specific needs. Consistent with NASAA's stated objectives, it also should not be duplicative and should ensure that IARs receive appropriate credit for CE they already receive, including the adviser education and training discussed above and, for example, relevant CE provided to dual-registrants under FINRA requirements.

It should also not be onerous for IARs to satisfy the program's requirements. We strongly recommend that IARs be given broad latitude in satisfying CE requirements by being able to select CE Content that is relevant to their specific needs and by being able to "count" CE that they may already receive for other purposes. The CE framework should also permit IARs to receive CE in a wide variety of ways, such as the employer-based in-house training discussed above, webcasts, podcasts, online learning, conference sessions, or certain self-study activities (*e.g.*, reading books and journal articles[15]). At a minimum, NASAA should clarify that CE requirements will be able to be satisfied via online courses and education (*i.e.*, it will not require in-person CE). We also recommend that NASAA outline a simple and workable process whereby IARs may receive approval of CE Content where there may not be an approved CE Provider (such as in the case of self-study activities).

[15] For example, we note that under the CE program being proposed by the CFA Institute, CE credit can be earned through a variety of self-study activities such as reading books and journal articles. *See Continuing Professional Development Guidebook for CFA Institute Members*, available at https://www.cfainstitute.org/-/media/documents/support/membership/ce-guidebook.ashx.

We make the following additional specific comments and recommendations:

a) NASAA should not divide the CE requirements into topical categories with prescribed CE credit hours but should instead allow greater flexibility for IARs to tailor their CE to their own situations;

b) The proposed required CE requirement of 12 hours per year is unreasonably high; NASAA should instead require either six hours of CE per year or 12 hours over two years, with a grace period and carry-forward allowed; and

c) IARs holding certain professional designations should be exempt from the proposed IAR CE obligations.

a) NASAA should not divide the CE requirements into topical categories with prescribed CE credit hours but should instead allow greater flexibility for IARs to tailor their CE to their own situations.

Under the proposal, IARs would be required to complete 12 total hours of CE each year. Six of these hours would need to focus on Products and Practice and six on Ethics and Professional Responsibility. The Products and Practice component relates to investment products, strategies, standards, and compliance practices relevant to the investment advisory industry. The Ethics and Professional Responsibility component relates to duties and obligations owed to clients by the IAR, including, but not limited to, issues related to the fiduciary duty owed to each client. According to the Notice, these topics were derived from the test specifications for the Series 65 and Series 66 Exams.

We recommend that the CE requirements, including CE credit hours, not be divided into these specified topical components. Since SEC-registered advisers' businesses (and thus areas in which IARs need to be competent) vary widely, we believe that there should not be a one-size-fits-all content requirement. The CE topics relevant to a particular IAR should be appropriate for the IAR's business (*i.e.,* they should take into account the specific services, strategies, and activities engaged in by that IAR). Instead of specifying these two categories, the CE program should broadly require that the CE that IARs receive should, at a minimum, address training on the regulatory requirements applicable to the IAR as well as on the fiduciary duty obligations owed by all IARs to their clients,[16] but should then permit IARs to conduct a "needs analysis" to determine the appropriate subject matter in light of the advisory services they offer and tailored

[16] We also believe that specifying a separate "ethics" component with a specified number of CE credit hours is unnecessary because issues relating to ethics are frequently part of training IARs receive in other topical areas.

to their firm's business and clients.[17] By way of example, issues relating to individual clients' taxable accounts may be different from those of retirement plan clients and IARs dealing with these different types of clients will have different CE needs.

b) NASAA should lower the amount of required CE to a more reasonable six hours per year or 12 hours over two years, and should allow a grace period and carry-forward of hours.

We also recommend that NASAA reconsider the general IAR CE requirements regarding the number of CE hours and the timing. Specifically, we believe that the requirement to complete 12 total hours of CE annually may be excessive.[18] We recommend that IARs instead be required to complete six total CE hours annually. Alternatively, we suggest 12 total CE hours every two years. We note that advisers routinely conduct or require their IARs to receive training that may not fit within NASAA's CE program but that is nevertheless important and time-consuming, *e.g.*, training related to cybersecurity, privacy, and sexual harassment.

We also believe that IARs should be permitted to carry forward IAR CE from year to year. In our view, NASAA should allow IARs reasonable flexibility to complete their CE requirements at a time that is convenient for them. It may be that an IAR has more time in a given year for additional training than in another year. We also think that an important lesson from the current COVID-19 situation is that a robust framework should account for unforeseen disruptions to businesses and peoples' routines.

For the same reasons, we recommend that the model rule incorporate a reasonable grace period for IARs who are unable to complete the required CE in any given year (or two years, if the requirement extends over two years). This would allow for unforeseen events and would also allow an IAR more time if an adviser submits CE Content after the fact and the content is not approved, as discussed above.

We believe that our recommendations in this section strike an appropriate balance between ensuring that IARs are receiving adequate CE and minimizing compliance burdens and costs for IARs and advisers that elect to assist IARs in satisfying their CE requirements.

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[17] This approach is similar to the more flexible approaches to CE adopted by the Municipal Securities Rulemaking Board for municipal advisors and by FINRA for associated persons of broker-dealers. For example, MSRB Rule G-3 does not require a minimum hour requirement for a municipal advisor's continuing education program, but rather requires that, at a minimum, each municipal advisor shall at least annually evaluate and prioritize its training needs, develop a written training plan, and conduct training annually on municipal advisory activities.

[18] We note that in addition to training and education regarding advisory-related business matters, firms also often provide training in other areas (*e.g.*, relating to employment or human resources) that may not count towards satisfying the proposed CE requirements.

c) IARs holding certain professional designations should be exempt from the proposed IAR CE obligations.

NASAA requests comment on whether "IARs holding professional designations [should] be exempt from any – or all of – the proposed IAR CE obligations." We believe such IARs should be exempt from all of the proposed obligations. The Notice indicates that a significant number of existing CE for IARs comes from professional designations. Moreover, NASAA historically has recognized certain professional designations for waivers of the Series 65 examinations.[19] Under the proposed framework, CE completed pursuant to a professional designation would be able to be used to satisfy an individual's IAR CE obligation so long as the course/content and CE Provider have been reviewed and approved by NASAA on a case-by-case basis.

Rather than evaluating individual course/content related to certain professional designations, we recommend that NASAA evaluate the existing professional designations that have been provided Series 65 waivers, including any certification and CE requirements, to determine whether they are relevant to the CE of IARs and should thus be deemed to satisfy an individual's IAR CE as contemplated by the final model rule. We strongly recommend that the final CE model rule explicitly provide an exemption for IARs who obtain these professional designations and are in good standing with the certifying organization.[20] We also recommend that the final model rule specify a procedure by which NASAA could determine on a going forward basis other professional designations that should similarly be entitled to an exemption. We believe that imposing duplicative CE requirements on IARs who receive certain robust professional designations is unnecessary to achieve NASAA's stated goals of ensuring that IARs receive continuing education on the securities business relevant to their duties and obligations.

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[19] As stated in the Notice, five professional designations currently qualify for waivers of the Series 65 examination under NASAA Model Rule USA 2002 412(e)-1(d): CFP, CFA, ChFC, CIC, and PFS.

[20] We would expect that, at a minimum, NASAA would conclude that IARs who have received designations as Chartered Financial Analysts and Certified Financial Planners would be exempt from the IAR CE requirements. We note also that, absent an exemption, the final model rule would also have to account for the fact that certain designations have certification requirements that operate on multi-year cycles, while the proposed requirements of IAR CE would be annual.

We appreciate the opportunity to provide comments on the proposed CE program for IARs. While we appreciate the two-week extension NASAA provided for submission of comments on the proposal, we do not believe that extension was sufficient. Given the importance of our obtaining member input into our comments and in light of the challenges we and our members are facing from the unprecedented COVID-19 disruption, we believe that leeway for late responses to the CE proposal is necessary and appropriate.[21]

We look forward to continuing to engage constructively with NASAA as it develops the CE program. Please do not hesitate to contact the undersigned at (202) 293-4222 if you have any questions or we can provide additional information.

Respectfully,

/s/ Gail C. Bernstein

Gail C. Bernstein
General Counsel

[21] Indeed, NASAA has recognized the need for regulators and industry participants to focus on COVID-related issues at this time and exercise care in proceeding with more routine rulemakings without adequate time for public input. *See* Written Remarks of NASAA President Christopher W. Gerold at the SEC Investor Advisory Committee Meeting (Apr. 2, 2020).