

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Amendment)

808 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents.

RELATES TO: KRS 292.310, 292.331(3), 292.337, 292.500(3)

STATUTORY AUTHORITY: KRS 292.331(3), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.331(3) authorizes the commissioner to require an examination as evidence of knowledge of the securities business as a condition of registration. KRS 292.500(3) authorizes the commissioner to classify securities persons and matters within his jurisdiction and prescribe different requirements for different classes. This administrative regulation requires an individual who advises the public regarding securities to successfully complete a written examination that demonstrates knowledge of the requirements of the securities laws and exempts certain individuals from the examination requirement. This administrative regulation also sets the examination requirements for individuals who participate in the FINRA Maintaining Qualifications Program (FINRA MQP) pursuant to FINRA Rule 1240(c), provided the individual elects to participate in the NASAA Examination Validity Extension Program (NASAA EVEP).

Section 1. Except as provided in Section 2 of this administrative regulation, an individual, including an investment adviser or an investment adviser representative, who advises the public regarding the value of a security or the advisability of investing in, purchasing, or selling a security shall demonstrate competence in the law of securities by providing the commissioner with proof of obtaining a passing score, as determined by the Financial Industry Regulatory Authority (FINRA), on one (1) of the following examinations:

- (1) The Uniform Investment Advisor Law Examination (Series 65 examination); or
- (2)
 - (a) The General Securities Representative Examination (Series 7 examination); and
 - (b) The Uniform Combined State Law Examination (Series 66 examination).

Section 2. The following individuals shall not be required to take and pass the examination:

- (1) An individual who registered as an investment adviser or investment adviser representative in a state on or before January 1, 2000 and has been continuously registered since that date, except that the commissioner may require the examinations identified in Section 1 of this administrative regulation for an individual found to have violated a state or federal securities law as a condition of continued registration;
- (2) An individual who currently holds one (1) of the following professional designations and is in compliance with all continuing education and other requirements of good standing for the designation:
 - (a) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;
 - (b) Chartered Financial Consultant (ChFC) issued by The American College, Bryn Mawr, Pennsylvania;
 - (c) Personal Financial Specialist (PFS) granted by the American Institute of Certified Public Accountants;
 - (d) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research; or
 - (e) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or
- (3) An individual who was registered as a broker-dealer agent prior to January 1, 1988, has been continuously registered since that date and has had no reportable disclosures on

Form U-4, as incorporated by reference in 808 KAR 10:010.

Section 3. An individual not required to take and pass any examination because of holding a designation specified in Section 2(2) of this administrative regulation may be required to take the examination if that individual fails to maintain the designation in good standing.

Section 4. A registered investment adviser shall not employ an individual as an investment adviser or as one who represents an investment adviser unless that individual has complied with this administrative regulation.

Section 5. To register in Kentucky as a broker-dealer or agent, an individual or a principal, if the applicant is an entity, shall:

- (1) Pass the appropriate examination, which depending on the proposed business, shall be one (1) of the following FINRA examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, 62, or 79; and
- (2) Pass the North American Securities Administrators Association (~~{}NASAA{}~~) Series 63 or Series 66 examination.

Section 6.

(1) Except as provided in subsections (2) and (3) of this section, an ~~An~~ individual who has been unregistered for a period of time in excess of two (2) years shall be required to take and pass the examinations specified in Sections 1 and 5 of this administrative regulation unless the commissioner grants a waiver for good cause shown in response to a written request by the investment adviser, broker-dealer, or issuer which the individual will represent.

(2) An individual who has been unregistered as an agent in any state for a period of time in excess of two (2) years but less than five (5) years, who has elected to participate in the FINRA Maintaining Qualifications Program (FINRA MQP) pursuant to FINRA Rule 1240(c), and whose FINRA qualifying examinations remain valid pursuant to participation in the FINRA MQP, shall be deemed in compliance with the examination requirements of Section 5 of this administrative regulation, provided the individual elects to participate in the NASAA Examination Validity Extension Program (NASAA EVEP) within two (2) years of agent registration termination; and

(3) An individual who terminates his or her registration as an investment adviser representative may maintain the validity of his or her Series 65/Uniform Investment Adviser Law Examination, or the investment adviser representative portion of the Series 66/Uniform Combined State Law Examination, as applicable, without being employed by or associated with an investment adviser or a federally covered investment adviser for a maximum of five years following the termination of the individual's investment adviser representative registration, provided the individual:

(a) Previously passed the examination for which the individual seeks to maintain validity under this rule;

(b) Was registered as an investment adviser representative for at least one (1) year immediately preceding the termination of the investment adviser representative registration;

(c) 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;

(d) Elects to participate in the NASAA EVEP under this paragraph within two (2) years from the effective date of the termination of the investment adviser representative registration;

(e) Does not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective; and

(f) Completes annually, no later than December 31 of each calendar year in which the person participates in the investment adviser representative NASAA EVEP:

1. Six (6) credits of investment adviser representative continuing education Ethics and Professional Responsibility Content offered by an authorized provider, including at least three (3) hours covering the topic of ethics; and

2. Six (6) credits of IAR CE Products and Practice Content offered by an authorized provider;

(4) An individual who elects to participate in NASAA EVEP must complete the credits required by subsection (3)(f) of this section for each calendar year that elapses after the individual's investment adviser representative registration became ineffective, regardless of when the individual elects to participate in NASAA EVEP.

(5) An individual who complies with the FINRA MQP under FINRA Rule 1240(c) shall be deemed in compliance with subsection (3)(f)2. of this section.

MARNI R. GIBSON, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 12, 2024 at 1:15 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 20, 2024, at 9:00 a.m., at 500 Mero Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact persons.

CONTACT PERSON: Gary Stephens, Assistant General Counsel and Marni Gibson, Commissioner, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, phone 502-782-9046, fax 502-573-8787, email Gary.Stephens@ky.gov and Marni.Gibson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation requires an individual who advises the public regarding securities to successfully complete a written examination that demonstrates knowledge of the requirements of the securities laws and exempts certain individuals from the examination requirement.

(b) The necessity of this administrative regulation:

This administrative regulation provides guidance to individuals who have registered with the agency regarding compliance with examination requirements and maintaining qualifications for compliance purposes and registration.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 292.331(3) authorizes the commissioner to require an examination as evidence of knowledge of the securities business as a condition of registration.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation will require an individual, including an investment adviser or an investment adviser representative, who advises the public regarding the value of a security or the advisability of investing in, purchasing, or selling a security shall demonstrate competence in the law of securities by providing the commissioner with documentation of proficiency to provide securities-related advice for clients and to maintain his or her registration as needed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This administrative regulation amendment provides guidance for individuals to participate in the FINRA Maintaining Qualifications Program ("FINRA MQP") pursuant to FINRA Rule 1240(c) provided the individual elects to participate in the NASAA Examination Validity Extension Program ("NASAA EVEP"). The amended language provides guidance as to the requirements to qualify for this extension to required registration practices.

(b) The necessity of the amendment to this administrative regulation:

This amended language allows for proscribed steps an adviser must take in order to maintain the qualifications necessary to renew a registration beyond the existing two-year window.

(c) How the amendment conforms to the content of the authorizing statutes:

The amended language allows for proscribed steps to be taken in order to maintain registration and be in compliance with current statutes.

(d) How the amendment will assist in the effective administration of the statutes:

This amended language confirms with FINRA rule exception requirements for registration and permits the same exception, creating uniformity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Broker-dealer agents and investment adviser representatives who leave the industry and wish to return without re-taking qualifying examinations for a limited period of time are affected. The number is unknown as it is dependent on those leaving the industry and electing to enter the program; however, all broker-dealer agents and investment adviser representatives would be eligible.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

This amendment provides an optional program for registered individuals to elect to extend their examinations beyond the current two-year window. To comply, individuals elect to enter the program, pay the fee established by the nationwide registration system, and maintain any necessary continuing education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The cost to the registrant will be a minimal, one-time fee to enter the program, which is paid to the nationwide registration system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Registered broker-dealer agents and investment adviser representatives will be allowed to maintain a basic level of qualifications for their registrations should they decide or need to leave the industry for a period of time beyond the current two-year limitation, enabling easier re-entry into the industry.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Costs to implement this regulation amendment are minimal, if any, as the processes are already incorporated into the nationwide registration system.

(b) On a continuing basis:

Costs for subsequent years are minimal, if any, as the processes are already incorporated into the nationwide registration system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Current Department resources.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

The Department does not anticipate a need to increase fees or funding to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

Applicants for the program pay a fee for the entry into the program on the nationwide registration system; however, this fee is not charged by the state of Kentucky, and Kentucky receives no increase in revenue from the fee.

(9) TIERING: Is tiering applied?

Tiering was not applied. The regulation did not require tiering to be applied to implement.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 292.500(3), KRS 292.331(3), KRS 292.310, KRS 292.337

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Department of Financial Institutions, Division of Securities

(a) Estimate the following for the first year:

Expenditures:None

Revenues:Minimal

Cost Savings:Minimal

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The effect on overall revenue for the Department will be minimal and will not have a substantial impact on the Department's budget.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures:None

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The amended regulation should have no financial impact on state or local government agencies.

(4) Identify additional regulated entities not listed in questions (2) or (3):

The amended regulation is not expected to affect additional regulated entities.

(a) Estimate the following for the first year:

Expenditures:None

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The amended regulation is not expected to impact costs for additional regulated entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

The costs will be minimal to the registrant, but any costs that are incurred for maintaining basic continuing education requirements will be determined by the time, manner, and medium in which the registrant participates in the required program components.

(b) Methodology and resources used to determine the fiscal impact:

This fiscal impact was determined by reviewing the requirements to comply with the amended regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

This regulation will not have a major economic impact on the regulated entities or the Department.

(b) The methodology and resources used to reach this conclusion:

The expected costs and revenues were reviewed.