

**FINAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE
CORPORATE SECURITIES LAW OF 1968
PRO 07-21**

In accordance with Government Code Section 11346.9, the Department of Financial Protection and Innovation (Department) sets forth below the reasons for the adoption of regulations contained in Title 10 of the California Code of Regulations, Section 260.236.2.

UPDATE OF INITIAL STATEMENT OF REASONS [Government Code section 11346.9, subdivision (a)(1)]

1. Update on Model Rule and State Implementation:

In November 2020, the North American Securities Administrators Association (“NASAA”) adopted the Investment Adviser Representative Continuing Education (“IAR CE”) Model Rule with significant support from state regulators and the securities industry. The IAR CE model rule is intended to be adopted nationwide and uniformly since many investment adviser representatives (IARs) hold multiple state registrations. For regulators to effectively oversee requirements are being met, FINRA’s existing Investment Adviser Registration Depository (IARD) system provides regulators with the ability to monitor and process Investment Adviser information via a single, centralized system that will be used to track and monitor IAR CE.

NASAA approved the IAR CE model rule in November 2020 and is closely following states that are planning and proposing to adopt the rule. Currently, there are 17 jurisdictions that have adopted the model rule:

- Arkansas (effective in 2023)
- Colorado (effective in 2024)
- Florida (effective in 2024)
- Hawaii (effective in 2024)
- Kentucky (effective in 2023)
- Maryland (effective in 2022)
- Michigan (effective in 2023)
- Mississippi (effective in 2022)
- Nevada (effective in 2024)
- North Dakota (effective in 2024)
- Oklahoma (effective in 2023)
- Oregon (effective in 2023)
- South Carolina (effective in 2023)
- Tennessee (effective in 2024)
- Vermont (effective in 2022)
- Washington, D.C. (effective in 2023)
- Wisconsin (effective in 2023)

There is one state and one U.S. territory in the rulemaking process: California and the U.S. Virgin Islands. Of all states, California has the largest number of home-state registered investment advisers (IAs) at approximately 3,675.¹ As of the 2021-2022 fiscal year, there were 58,187 IARs in California.²

2. Update to the Table on page 14:

**IAR Continuing Education Monitoring Workload
Financial Institutions Examiner**

Activity	Total IARs	Estimated average number of Staff hours per review	Total workload hours
Section 1 - IAR Registration Only: Review, track, and monitor investment adviser representative continuing education requirements for individuals who may not meet continuing education through other means; review and process registration renewals - est. 75% Compliance (**14,065 x 75%)	10,549	0.10	1,055
Review, track, and monitor investment adviser representative continuing education requirements for individuals who may not meet continuing education through other means; review and process registration renewals – est. 25% non-Compliance (**14,065 x 25%)	3,516	*1.0	3,516
Section 2 - Dual registration: Review, track, and monitor investment adviser representative continuing education requirements for individuals who may meet continuing education through other means; review and process registration renewals	***44,541	**0.07	3,118
Total IARs Estimated for 2024-25	***58,606		
Training			100
Total Hours			7,869
Number of positions needed (1,760 hours per year position)			4.4
Number of current positions			0.0
Financial Institutions Examiners Requested			4.0

¹ <https://www.nasaa.org/wp-content/uploads/2021/04/2021-IA-Section-Report-FINAL.pdf>

² See the Broker-Dealer/Investment Adviser Program 2023 Annual Report to the Legislature: <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/09/2023-BDIA-Report.pdf>

Note: This is the Department's current estimate for positions. DFPI is still evaluating resource needs.

*The Department revised the estimated average number of staff hours per review from 1.5 hours to 1.0 hours. The prior 90-minute figure was based on the BDIA program's experience handling annual renewals of registered Investment Advisers (the licensed entities that provide investment advice to their clients). This estimate has been revised to 60 minutes after determining that an enforcement pathway will be developed to expedite this process. Investment Advisers who fail to renew their registration must go through a "summary revocation" process. Even though these progressive disciplinary actions will be more complex than the summary revocation process, the BDIA program will work with the Department's Enforcement Division to develop procedures to expedite the process by developing templates and forms for potential settlement actions.

**The Department revised the estimated average number of staff hours per review from 0.10 hours to 0.07 hours. IARs who are dually registered are also Broker Dealer registered representatives and have a Broker Dealer firm that has supervisory responsibility for overseeing their continuing education. After further assessment and review of the IAR CE monitoring and tracking of CE compliance, the Department has determined that it will require less time to monitor these IARs for compliance compared to IARs that are primarily smaller, one-man shops. This is because Broker Dealer firms generally have reporting tools available to them through CRD to easily review for compliance with the CE rule and know at any given point if the IAR under their supervision is compliant or noncompliant and can send reminders to the IAR prior to the CE due date. State-registered IAs will not have this same capability and IARs who are not dually registered with a Broker Dealer firm will track their CE individually through a designated FinPro account. FinPro is a voluntary FINRA database tool available to IARs to track CE and manage individual registrations. IARs are encouraged to use this tool; however, it is not required and if IARs are not using the tool, they will need to monitor CE credits and completion individually. Therefore, IARs with Broker Dealer dual registration will have direct supervision and reporting tools that will take less time for the Department to review.

***The Department updated the total number of IARs in California from 57,740 as of March 25, 2022 to 58,606, which is the estimated number of IARs in the 2024-2025 fiscal year (given a 1.5% increase).

***The Department updated the total number of dually registered IARs in California from 44,032 as of March 2, 2022 to 44,541, which is the estimated number for the 2024-2025 fiscal year.

***The Department updated the total number of IARs *not* dually registered from 13,708 to 14,065 which equals 58,606 (total number of IARs) minus 44,541 (total number of dually registered IARs).

MODIFICATIONS TO TEXT OF REGULATION

Section 260.236.2, subsection (a)(1). Subsection (a)(1) of the originally proposed regulation defined the term “Approved IAR Continuing Education Content” to mean “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.” The OAL found this subsection did not satisfy the clarity standard in Government Code section 11349.1 because it was unclear whether “Approved IAR Continuing Education Content” referred to existing materials currently approved by NASAA or materials that would be approved in the future; it was unclear what criteria would be used when determining whether to approve continuing education content; the term “designee” was not defined; and it was unclear what criteria would be used by NASAA to select designees. The modified text revises the word “content” to “course” for clarity and removes the term “designee.” Since NASAA has the ultimate authority to choose the designee and approve the courses the designee approves, the reference to designee is unnecessary. The modified text also clarifies that “Approved IAR Continuing Education Course” means a course approved by NASAA at the time the IAR takes the course, and sets forth the criteria that NASAA will use to approve continuing education courses by incorporating by reference pages 20-27 of the NASAA IAR CE Program Handbook, January 2023 Edition. The modified text clarifies that the terms “audience,” “behavior,” “condition,” and “degree” on page 21 of the NASAA IAR CE Program Handbook constitute elements that NASAA shall consider in determining whether a course has a defined objective and outcome. The modified text also clarifies that the terms have the following meanings: “Audience” means the course identifies the intended recipients of the course material, “behavior” means the course identifies the knowledge or skills that a student obtains at the completion of the course, “condition” means the course identifies the conditions under which a student demonstrates knowledge or skills at the end of the course, and “degree” means the course includes measurable standards to assess a student’s performance.

Section 260.236.2, subsection (a)(2). Subsection (a)(2) of the originally proposed regulation defined the term “Authorized Provider” to mean “a person that NASAA or its designee has authorized to provide continuing education content required by this rule.” The OAL found this subsection did not satisfy the clarity standard in Government Code section 11349.1 because it was unclear what criteria NASAA or its designee would use when authorizing a provider and because the term “designee” was not defined. The modified text revises the word “content” to “courses” for clarity and sets forth the criteria that NASAA will use when authorizing a provider by incorporating by reference pages 7-11 of the NASAA IAR CE Program Handbook, January 2023 Edition. The modified text also removes the term “designee.” Since NASAA has the ultimate authority to choose the designee and approve the courses the designee approves, the reference to designee is unnecessary.

Section 260.236.2, subsection (a)(4). Subsection (a)(4) of the originally proposed regulation defined the term “Credit” to mean “a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.” The OAL found this

subsection did not satisfy the clarity standard in Government Code section 11349.1 because it was unclear what criteria NASAA or its designee would use to determine that a unit of at least 50 minutes of educational instruction is inadequate and because the term “designee” was not defined. The modified text sets forth the criteria that NASAA will use to determine that 50 minutes of educational instruction is adequate to be a credit by incorporating by reference page 24 of the NASAA IAR CE Program Handbook, January 2023 Edition. The modified text also removes the phrase “that has been” because it is superfluous and removes the term “designee.” Since NASAA has the ultimate authority to choose the designee and approve the courses the designee approves, the reference to designee is unnecessary.

Section 260.236.2, subsection (a)(6). Subsection (a)(6) of the originally proposed regulation defined the term “Home State” to mean “the state in which the investment adviser representative has its principal office and place of business.” The OAL found this subsection did not satisfy the clarity standard in Government Code section 11349.1 because the phrase “principal office and place of business” was unclear. To provide clarity, the modified text defines the phrase “principal office and place of business” to mean the location reported in the Central Registration Depository (CRD) database. CRD is a database that all IARs are familiar with because they are required to submit their individual registration through this database.

Section 260.236.2, subsection (a)(7). Subsection (a)(7) of the originally proposed regulation defined the term “IAR Ethics and Professional Responsibility Content” to mean “approved IAR continuing education content that addresses an investment adviser representative’s ethical and regulatory obligations.” The OAL found this subsection did not satisfy the clarity standard in Government Code section 11349.1 because the phrase “approved IAR continuing education content” was unclear for the reasons discussed under subsection (a)(1). The clarity concern related to the term “approved IAR continuing education content” has been addressed by the proposed changes to subsection (a)(1). The modified text also revises the word “content” to “course” for clarity.

Section 260.236.2, subsection (a)(8). Subsection (a)(8) of the originally proposed regulation defined the term “IAR Products and Practice Content” to mean “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.” The OAL found this subsection did not satisfy the clarity standard in Government Code section 11349.1 because the phrase “approved IAR continuing education content” was unclear for the reasons discussed under subsection (a)(1). The clarity concern related to the term “approved IAR continuing education content” has been addressed by the proposed changes to subsection (a)(1). The modified text also revises the word “content” to “course” for clarity.

Section 260.236.2, subsection (a)(11). Subsection (a)(11) of the originally proposed regulation defined “Reporting Period” to mean one twelve-month period. However, the

Department determined that it was unclear when the twelve-month period began and when an investment adviser representative's first reporting period commences. Therefore, the subsection has been revised to clarify that "Reporting Period" means one calendar year starting on January 1 and ending on December 31 and that an investment adviser representative's initial reporting period with this state commences the first day of the first full calendar year after the individual is registered or required to be registered with this state.

Section 260.236.2, subsection (a)(12). Subsection (a)(12) has been added to the proposed regulation to define the term "Reporting Period for 2024" to mean the period starting on the date this rule becomes effective and ending on December 31, 2024. The Department added this subsection to clarify that the reporting period for 2024 will be shorter than the subsequent reporting periods which will be twelve months.

Section 260.236.2, subsection (b). Subsection (b) of the proposed regulation has been revised to clarify that the requirements in subsections (b)(1) and (b)(2) must be completed in the Reporting Period for 2024 and each Reporting Period thereafter.

Section 260.236.2, subsection (b)(1). Subsection (b)(1) of the proposed regulations states that "An investment adviser representative must complete six (6) Credits of IAR ethics and professional responsibility content offered by an authorized provider, with at least three (3) credits covering the topic of ethics." The OAL found this subsection did not satisfy the clarity standard in Government Code section 11349.1 because the phrase "authorized provider" was unclear for the reasons discussed under subsection (a)(2). The modified text revises the word "content" to "course" for clarity. The clarity concern related to the term "authorized provider" has been addressed by the proposed changes to subsection (a)(2).

Section 260.236.2, subsection (b)(2). Subsection (b)(2) of the proposed regulations states that "An investment adviser representative must complete six (6) Credits of IAR products and practice content offered by an authorized provider." The OAL found this subsection did not satisfy the clarity standard in Government Code section 11349.1 because the phrase "authorized provider" was unclear for the reasons discussed under subsection (a)(2). The modified text revises the word "content" to "course" for clarity. The clarity concern related to the term "authorized provider" has been addressed by the proposed changes to subsection (a)(2).

Section 260.236.2, subsection (c). Subsection (c) of the proposed regulations states that "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 the subdivision (b)(2) IAR products and practice requirement for each applicable reporting period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA: (1) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards. (2) 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. (3) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.” The OAL found subsection (c)(3) did not satisfy the clarity standard in Government Code section 11349.1 because it did not provide criteria for continuing education content providers or participants to understand what is required to “demonstrate proficiency.” The OAL also found that it was unclear whether the Department was referring to NASAA’s current FINRA-related determinations regarding subsections (c)(1) through (c)(3) or any such NASAA determinations on the three factors in the future. The modified text deletes the phrase “considered to be” because it is superfluous and revises the word “content” to “course” for clarity. The modified text also deletes subsections (c)(1), (c)(2), and (c)(3) and in place of those subsections, clarifies that any FINRA continuing education course that also meets NASAA criteria will satisfy the continuing education requirements of subsection (b)(2). The modified text sets forth the criteria that NASAA will use to approve FINRA CE content for IAR CE purposes by incorporating by reference pages 20-27 of the NASAA IAR CE Program Handbook, January 2023 Edition.

Section 260.236.2, subsection (d)(3). The modified text revises the word “content” to “course” for clarity.

Section 260.236.2, subsection (g). In the last sentence, “Investment Adviser” was corrected to “Investment Adviser Representative” for accuracy.

Section 260.236.2, subsection (h). Subsection (h) of the originally proposed regulation stated that “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: (1) The investment adviser representative’s home state has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Continuing Education. (2) The investment adviser representative is in compliance with the home state’s investment adviser representative continuing education requirements.” The OAL found subsection (h) did not satisfy the clarity standard in Government Code section 11349.1 because the definition of “Home State” was unclear for the reasons discussed under subsection (a)(6), it was unclear what criteria would be used to determine whether an IAR’s home state requirements were “at least as stringent” as the NASAA model rule, it was ambiguous what entity would make that determination, and the term “NASAA Model Rule” was unclear. The modified text removes the phrase “at least as stringent” and the term “NASAA Model Rule” and in place of the prior language, states that the IAR’s home state must have continuing education requirements that are the same as the requirements in subsection (b)(1) and (b)(2) of the rule which creates a clear standard for IARs to understand. The clarity concern related to the term “Home State” is addressed by the proposed changes to subsection (a)(6).

Section 260.236.2, subsection (j). The exemption under subsection (j) of the proposed regulations has been removed. This exemption was unique to California’s originally

proposed regulation and is not a part of NASAA's model rule. After further consideration, the Department determined that IARs who offer or negotiate for the sale of investment advisory services *should* be subject to the CE requirements under subsection (b)(1) and (b)(2) to enhance consumer protection of investors in California and to maintain uniformity with the states that have adopted NASAA's model rule. Therefore, the exemption has been removed.

Non-substantive changes. Defined words and phrases that were uncapitalized in the originally proposed regulation have been revised to be capitalized.

Incorporation by reference. The modified text of the proposed regulation incorporates by reference pages 7-11 and 20-27 of the NASAA IAR CE Program Handbook, January 2023 Edition. These pages were incorporated by reference because it would be cumbersome and impractical to publish the NASAA IAR CE Program Handbook, January 2023 Edition, in the California Code of Regulations.

LOCAL MANDATE DETERMINATION [Government Code section 11346.9, subdivision (a)(2)]

The proposed regulations do not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY NOTICE PERIOD OF DECEMBER 2, 2022 THROUGH JANUARY 16, 2023 [Government Code section 11346.9, subdivision (a)(3)]

The Department received fourteen public comment letters during the 45-day public comment period. The comments are summarized below, followed by the Department's response to each comment.

Commenter 1: Holmes Osborne, Osborne Global Investors

Comment No. 1: The commenter does not see a need for continuing education. The commenter stated that most advisers have at least a bachelor's degree and maybe a chartered financial analyst (CFA) or certified financial planner (CFP). The commenter stated there is no correlation between knowledge of investing and continuing education. The commenter stated the vast majority of advisers read, attend conferences, and learn about what they are investing their clients' money in.

Response: The Department disagrees with the commenter's statement that there is no need for a continuing education requirement for IARs or that there is no correlation between continuing education and knowledge of investing. IARs play an important role in the financial lives of millions of Americans. While some IARs are CFPs, this only equates to approximately 29% of the financial professionals in the industry.³ There is no data to support how many hold a bachelor's degree and/or whether the degree held is

³ See FINRA [Statistics](#) as of 12/31/2020.

relevant to the financial industry. Furthermore, a bachelor's degree is not required by law to become an IAR so some IARs may have a bachelor's degree while others may not. The range of education completed by IARs may vary.

Additionally, those that are already CFPs will not need to duplicate IAR CE requirements as long as the courses they are taking are from a NASAA-approved provider. Requiring IARs to continue professional education over their careers ensures their ongoing competency and helps keep them knowledgeable of new developments, best practices, and current regulatory compliance requirements in their areas of expertise and when handling clients' life savings. Furthermore, if the vast majority of advisers read, attend conferences, and continually learn as the commenter states, then a mandatory continuing education requirement will not impose much of an additional burden.

Commenter 2: Nate Nieri, Modern Money Management

Comment No. 2.1: The commenter supports educational requirements for IARs but suggests that requirements be more in line with other professional bodies such as the National Association of Personal Financial Advisors (NAPFA), the Certified Financial Planning Board (CFPs), and the Financial Planning Associations (FPA), and the Institute of Charter Financial Analyst (CFA).

Response: The IAR CE program is designed to accept courses and the credits taken to maintain professional designations so long as the provider and course have been approved through Prometric for IAR CE purposes. Providers will likely promote the fact that certain courses qualify for IAR CE so IARs can look for courses that meet the CE requirements for both IAR CE and their other professional designations.

All NAPFA-registered financial advisors who join NAPFA on or before June 30, 2022, must complete 60 CEs in the two-year CE cycle, including an approved 2-CE Ethics course, with at least 30 of these 60 CEs coming from NAPFA or NAPFA-approved sources. NAPFA is a member organization and is not considered a professional designation.

CFP® designated professionals are required to complete 30 hours of continuing education each reporting period: 2 hours of CFP Board-approved Ethics CE, and 28 hours of CE covering one or more of the CFP Board's Principal Topics.

FPA is a member organization and is not considered a professional designation. FPA is recognized by the CFP® Board as a CE Quality Partner. More than half of their online programs offer CE credit for CFP® Professionals and include courses that fulfill the 2-hour professional conduct requirement. Through FPA resources, CFP® professional members can meet continuing education requirements.

For CFA® designated professionals, CE is voluntary and therefore there is no CE requirement. CFA charter-holders and members are encouraged to earn at least 20

credits (including 2 credits in the areas of Standards, Ethics, and Regulations) throughout the membership year, whether they use CFA Institute materials or resources from elsewhere.

Each of the above member organizations and/or designations has the ability to get its proprietary CE content approved and/or recommend that its vendors or partners get CE approved through Prometric. Currently, there are 159 approved CFP designation courses and 3 approved CFA designation courses.

The commenter suggests the Department's proposed CE requirements be more in line with other professional bodies such as NAPFA and the CFP. However, the Department notes that this could actually result in a higher burden for IARs (more overall CE hours) compared to the proposed, rule which is a less stringent requirement.

Comment No. 2.2: The commenter stated that all professional bodies have educational requirements which include ethics and professional responsibility, and requirements are two hours every two years. The commenter suggested that DFPI align with these requirements for the following reasons: (1) availability of courses for IARs to take, (2) a reliable framework and available educational content is already in place and well vetted, and (3) two hours has been the standard across most organizations, with courses and content sufficient to meet that requirement.

Response: The Ethics and Professional Responsibility component is designed to ensure ongoing knowledge and competency related to an IAR's duties and obligations to the IAR's clients including, but not limited to, issues related to the fiduciary duty owed to each client. There are currently 134 credits focused on Ethics and Professional Responsibility with 242 credits focused on the Products and Practice component. In total, there are 28 Course Providers, nineteen (19) of whom are actively submitting courses; therefore, the number of ethics-related courses will continue to grow and already offers an adequate number of courses and content to meet the requirement.

The Ethics and Professional Responsibility component is designed to ensure ongoing knowledge and competency related to an IAR's duties and obligations to the IAR's clients including, but not limited to, issues related to the fiduciary duty owed to each client. The Department agrees with NASAA's determination that three hours of ethics is an appropriate amount of time on an annual basis to keep IARs familiar and up-to-date with this important topic. Furthermore, the three-hour requirement is the California insurance industry's standard for ethics CE and almost half of IARs are dually insurance licensed.⁴ Therefore, it is reasonable to keep the Department's proposed requirement in line with this standard.

Comment No. 2.3: The commenter stated that regarding six hours of product education, many of the state's IARs do not sell "products" and provide financial planning services

⁴ See the NASAA IA 2021 Section Report <https://www.nasaa.org/wp-content/uploads/2021/04/2021-IA-Section-Report-FINAL.pdf>

to clients. Rather than altering the proposed requirements, the commenter suggested expanding the requirements to include educational content that falls under broader categories such as investment management, retirement planning, taxes, insurance planning, estate planning, account management, investment products, etc. for the following reasons: (1) this will encourage IARs to be educated not just on product sales but on more comprehensive solutions that may be appropriate for clients and consumers, (2) it encourages more education around fiduciary-type duties and putting the client/customer first rather than the product first sales mentality, (3) it increases the knowledge base of the state's IARs, and (4) it is more inclusive to the states representing IARs and the services they provide rather than just broker-dealers that sell products.

Response: In response to the commenter's statement that many of the state's IARs do not sell products, as of 2021, approximately 84% of IARs manage a portfolio of securities for their clients and make recommendations related to securities products even if they are not actually selling them.⁴ Therefore, the Department stands by its determination that six hours of products and practices content is an appropriate continuing education requirement. NASAA has published an Investment Adviser Representative Continuing Education Handbook which includes qualifying course subjects and covers relevant course topics such as fiduciary obligations and best interest and does include topics as described by the commenter. NASAA currently offers 159 approved courses that also qualify for CFP designation continuing education; therefore, categories within these courses cover a wide array of financial planning services topics.

Commenter 3: Susan Doherty

Comment No. 3.1: The commenter stated that adding more regulations and requirements to IAR practitioners serves to decrease competition and decrease participation in this business by women. The commenter stated the requirements to become an IAR and set up a business are onerous and very expensive already, and adding more requirements rewards large companies and punishes small companies who are just getting their feet on the ground. The commenter requested the Department not impose more requirements on California's small businesses and stated that regulations like this are making business people in California want to leave the state.

Response: IARs play an important role in the financial lives of millions of Americans, yet unlike most financial services professionals they are not required to meet a CE requirement to maintain their licenses to work with investors. Only those who undertake rigorous training and education and then pass a licensing examination are licensed to provide investment advice. Once licensed, however, there are no ongoing educational requirements. As it stands today, there are many investors working with IARs who receive no continuing education. These advisers rely on knowledge gained from preparation for the Series 65 licensing exam when they first entered the business, in some cases decades ago. Voluntarily trying to remain current, some may not have the opportunity or resources to keep up with regulatory changes or practical skills-based

developments to the extent they should. The purpose of the proposed rule is to close the investor protection gap and to develop a responsive and relevant continuing education program to help IARs more safely and competently serve clients. The CE requirement will not punish small businesses because the cost to comply is low or free; NASAA and one state currently offer two free CE courses with more planned. This regulation will not make IARs leave California because seventeen other states have already enacted the same rule and two other states are in the process of enacting the same rule. Leaving California will not mean the IAR is not subject to the model rule.

Comment No. 3.2: The commenter stated the requirements to become an IAR and set up a business are onerous and very expensive already, and adding more requirements rewards large companies and punishes small companies who are just getting their feet on the ground. The commenter requested the Department not impose more requirements on California's small businesses and stated that regulations like this are making business people in California want to leave the state.

Response: Both NASAA and the Department were mindful of developing a CE framework that would impose minimal costs to IARs. Some existing continuing education courses offered through FINRA have modest enrollment fees (less than \$100) and NASAA has stated its intent to engage a "wide range of vendors" including state regulatory agencies to offer approved continuing education courses for IARs.⁵ In fact, based on vendor information collected by NASAA, there are low-cost options including packages for as low as \$65 which satisfy the entire continuing education requirement.⁶ Additionally, NASAA will be offering free ethics courses. Given the anticipated availability of low- or no-cost course options to satisfy these requirements and the fact that many IARs already take advantage of educational course offerings even without a state mandate, this rule is not expected to have a material economic impact on IARs.

In response to the commenter's statement that the proposed rule will make small businesses leave California, the IAR CE rule is intended to be a national program. Therefore, IARs choosing to do business in other states may be faced with the same CE requirements, especially as more states adopt the Model Rule over the next few years.⁷ Furthermore, even for IARs that choose to leave the state, if their clients reside in California and the IAR is registered in California, the CE requirement would still apply.

Commenter 4: Michael Hudick

⁵ See NASAA's Frequently Asked Questions: Investment Adviser Continuing Education, available at <https://www.nasaa.org/industry-resources/investment-advisers/resources/iar-ce-faq>.

⁶ The IAR CE course reporting fee, also referred to as the roster fee, is \$3 per credit hour. When the course vendor/provider submits an IAR's completed course for credit, the \$3 per credit hour is due upon submission. For twelve credits, the roster fee will total \$36.

⁷ There are currently seventeen states that have adopted the Model Rule see NASAA's participating jurisdictions available at <https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education/iar-ce-map/#info>.

Comment No. 4.1: The commenter stated that he is both an IAR and a certified financial planner or CFP® who is regulated by the Certified Financial Planning Board (“Board”) and thereby required to report at least 15 hours of continuing education (“CE”) per year (30 hours in every two year period) to the Board, with a requirement that the Board approve all CE hours reported in order for them to count towards the requirement. The commenter stated that at least two of the CE hours must be for Ethics and that the Board holds him to a rigorous Code of Ethics. The commenter stated that it is not clear whether the same CE hours that he reports to the Board can also be reported for compliance with the proposed regulation.

Response: The same CE hours the commenter reports to the Board can also be reported for compliance with the proposed regulation. There is a mechanism in place so that CE for the CFP designation and the proposed regulation will not be duplicative. The IAR CE program is designed to accept courses and the credits taken to maintain professional designations so long as the provider and course have been approved through Prometric for IAR CE purposes. Providers will likely promote the fact that certain courses qualify for IAR CE so IARs can look for courses that meet the CE requirements for both IAR CE and their professional designations. Currently, there are 159 approved CFP courses being offered and this number is expected to continue to increase.

Comment No. 4.2: The commenter stated that IARs who are not CFPs have a very low hurdle to overcome when representing to the public that they are an IAR. The commenter stated that in contrast, a CFP® must earn at least a bachelor’s degree from an accredited college or university, successfully complete a Board-approved program in Financial Planning, which took him two years, and then work in the field for at least five years after successfully passing a two-day examination. The commenter stated that because the CFP® designation is rigorously designed to protect the general public, he requests the Department adopt a waiver for anyone holding a CFP®.

Response: While the Department understands there are stringent requirements to obtain a CFP designation, the Department does not believe it is necessary to adopt a waiver. Since the IAR CE program is designed to accept courses and the credits taken to maintain professional designations such as the CFP, so long as the provider and course have been approved through Prometric for IAR CE purposes, a waiver is not needed. The current IAR CE framework is based on criteria and standards established by NASAA and there is a comprehensive process in place to become an approved provider and offer course content.⁸ This process allows NASAA to maintain the ability to review the quality of the content for any of the professional designation CE being offered and provided to IARs.

Commenter 5: Leslie A. Smith, Coronado Financial Group, LLC

⁸ Information for IAR CE providers is posted to NASAA’s website at <https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education/for-iar-ce-providers/>

Comment No. 5: The commenter stated she has no objection to continuing education (CE) requirements per se, but the proposed requirements duplicate what is required of most FINRA registered representatives. The commenter stated that since many IARs are also registered representatives, she requests the Department allow dual use of the CE, meaning if a registered representative must complete CE to meet FINRA standards, the CE should also apply to the requirements under the proposed rule.

Response: The IAR CE framework does allow CE to meet both FINRA standards and the requirements under the proposed rule. FINRA administers the continuing education program for the securities industry. FINRA CE consists of two mandatory programs: the Regulatory Element and the Firm Element. FINRA Rule 1240 requires registered persons to complete the Regulatory Element annually by December 31 for each registration that they hold. The Regulatory Element provides training on significant rule changes and other regulatory developments relevant to each registration category. The Firm Element of the FINRA CE Program requires broker-dealers to establish a formal training program to keep registered persons up to date on topics related to professional responsibility and to the role, activities, or responsibilities of the registered person. In planning, developing, and implementing the Firm Element, each broker-dealer must consider its size, structure, scope of business, and regulatory concerns. An IAR who is also a registered Broker-Dealer (BD) agent and who complies with FINRA's CE Regulatory Element requirements is considered to be in compliance with the requirement to report six credits of Products and Practices content, so long as the FINRA CE content continues to meet certain baseline criteria as determined by NASAA. A BD firm can seek approval to provide any CE that meets the criteria established by NASAA, such as for their annual Firm Element CE. NASAA will accept the securities industry CE Regulatory Element as an equivalent of the Products and Practices module so long as the FINRA CE baseline criteria is met, and the BD firm and their course content are approved.

Commenter No. 6: Adam Schneiberg, Shepherd Street Advisors

Comment No. 6.1: The commenter stated that twelve hours of continuing education per year is too long and imposes an undue hardship on smaller firms such as his where one or two owners are already working at capacity. The commenter stated he is currently wrestling with the twelve hours of CE required by the state of Maryland for 2022. The commenter stated these sessions take a long time and are often insufferable. The commenter suggests a requirement of six hours or less would be more than enough and would allow him to enjoy the time learning something new and relevant to his chosen profession.

Response: The commenter will not be required to take any additional CE for multiple states he is registered in unless any of these states have CE that is a higher standard than the Model Rule. Generally, if an IAR is in compliance with their home state's CE rules, they will be considered in compliance with the CE requirements of other states so long as the home state rules are consistent with the Model Rule. Therefore, for example

if commenter complies with California's IAR CE requirements they will also meet Maryland's requirements since IAR CE is intended to be a national program.

Comment No. 6.2: The commenter stated the content that is available from the approved CE vendors is not very good and often irrelevant. For example, the commenter was locked in a three-hour class on insurance products when his firm did not sell insurance. The commenter stated that at the moment, there does not appear to be enough quality content to mandate twelve hours of online study. The commenter stated that if the proposed rule passes, the Department needs to ensure that CE content providers raise their game and release content that is current, relevant, and as engaging as possible.

Response: IARs are free to select courses that appeal to their interests and business models so long as they meet the credit requirements, and the courses are approved content for the IAR CE program. The program provides maximum flexibility for IARs by providing a wide array of course categories and topics. There are currently 442 approved courses, 268 credits focused on Ethics and Professional Responsibility and 432 credits focused on the Products and Practice component. In total, there are 46 Course Providers. Therefore, the number of courses being offered will continue to grow, and there is already an adequate number of quality courses and content to meet the requirements.

Commenter 7: Jeffrey Fritts, Amplified Alpha

Comment No. 7: The commenter requested the Department not enact the proposed regulation. The commenter stated the continuing education requirement would only benefit companies selling CE services. The commenter stated he has been a licensed insurance broker for 30 years and has had similar requirements in that field, and every year wastes time and money studying and testing on material that has nothing to do with his business or his clients' business. The commenter stated that refresher ethics or regulatory training can be constructive so an annual or biennial ethics or regulatory update training for investment advisers would be beneficial for the advisory industry and for consumers overall. The commenter stated that having to purchase, read, and test on the merits of cash flow analysis or bond ladders when he does algorithmic trading is of no benefit.

Response: IARs are free to select courses that appeal to their interests and business models so long as they meet the credit requirements, and the courses are approved content for the IAR CE program. The program provides maximum flexibility for IARs by providing a wide array of course categories and topics. There are currently 442 approved courses, 268 credits focused on Ethics and Professional Responsibility and 432 credits focused on the Products and Practice component. In total, there are 46 Course Providers. Therefore, the number of courses will continue to grow, and there is already an adequate number of quality courses and content to meet the requirements. The commenter will have the ability to customize their own CE content and purchase what is relevant and beneficial.

Commenter 8: Joseph Alfonso CFP, Aegis Financial Advisory, LLC

Comment No. 8: The commenter requested that an exception be made in the proposed regulation for advisers who hold designations such as the CFP and Chartered Financial Consultant (ChFC) or are members of organizations such as NAPFA. The commenter stated these advisers are already required to complete significant continuing education requirements that exceed the proposed regulation to hold their certification or remain in good standing with the organization. The commenter stated that adding the proposed requirement for CE would unnecessarily impose an undue burden on these advisers both in terms of additional time spent earning additional continuing professional education as well as increased compliance overhead. The commenter stated he fully agrees that advisers should be required to further their knowledge through substantive CE over and above the education required to pass an initial licensing exam. The commenter stated many advisers already take it upon themselves to pursue such education and attest to the completion of that study on a regular basis. The commenter stated these advisers should be excluded from the proposed regulation; to do otherwise would be redundant, burdensome and would do nothing to achieve the stated objectives of the regulation.

Response: To avoid duplicative CE requirements, the IAR CE program is designed to accept courses and the credits taken to maintain professional designations such as the CFP and ChFC, so long as the provider and course have been approved through Prometric for IAR CE purposes. NAPFA also has the option to become an approved course and content provider. This mechanism will mitigate imposing an undue burden on IARs with other professional designations, since taking courses from approved providers will not increase time spent or compliance overhead by the IAR. Providers will likely promote the fact that certain courses qualify for IAR CE so IARs can look for courses that meet the CE requirements for both IARs and their other professional designations. For advisers who already pursue CE on their own or for other professional designations, and attest to the completion of the CE on a regular basis, there should be no additional burden imposed by this rule if the CE is from an approved provider.

Commenter 9: Juerg “George” Ciceri, JC Financial Planning & Investments LLC

Comment No. 9.1: The commenter requested the Department not implement the proposed regulation for continuing education. The commenter stated members of FINRA firms and advisers with specific designations, such as CFP practitioners, already have CE requirements. The commenter stated that as a CFP himself, he is required to complete 30 hours of CE each reporting period consisting of two hours of CFP Board-approved ethics CE and 28 hours of one or more of the CFP Board’s principal topics. The commenter stated that adding another program filled with administrative bureaucracy is simply reinventing the wheel. The commenter stated there is no need for additional regulations with the exception of investment advisers that do not already have CE requirements. The commenter asked whether the Department has figured out how many investment advisers would fall into this category.

Response: The IAR CE program is designed to accept courses and the credits taken to maintain professional designations so long as the provider and course have been approved through Prometric for IAR CE purposes. Providers will likely promote the fact that certain courses qualify for IAR CE so IARs can look for courses that meet the CE requirements for both IAR CE and their professional designations. The Department is aware of the population of IARs that do not already have CE requirements. Of the more than 340,000 state-registered investment adviser representatives, fewer than 20 percent are not receiving any form of continuing education.⁹ While the Department understands each professional designation has its own set of standards for CE, the IAR CE framework allows NASAA the ability to review the quality of the content being offered to these professional designations and provided to IARs.

Comment No. 9.2: The commenter stated that while some of the courses offered for the CFP CE program would probably also qualify under the proposed regulation, it would still be adding more complexity with no additional value since the proposed regulation would require additional filings with the Department. The commenter stated this does not sound efficient and that a small firm like his already has to deal with a huge number of filing and legal and compliance issues. The commenter stated it would make it even more difficult for small firms to compete against bigger firms.

Response: In the circumstance described by the commenter, the regulation does not add any complexity for the IAR because the rule does not require additional filings by the IAR with the Department. The course vendor/provider will report course completion to FINRA, NASAA's vendor for program tracking. Additionally, FINRA's FinPro system is available as a tool for an IAR and gives them the ability to easily track and monitor their CE progress. The value of IAR CE will create a direct incentive and opportunity for IARs to stay current with industry and regulatory developments. This in turn will contribute to the quality of advice and professionalism that IARs provide to their clients – all of which will provide the investing public with more protection and better service.

Commenter 9.3: The commenter quoted the section titled "Effect on Small Business" from the Initial Statement of Reasons which stated that "Under Government Code section 11342.610, subdivision (b), an investment adviser is not a small business. Therefore, this rulemaking action will not have an impact on small businesses." The commenter stated that he disagrees with this statement and as a single-owner IAR, he considers himself to be a small business.

Response: The Department understands that the term "small business" colloquially refers to a business with a small number of employees and/or revenue within a certain lower range. However, the term "small business" has a specific legal definition under the Administrative Procedure Act which governs this proposed rulemaking. Government Code section 11342.610, subdivision (b) states that the term "small business" does not

⁹ See <https://www.riainabox.com/resources/do-investment-adviser-reps-have-a-continuing-education-requirement>

include the following professional and business activities: (1) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an *investment adviser*. Due to the legal definition of “small business” in the Administrative Procedure Act, the Department’s Initial Statement of Reasons accurately stated that an investment adviser is not a small business under Government Code section 11342.610, subdivision (b).

Comment No. 9.4: The commenter quoted the section titled “Cost Impacts on Representative Private Person or Business” from the Initial Statement of Reasons which discussed the estimated annual costs of compliance with the proposed regulation and that IARs holding other professional designations may be in compliance with some or all of the CE requirements in the proposed regulation. The commenter stated that based on his experience, there are very few ethics classes being offered, and the ones offered can cost \$20-\$50 per class. The commenter stated that while this may not be a huge amount, it will still increase the costs of doing business and does not help to promote financial planning and investment advisory services to more people at a reasonable price.

Response: The IAR CE ethics requirement is 3 credits. There are currently 134 credits focused on Ethics and Professional Responsibility with 242 credits focused on the Products and Practice component. In total, there are 28 Course Providers, 19 of whom are actively submitting courses; therefore, the number of ethics-related courses will continue to grow and already offers an adequate number of quality courses and content to meet the requirement. The commenter states that the increase in costs does not help promote financial planning and investment advisory services to more people. However, NASAA and some states are offering free, no-cost ethics courses as an option to earn credit toward meeting this requirement. Given the anticipated availability of low- or no-cost course options to satisfy these requirements and the fact that many IARs already take advantage of educational course offerings even without a state mandate, this rule is not expected to have a material economic impact on IARs.

Comment No. 9.5: The commenter quoted the CE requirements under the proposed regulation and stated that while “ethics and professional responsibility” is an important topic, six hours annually is too much. The commenter stated that he has taken two hours of ethics classes bi-annually for his certification for sixteen years and has had difficulty finding classes on this topic every time. The commenter stated these classes offer very little learning value and he simply takes them because they are required. The commenter stated that most would agree that “you live being an ethical investment adviser – taking a lot of classes won’t make someone more ethical.”

Response: The Ethics and Professional Responsibility component is designed to ensure ongoing knowledge and competency related to an IAR’s duties and obligations to his or her clients including, but not limited to, issues related to the fiduciary duty owed to each client. The Department agrees with NASAA’s determination that three hours of ethics is

an appropriate amount of time on an annual basis to keep IARs familiar and up-to-date with this important topic. Furthermore, the three-hour requirement is the California insurance industry standard for ethics CE and almost half of IARs are dually insurance licensed.¹⁰ Therefore, it is reasonable to keep the Department's proposed requirement in line with this standard.

Commenter 10: William Cuthbertson, Fiscalis Advisory, Inc.

Comment No. 10.1: The commenter stated that as a CFP professional, in general he believes the Department's decision to adopt a regulation instituting continuing education is a good decision but the rule should be improved upon to avoid interference with preexisting programs that exceed these new requirements. The commenter stated that as an IAR who currently holds an "advanced designation" which qualifies for an examination waiver under the California Code of Regulations due to the fact that requirements set forth for the advanced designation exceed those set forth for IARs, he is concerned that this new regulatory requirement will be unnecessarily duplicative and burdensome for professionals like him. The commenter stated the proposed regulation appears to allow professionals like himself to sidestep the new regulations by simply continuing to meet their current advanced designation CE requirements *only if* the educational content providers (whose content and materials have already been approved by the advanced designation certifying body) are willing to have their content approved *again*. The commenter stated this process involved red tape, headaches, and expenses. The commenter stated this may appear to be a minor detail but in his view, is not, and makes CE more expensive, disruptive, and duplicative.

Response: The IAR CE program is designed to accept courses and the credits taken to maintain professional designations so long as the provider and course have been approved through Prometric for IAR CE purposes. Providers will likely promote the fact that certain courses qualify for IAR CE so IARs can look for courses that meet the CE requirements for both IAR CE and their professional designations to avoid duplication. The commenter states an IAR who currently holds an "advanced designation" which qualifies for an examination waiver under the California Code of Regulations exceeds those set forth for IARs. This is not always the case; for example, for the CFA[®] professional designation, CE is voluntary and therefore there is no CE requirement. While the Department understands each professional designation has its own set of standards for CE, the IAR CE framework allows NASAA the ability to have a mechanism to review the quality of the content being offered to professional designations and provided to IARs.

Both NASAA and the Department were mindful of developing a CE framework that would impose minimal costs to IARs. Some existing continuing education courses

¹⁰ The California Department of Insurance requires California life-only agents, accident and health agents, property broker-agents, casualty broker-agents, or personal lines broker-agents to complete three hours of ethics every license term and approximately 48% of IARs are insurance agents.

See <https://www.insurance.ca.gov/0200-industry/0030-see-pre-lic/446-9.cfm> and See page 5 of <https://www.nasaa.org/wp-content/uploads/2021/04/2021-IA-Section-Report-FINAL.pdf>

offered through FINRA have modest enrollment fees (less than \$100) and NASAA has stated its intent to engage a “wide range of vendors” including state regulatory agencies to offer approved continuing education courses for IARs.¹¹ In fact, based on vendor information collected by NASAA, there are low-cost options including packages for as low as \$65 which satisfy the entire continuing education requirement. Additionally, NASAA will be offering free ethics courses. Given the anticipated availability of low- or no-cost course options to satisfy these requirements and the fact that many IARs already take advantage of educational course offerings even without a state mandate, this rule is not expected to have a material economic impact on IARs.

Provider cost includes a \$250 application fee and a \$35 renewal fee at the end of each one-year term. After five years of operation, each IAR CE provider will need to complete a comprehensive application and audit review, which will cost \$250 and will be effective for another five-year period.¹²

At this time there are 245 courses approved and active for a total of 376 credits. IAR CE has been designed to be cost-effective, manageable, and accommodating to IARs with multiple professional designations.

Comment No. 10.2: The commenter stated that a much simpler and cleaner approach is to fully allow the original licensing oversight body’s CE approvals to stand on their own without duplicative approvals and oversight. The commenter stated that if these organizations can create, establish, and maintain professional licensing programs which exempt their licensees from sitting for initial licensing examinations, they can do the same for their already existing CE programs.

Response: The commenter states it is a much simpler and cleaner approach to fully allow the original licensing oversight body’s CE approvals to stand on their own; however, the Department disagrees. The CE requirements and review process vary greatly among professional designations and is even voluntary for the CFA® designation. Therefore, creating an exemption for these licensees would be overly broad.

Commenter 11: Chris Remedios

Comment No. 11: The commenter stated he is a fee-only financial planner in San Francisco, does not sell products, and always operates as a fiduciary which he believes all financial advisors/planners should do. The commenter stated he understands the need to protect consumers from “bad apples” in the industry but wishes the strategy to keep advisers in line would not be to check a box where courses were completed but no behavior was changed. The commenter stated that as a CFP, he is required to attend two hours of Ethics courses every two years and stated it is hard to imagine that two

¹¹ To view a list of NASAA approved CE providers, see <https://www.nasaa.org/industry-resources/approved-iar-ce-providers/>

¹² For a copy of the NASAA provider handbook, see <https://www.nasaa.org/wp-content/uploads/2023/01/NASAA-CE-Program-Handbook-V3.pdf>

hours of Ethics each year and four hours of professional responsibility courses are going to change the behavior of those who have not found a way to put customers' best interest first. The commenter stated that the requirement of extra CE seems to allow state regulators to step back from the requirement that all financial advisers must act in the customer's best interest at all times. The commenter stated he is not optimistic that the proposed regulation will help keep customers safer.

Response: The Department disagrees. As it stands today, there are many investors working with investment adviser representatives who receive no continuing education. These advisers rely on knowledge gained from preparation for the Series 65 licensing exam when they first entered the business, some decades ago. Voluntarily trying to remain current, some may not have the opportunity or resources to keep up with regulatory changes or practical skills-based developments to the extent they should. In a profession that continues to grow, the proposed continuing education solution is specific to advisers' unique service and consistent with their elevated fiduciary duty of care and ensures they are knowledgeable of current industry regulations, developments, and best practices when handling clients' life savings. Therefore, the Department has determined the proposed rule will likely increase consumer protection.

Commenter 12: Curt Weil

Comment No. 12.1: The commenter stated that the object of the proposed regulation is worthy, but it is, to a degree, duplicative with respect to IARs who hold a designation such as Certified Financial Planner and Chartered Financial Analyst, whose regulatory bodies already required significant continuing education. The commenter suggests that consideration be given to these existing requirements, perhaps by giving dual credit for approved courses or excusing holders of approved designations.

Response: The IAR CE program is designed to accept courses and the credits taken to maintain professional designations so long as the provider and course have been approved through Prometric for IAR CE purposes. Providers will likely promote the fact that certain courses qualify for IAR CE so IARs can look for courses that meet the CE requirements for both IAR CE and their professional designations. Therefore, the program is designed to allow and accept dual credits as suggested by the commenter. It should also be noted that the CFA® designation CE is voluntary and therefore not all holding this professional designation will necessarily fulfill the requirements of IAR CE.

Commenter 13: Nandi Pathefinder

Comment No. 13.1: The commenter suggested "we need less regulation and fees, not more." The commenter stated that contrary to the state's assertion, investment advisers can be small businesses, and creating more obstacles to entry reduces the ability for new advisers to emerge from systemically disadvantaged populations who need help and opportunity the most.

Response: The Department understands that the term “small business” colloquially refers to a business with a small number of employees and/or revenue within a certain lower range. However, the term “small business” has a specific definition under the Administrative Procedure Act which governs this proposed rulemaking. Government Code section 11342.610, subdivision (b) states that the term “small business” does not include the following professional and business activities: (1) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an *investment adviser*. Due to the legal definition of “small business” in the Administrative Procedure Act, the Department’s Initial Statement of Reasons accurately stated that an investment adviser is not a small business under Government Code section 11342.610, subdivision (b).

Regarding the commenter’s statement that the proposed regulation will create more obstacles to entry which will reduce the ability for new advisers to emerge from systemically disadvantaged populations who need help and opportunity the most, the Department does not agree. The IAR CE Model Rule is intended to be an industry standard for all practicing IARs, regardless of background or demographic. There is a need for a CE requirement for IARs and a correlation between CE and knowledge of investing. IARs play an important role in the financial lives of millions of Americans, yet unlike most financial services professionals, they are not independently required to meet a CE requirement to maintain their licenses to work with investors. Requiring IARs to continue professional education over the course of their careers ensures their ongoing competency and helps keep them knowledgeable about new developments, best practices, and current regulatory compliance requirements in their areas of expertise and when handling clients’ life savings. The yearly requirement of CE does not pose an obstacle to new advisers because the cost of each course ranges from approximately \$5 to \$30, and full packages from \$65. Also, two free courses are offered by NASAA and the State of Wisconsin, with more planned. This cost is negligible compared to the amount of client funds that are at stake.

Comment No. 13.2: The commenter stated that CE should be self-reportable rather than through state-sanctioned providers, or at the very least there should not be additional requirements on top of those already imposed by other agencies.

Response: The commenter suggests that CE should be self-reportable. Self-reporting would actually be more burdensome for the IAR. The mechanism in place requires the approved provider to report the CE which is more convenient than self-reporting.

Comment No. 13.3: The commenter stated that \$36 in reporting fees are extortion and if taxpayers vote for and demand something then the general fund should provide for its expense of that “protection.” The commenter stated for example, the Department could create one ethics class that the state approves and is offered for free and if agents take it, then they get recognized on the Department’s website and maybe E&O insurers will offer them a discount for taking it.

Response: The Department disagrees that the \$36 reporting fee should be paid out of the state's general fund. Other professional designations that impose CE requirements are paid directly by the individual or their employer. Also, both NASAA and the Department were mindful of developing a CE framework that would impose minimal costs to IARs. Some existing continuing education courses offered through FINRA have modest enrollment fees (less than \$100) and NASAA has stated its intent to engage a "wide range of vendors" including state regulatory agencies to offer approved continuing education courses for IARs.¹³ In fact, based on vendor information collected by NASAA, there are low-cost options including packages for as low as \$65 which satisfy the entire continuing education requirement.¹⁴ Additionally, NASAA will be offering free ethics courses. Given the anticipated availability of low- or no-cost course options to satisfy these requirements and the fact that many IARs already take advantage of educational course offerings even without a state mandate, this rule is not expected to have a material economic impact on IARs.

Commenter 14: Jason Fox, Vice President Government Relations, representing the California Society of CPAs (CalCPA) which represents the Certified Public Accountant (CPA) profession and related professionals working in public accounting firms and businesses throughout California.

Comment No. 14.1: The commenter stated that CalCPA supports robust CE requirements for licensed professionals and maintains a rigorous consumer protection framework but is concerned the proposed regulations may be duplicative and unnecessary for many CPAs that are already subject to significant state oversight including comprehensive CE requirements. The commenter stated the added requirements may exacerbate an already challenging instance of regulatory overlap.

Specifically, the commenter stated that under current law, California CPAs licensed by the California Board of Accountancy (CBA) are authorized to perform a wide range of services from assurances of financial information to tax planning and compliance to strategic advice on personal and organizational decisions. The commenter stated for licensure, CPAs must show proficiency by meeting and maintaining comprehensive CE requirements, passing a rigorous professional examination, demonstrating ethical competency, and completing the practical experience. The commenter stated that as a condition of licensure, CPAs must complete at least 80 hours of CE every two-year renewal period, including education in technical subjects that focus on the maintenance, and enhancement, of their public accounting skills, knowledge related to the services they provide consumers, and specific ethics and regulatory review courses. CPAs must also adhere to various professional standards including a code of professional conduct, ethical standards of practice, and applicable statutes and rules such as financial

¹³ See NASAA's Frequently Asked Questions: Investment Adviser Continuing Education, available at <https://www.nasaa.org/industry-resources/investment-advisers/resources/iar-ce-faq>.)

¹⁴ The IAR CE course reporting fee, also referred to as the roster fee, is \$3 per credit hour. When the course vendor/provider submits an IAR's completed course for credit, the \$3 per credit hour is due upon submission. For twelve credits, the roster fee will total \$36.

planning standards. The commenter stated that because financial planning is an activity that CPAs may engage in as part of the various services they provide a client, financial planning and related topics are embedded throughout various CPA licensure requirements and professional standards. The commenter stated that the American Institute of CPAs (AICPA) has a Personal Financial Planning section that provides resources to support CPAs in their financial planning practice, including CE programs. The commenter stated that CalCPA also maintains a Personal Financial Planning committee and offers financial planning education courses. The commenter stated these frameworks provide extensive financial planning resources and education tailored to the professional and regulatory needs of California CPAs working in this space.

Response: The commenter describes the details of CPA licensure, their CE requirements, and the Personal Financial Planning committee which offers financial planning resources and education to CPAs. Courses to fulfill CPA CE and the financial planning courses offered by CalCPA may be submitted to NASAA and its vendor Prometric for approval as IAR CE. The IAR CE program is designed to accept courses and the credits taken to maintain other professional designations so long as the provider and course have been approved through Prometric for IAR CE purposes. Providers will likely promote the fact that certain courses qualify for IAR CE so IARs can look for courses that meet the CE requirements for both IAR CE and their professional designations. While the Department understands each professional designation has its own set of standards for CE, the IAR CE framework gives NASAA the ability to review the quality of the content being offered to CPA professional designations and approve it for IAR CE purposes.

Comment No. 14.2: The commenter stated that the Investment Advisers Act of 1940, Section 202(a)(11)(B) recognized the role of accountants in financial advisory services by exempting CPAs from registering as an investment adviser if their services include advice regarding securities that is solely incidental to the practice of their profession. The commenter stated this was partly in recognition that CPAs commonly give a certain amount of investment advice to their clients in the course of their regular services as CPAs and that it would be inappropriate to require them to register as investment advisers merely because of this aspect of their practice. The commenter stated that while California generally follows this same exception, it deviates as it relates to accountants using the title “financial planner” under Corporations Code section 25009, subdivision (b)(2). The commenter stated this has created confusion for many CPAs since financial planning and related services are already included throughout the CPA regulatory structure. The commenter stated that in general, CPAs have been able to navigate this gray area and register as an investment adviser representative if they are providing comprehensive investment advice for clients. However, CalCPA fears that adding a CE requirement to CPA financial planners who are registered as investment advisers could add further confusion and exacerbate regulatory overlap of CPA services. The commenter stated it would also unnecessarily add to CPAs’ regulatory obligations. To avoid the possibility of further confusion and complications, CalCPA

requests that CPAs be exempt from the proposed rule implementing CE requirements for California IARs.¹⁵

Response: The commenter is referencing both federal and California law which exempt a CPA from registering as an IAR when the CPA's advisory activity is solely *incidental* to their practice. The Department disagrees that the proposed rule would create confusion regarding the applicability of the IAR CE requirement. The proposed IAR CE rule is clear that the continuing education requirements are only applicable to CPAs that are also *registered* as an IAR. To determine whether a CPA needs to register as an IAR, some of the factors to consider include the scope of investment advisory activity, the services provided, and compensation.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF FEBRUARY 15, 2024 THROUGH MARCH 1, 2024
[Government Code section 11346.9, subdivision (a)(3)]

The Department received six public comment letters during the 15-day public comment period. The comments are summarized below, followed by the Department's response to each comment.

Commenter 1: Casey Grigg, CFA

Comment No. 1: The commenter stated that if the resubmitted rulemaking file is approved by OAL later this year (in 2024), it is not fair that IARs would have to complete the twelve-hour CE requirement by year-end 2024. The commenter stated that less than nine months, at best, to comply is not enough time and very burdensome to small business owners. The commenter requested the rule, if approved, go into effect in 2025 at the earliest and not in 2024. The commenter stated this is another example of California regulators trying to overregulate businesses, especially small businesses.

Response: The Department acknowledges that the modified rule requires IARs to complete twelve hours of continuing education in 2024. The Department has weighed this burden against the benefits to the public of implementing the IAR CE program immediately rather than postponing it another year. IARs play an important role in the financial lives of millions of Americans, yet unlike most financial services professionals, they are not independently required to meet a CE requirement to maintain their licenses to work with investors. Requiring IARs to continue professional education over the course of their careers ensures their ongoing competency and helps keep them knowledgeable about new developments, best practices, and current regulatory compliance requirements in their areas of expertise and when handling clients' life savings. It is important to the Department and California investors that IARs registered in California meet the same CE requirements as other states. Following years of messaging from NASAA to the industry about the IAR CE Model Rule, the DFPI has also provided notice to the industry regarding the proposed rule. In conclusion, the

¹⁵ CalCPA became a NASAA approved provider in 2023.

Department has considered the commenter's concerns but believes the policy benefits weigh in favor of implementing the CE requirement immediately,

Commenter 2: Jeff Fritts, Amplified Alpha

Comment No. 2: The commenter stated the proposed rule is a scheme by continuing education companies to sell courses that provide no value. The commenter stated that this has occurred in the insurance industry and created a useless industry that adds no value. As a licensed insurance broker who works on \$1 billion construction project programs, the commenter stated he must do continuing education on homeowners' insurance. The commenter requested DFPI not allow this rule.

Response: Please see the Department's responses to Comments 1, 3.1, and 3.2 in the preceding section titled "Summary and Response to Comments Received During the 45-Day Notice Period of December 2, 2022 through January 16, 2023."

Commenter 3: Gerrit van der Zwan, TDA Compliance

Comment No. 3: The commenter addressed Section (a)(12) of the proposed rule which defines "Reporting Period for 2024" as starting on the date this rule becomes effective. The commenter requested DFPI change the effective date to a reasonable "real" date (such as June 30, 2024) to allow IARs that become registered during 2024 to have sufficient time to obtain the required credits. The commenter is concerned that IARs who become registered during 2024 may be required to obtain the required credits in an unfairly short amount of time, for example if the rule becomes effective on December 30, 2024.

Response: IARs that register in California will be required to meet the annual IAR CE requirement by the end of the first full calendar year *following* the year in which they first become registered. Therefore, an IAR who registers in California in 2024 will not need to comply with the IAR CE requirement until their first full calendar year of registration which would be in 2025.

Commenter 4: Daniel Seidman, Seidman Investment Portfolios

Comment No. 4: The commenter stated that as a person involved in the financial industry since 1985 and an IAR since 1987 with over 30 years in the business, continuing education should sunset. The commenter stated that at some point, no continuing education should be required of an IAR as you end up repeating the same courses, for instance like an insurance agent. The commenter stated he does not understand why CE was determined to be necessary; given that an IAR is required to be a fiduciary, the person should keep up with the times which is part of being in business and running a business.

Response: Please see the Department’s responses to Comments 1 and 3.1 in the preceding section titled “Summary and Response to Comments Received During the 45-Day Notice Period of December 2, 2022 through January 16, 2023.”

Commenter 5: Jeff Martinez, Treveri Capital LLC

Comment No. 5.1: The commenter stated the financial industry is already over regulated and more compliance such as continuing education is a waste of everyone’s time in the industry. The commenter stated that CE every year contributes to increased regulation and time consumption on an overburdened financial profession. The commenter asked if the Department thinks professionals have only one license and no other CE requirements. The commenter stated the Department should proactively think of ways to lower regulation and lower fees for professionals. The commenter included a table of the number of FINRA-registered representatives leaving and entering the industry annually, from 2008 to 2022, and stated there has been a loss of 40,000 registered representatives since 2008 and this could happen to the investment adviser industry too.

Response: Please see the Department’s responses to Comments 1, 3.1, and 3.2 in the preceding section titled “Summary and Response to Comments Received During the 45-Day Notice Period of December 2, 2022 through January 16, 2023.”

Comment No. 5.2: The commenter stated that a one-year time frame is too short and instead, the time frame should be at least a minimum of two years and [allow] CE credits from other designations or insurance license CE credits [to fulfill the IAR CE requirement]. The commenter stated the situation has become a year long class of CE requirements for all licenses and designations. The commenter included a link with a list of designations that he feels should be exempt from CE requirements.

Response: Please see the Department’s responses to Comments 2.1, 2.2, and 8 in the preceding section titled “Summary and Response to Comments Received During the 45-Day Notice Period of December 2, 2022 through January 16, 2023.”

Commenter 6: Raj Vasudevan, White Stork Asset Management LLC

Comment No. 6.1: The commenter stated that while he respects the proposal requiring [continuing] education, he feels the current time or duration left in 2024 to complete all courses may not be sufficient for companies with two or more IARs in California.

Response: Please see the Department’s response to Comment 1 in this section.

Comment No. 6.2: The commenter stated that preliminary correspondence with some course providers has indicated that some have insufficient courses while others have a large list of courses which may not all be applicable or improve their current knowledge. The commenter requests the DFPI allow IARs to complete courses in 2025 to allow

sufficient time in 2024 for research and ensuring the right courses are selected and completed in time for the benefit of the IARs and California as a whole.

Response: Please see the Department’s responses to Comments 6 and 7 in the preceding section titled “Summary and Response to Comments Received During the 45-Day Notice Period of December 2, 2022 through January 16, 2023.”

ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES [Government Code section 11346.9, subdivision (a)(5)]

Pursuant to Government Code section 11342.610, subdivision (b)(1), investment advisers are excluded from the definition of “small business.” Therefore, the proposed regulation does not impact small businesses and no alternatives would lessen the impact of the proposed regulation on small businesses.

ALTERNATIVES DETERMINATION [Government Code section 11346.9, subdivision (a)(4)]

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The regulations adopted by the Department are the only regulatory provisions identified by the Department that accomplish the goal of protecting the interests of consumers and preserving the health, safety, and general welfare of the people of this state, through the adequate regulation of investment adviser representatives in this state. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Department’s attention.