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Sequence Number: 05-10-23

Rule ID(s): 9875

File Date: 5/3/2023

Effective Date: 8/1/2023

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Securities Division
Contact Person:	Anthony Glandorf
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Revision Type (check all that apply):

☐ Amendment ☐ Content based on previous emergency rule filed on _____
☒ New ☐ Content is identical to the emergency rule
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-04-03	Industry Regulation
Rule Number	Rule Title
0780-04-03-.17	Investment Adviser Representative Continuing Education

Chapter 0780-04-03
Industry Regulation
New

Rule 0780-04-03-.17 Investment Adviser Representative Continuing Education is a new rule. All subsequent rules, and references thereto, are renumbered accordingly.

- (1) **Investment Adviser Representative Continuing Education.** Every investment adviser representative registered under Tenn. Code Ann. § 48-1-109 must complete the following investment adviser representative continuing education requirements each reporting period:
 - (a) **Investment Adviser Representative Ethics and Professional Responsibility Requirement.** An investment adviser representative must complete six (6) credits of investment adviser representative regulatory and ethics content offered by an authorized provider, with at least three (3) hours covering the topic of ethics; and
 - (b) **Investment Adviser Representative Products and Practice Requirement.** An investment adviser representative must complete six (6) credits of investment adviser representative products and practice content offered by an authorized provider.
- (2) **Agent of FINRA-Registered Broker-Dealer Compliance.** 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 subparagraph (1)(b) of this rule 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) **Credentialing Organization Continuing Education Compliance.** Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under subparagraph (10)(a) of Rule 0780-04-03-.01 comply with subparagraph (1)(a) and (1)(b) of this rule provided all of the following are true:
 - (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 investment adviser representative continuing education content.
- (4) **Investment Adviser Representative Continuing Education Reporting.** Every investment adviser representative is responsible for ensuring that the authorized provider reports to NASAA or its designee the investment adviser representative's completion of the applicable investment adviser representative continuing education requirements.
- (5) **No Carry-Forward.** An investment adviser representative who completes credits of continuing education in excess of the amount required for the reporting period may not carry forward excess credits to a subsequent reporting

period.

- (6) **Failure to Complete or Report.** 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 to NASAA or its designee all required investment adviser representative continuing education credits for all reporting periods as required by this rule. An investment adviser representative who is CE Inactive at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.
- (7) **Discretionary Waiver by the commissioner.** The commissioner may, in its discretion, waive any requirements of this rule.
- (8) **Home State.** An investment adviser representative registered or required to be registered in this State who is registered as an investment adviser representative in the individual's home state is considered to be in compliance with this rule provided that both of the following are true:
 - (a) The investment adviser representative's home state has continuing education requirements that are at least as stringent as this rule; and
 - (b) The investment adviser representative is in compliance with the home state's investment adviser representative continuing education requirements.
- (9) **Unregistered Periods.** An investment adviser representative who was previously registered under the Act and became unregistered must complete investment adviser representative continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered again under the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by paragraph (10) of Rule 0780-04-03-.01 in connection with the subsequent application for registration.
- (10) **Definitions.** As used in this Rule, the following terms mean:
 - (a) "Approved investment adviser representative 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.
 - (b) "Authorized provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this Rule.
 - (c) "Credit" means a unit that has been designated by NASAA or its designee as at least fifty (50) minutes of educational instruction.
 - (d) "Home state" means the state in which the investment adviser representative has its principal office and place of business.
 - (e) "Investment adviser representative ethics and professional responsibility content" means approved investment adviser representative continuing education content that addresses an investment adviser representative's ethical and regulatory obligations.
 - (f) "Investment adviser representative products and practice content" means approved investment adviser representative 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.
 - (g) "Investment adviser representative" means an individual who meets the definition of "investment adviser representative" under the Act and an individual who meets the definition of "investment adviser representative" under T.C.A. § 48-1-102.
 - (h) "NASAA" means the North American Securities Administrators Association, Inc. or a committee

designated by its board of directors.

- (i) "Reporting period" means one twelve (12) month period as determined by NASAA and described on the NASAA website, nasaa.org, in the Investment Adviser Representative Continuing Education Frequently Asked Questions. 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 registered or required to be registered with this state.

Authority: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-112, 48-1-115, and 48-1-116.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance on 09/01/2022, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/12/2022

Rulemaking Hearing(s) Conducted on: (add more dates). 09/01/2022

Date: Mar 21, 2023

Signature: 
Carter Lawrence (Mar 21, 2023 15:04 CDT)


Name of Officer: Carter Lawrence

Title of Officer: Commissioner

Agency/Board/Commission: Tennessee Securities Division

Rule Chapter Number(s): 0780-04-03

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Jonathan Skrmetti
Attorney General and Reporter
April 24, 2023
Date

Department of State Use Only

Filed with the Department of State on: 5/3/2023

Effective on: 8/1/2023

RECEIVED

May 03 2023, 2:18 pm

Secretary of State
Division of Publications



Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

No public comments were received for this rulemaking.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the rule being proposed that would bear the cost of, or directly benefit from the rule being proposed;

The investment adviser industry consists of large and small businesses. Approximately two to three hundred small businesses will be impacted by this rule. This rule consistently applies to all investment advisers that employ investment adviser representatives (IARs) registered with the Securities Division.

2. The projected reporting, record keeping and other administrative costs required for compliance with the rule being proposed, including the type of professional skills necessary for preparation of the report or record;

This rule requires IARs to obtain annual continuing education through NASAA approved programming. IARs are required to annually obtain the continuing education requirements in order to renew their registrations. All preparation and reporting requirements will be met through third parties that provide NASAA reports of the IARs' attendance and completion of courses.

3. A statement of the probable effect on impacted small businesses and consumers;

The impact on small businesses will be minimal as small investment advisers typically employ fewer IARs than large investment advisory firms. The cost of compliance is nominal as the reporting and record keeping requirements are handled by NASAA and related third parties.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the rule being proposed that may exist, and to what extent the alternative means might be less burdensome to small business

Many IARs are also registered broker-dealer agents. FINRA currently has a continuing education requirement for broker-dealer agents. The rule allows credit for continuing education hours earned by agents who are also registered as IARs. To allow for the simplest method of complying with the rules for small businesses, all IAR continuing education programming will be approved by and reported through NASAA.

5. A comparison of the rule being proposed with any federal or state counterparts; and

The Securities and Exchange Commission ("SEC") and the Financial Industry Regulatory Authority ("FINRA") currently have similar continuing education requirements for broker-dealer agents. No such requirements exist for IARs that are primarily or solely regulated by the Division. [AO1] The North American Securities Administrators Association ("NASAA") has written an IAR continuing education model rule and has encouraged states to adopt it. This rule closely follows the NASAA model rule. The NASAA model rule has been adopted in Maryland, Mississippi, and Vermont.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the rule being proposed.

Exemption from the continuing education requirements would place its clients in a position of having less educated investment advisers and thus place them in a position of not benefiting from the education received. These Tennessee investors would be exposed to outdated financial advice from their investment adviser representative. Creating such a disparity would outweigh the burden of individuals in small businesses complying with the continuing education requirement.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

This rule is not projected to have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule establishes a minimum continuing education requirement for investment adviser representatives registered in the state. This requirement sets a minimum of six hours of continuing education in ethics and professional responsibility and six hours in products and practice content. The rule allows for those also licensed as a broker-dealer agent to be exempt from this requirement if they maintain certain continuing education under FINRA's membership as a broker dealer. Further, an exemption exists for any investment adviser representative whose home state is not Tennessee and who completes continuing education in his or her home state.

A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There is no known federal law or regulation or any state law or regulation mandating promulgation of this rule or establishing guidelines relevant thereto. This rule was drafted from model language created by NASAA and urged adoption of its model rule by the states.

Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All investment adviser representatives registered in the state of Tennessee will be affected. Adoption of this rule will positively affect NASAA, as it drafted the model rules and urged adoption by all the states.

Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or necessity to promulgate this rule.

An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no estimated probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule.

Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Elizabeth Bowling, Assistant Commissioner
Anthony Glandorf, Chief Counsel for Securities and FSIU Litigation

Identification of the appropriate agency representative or representatives who will explain the rule at scheduled meeting of the committees;

Elizabeth Bowling, Assistant Commissioner
Anthony Glandorf, Chief Counsel for Securities and FSIU Litigation

Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

253-3703; Elizabeth.Bowling@tn.gov; Anthony.Glandorf@tn.gov

Any additional information relevant to the rule proposed for continuation that the committee requests;

None. Known.

COMMERCE AND INSURANCE
DIVISION OF SECURITIES
INDUSTRY REGULATION

0780-04-03-.17 INVESTMENT ADVISER REPRESENTATIVE CONTINUING EDUCATION

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

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- (7) Discretionary Waiver by the commissioner. The commissioner may, in its discretion, waive any requirements of this rule.
- (8) Home State. An investment adviser representative registered or required to be registered in this State who is registered as an investment adviser representative in the individual's home state is considered to be in compliance with this rule provided that both of the following are true:

 - (a) The investment adviser representative's home state has continuing education requirements that are at least as stringent as this rule; and
 - (b) The investment adviser representative is in compliance with the home state's investment adviser representative continuing education requirements.
- (9) Unregistered Periods. An investment adviser representative who was previously registered under the Act and became unregistered must complete investment adviser representative continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered again under the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by paragraph (10) of Rule 0780-04-03-.01 in connection with the subsequent application for registration.
- (10) Definitions. As used in this Rule, the following terms mean:

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- (f) "Investment adviser representative products and practice content" means approved investment adviser representative 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.
- (g) "Investment adviser representative" means an individual who meets the definition of "investment adviser representative" under the Act and an individual who meets the definition of "investment adviser representative" under T.C.A. § 48-1-102.
- (h) "NASAA" means the North American Securities Administrators Association, Inc. or a committee designated by its board of directors.
- (i) "Reporting period" means one twelve (12) month period as determined by NASAA and described on the NASAA website, nasaa.org, in the Investment Adviser Representative Continuing Education Frequently Asked Questions. 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 registered or required to be registered with this state.

Authority: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-112, 48-1-115, and 48-1-116.