



NASAA

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December 13, 2010

Jennifer B. McHugh
Senior Advisor to the Chairman and,
Acting Director Division of Investment Management
U.S. Securities Exchange Commission
100 F Street, NE
Washington, D.C.

RE: Investment Adviser Qualification Examination Program

Dear Ms. McHugh:

In a letter dated November 16, 2010, Thomas Selman, executive vice president for regulatory management at FINRA, submitted information to the Commission in response to what Mr. Selman described as inquiries from the Commission staff "about the sufficiency of current qualification requirements for investment adviser personnel." Specifically, Mr. Selman's letter was accompanied by a memo wherein staff at FINRA offered their "thoughts on how an investment adviser personnel qualification program might be developed and implemented." This letter delineates the comprehensive scope and sufficiency of current testing standards and the reasons why the FINRA proposal is not a worthwhile expenditure of Commission resources.

As explained in the report submitted to the Commission by NASAA pursuant to the Section 913 Study, to register as an investment adviser representative individuals must satisfy certain competency requirements.¹ Generally individuals can meet the state competency requirements by obtaining a passing score on the Series 65 examination, the Series 7 and 66 examinations, or otherwise be qualified by virtue of holding one or more recognized credentials.² The Series 65 and 66 were developed by NASAA in consultation with representatives from the investment adviser industry and experts in the development of qualification examinations.

¹ See, *State Securities Regulators Report on Regulatory Effectiveness and Resources with Respect to Broker-Dealers and Investment Advisers*, pp. 6-7.

² When the Series 65 exam was being developed, NASAA reviewed the course materials and exam content for several designations. If the material and exam required to earn the designation was comparable to the Series 65 content, NASAA recommended states allow individuals holding that designation to become registered as an investment adviser representative without taking the Series 65. Five designations - Certified Financial Planner, Chartered Financial Analyst, Chartered Financial Consultant, Personal Financial Specialist, and Chartered Investment Counselor - were found to have met that criteria. Other designations have requested to be included on the list, but have been found to be deficient in the coverage provided of the required content. The designations are not really an exemption from the Series 65 requirement, but are an alternative means of meeting the knowledge requirement for licensure as an IAR.

An individual who seeks registration solely as an investment adviser representative may satisfy the competency requirements by achieving a passing score on the Series 65 or by holding one or more approved designations.³ On page three (3) of the memo accompanying Mr. Selman's letter FINRA has provided the Commission with examples of the items it believes should be included on an investment adviser qualification examination. A comparison of these items with the content outline of the Series 65 demonstrates that there is significant overlap.⁴ In short, all but four items on the FINRA list are covered on the Series 65. The items not covered are more generally related to the operations of broker-dealer firms.

Furthermore, and more relevant to the qualification of investment adviser representatives, the Series 65 covers many more areas that are not included in the list provided by FINRA. FINRA's submission did not include, for example, tax considerations, retirement plans, ERISA issues, special accounts such as 529 plans, and state registration and post registration requirements.

The NASAA competency examinations remain a vital tool in assessing the qualifications of individuals who are seeking registration as investment adviser representatives. Beginning in 1998, NASAA undertook a complete revision of the Series 65.⁵ The process began with a job analysis in which registered investment adviser representatives were surveyed to determine the knowledge and skills that were essential for a person entering the profession. The survey was used to revise the content outline for the examination, which provided the basis for the drafting of the questions for the test. NASAA relied heavily on industry participation throughout the development process. In 2009, NASAA undertook a significant revision of the content of this and other examinations which followed the same procedure of surveying the industry and then using the survey results to develop the content outline and test questions. NASAA continues to involve both practitioners and compliance personnel in developing and maintaining the examinations to ensure the examinations reflect the current needs of the industry.

While a continuing education requirement for registered representatives is understandable given the highly prescriptive nature of regulating these individuals and their business practices, the necessity of such a requirement should be carefully studied before it is determined whether it is appropriate for investment adviser representatives in light of their fiduciary duty. As you know, investment advisers and investment adviser representatives are subject to a fiduciary duty while registered representatives are subject to a suitability standard. The regulation of investment advisers is a principles based structure centered on the requirement that an investment adviser act in the best interest of its client. Regulation of registered representatives, on the other hand, is modeled on a lesser standard supplemented by rules. For this precise reason, the current continuing education program applicable to registered representatives is inapplicable and could not serve as a model for any proposed continuing education program for investment adviser representatives.

It is clear that given the current rigorous testing standards applicable to investment adviser representatives and the heightened standard of care governing advisers there is simply no good reason to waste the Commission's limited resources on overseeing the development or implementation of any additional qualification examinations for investment adviser personnel.

3 An individual holding a current Series 7 exam may take the Series 66 examination for investment adviser representative registration. The Series 7 exam is a corequisite that must be successfully completed with the Series 66.

4 A copy of the content outline of the Series 65 was included as Exhibit 1 to the *State Securities Regulators Report on Regulatory Effectiveness and Resources with Respect to Broker-Dealers and Investment Advisers*.

5 The same process was used in developing the Series 66, although the job analysis was not repeated.

Should you have any questions regarding these comments, please contact the undersigned or Joey Brady, NASAA's Deputy General Counsel at jb@nasaa.org

Yours,

A handwritten signature in black ink that reads "David Massey". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David Massey
NASAA President
North Carolina Deputy Securities Administrator