

INVESTMENT ADVISER NEWSLETTER

Wisconsin Department of Financial Institutions—Division of Securities

Fall 2018



Our periodic newsletter for investment advisers registered in Wisconsin is published twice per year. Past editions can be found [here](#).

2019 Registration Renewal

Soon it will be time to renew your firm and individual registrations through the Investment Adviser Registration Depository (IARD). Your renewal Statement will be available on IARD beginning November 12th. Renewal payments for firm, individual, and branch registrations are due this year on December 17th. [Click here](#) to see the 2019 Renewal Program Calendar.

If you have questions regarding the renewal process or your status, please contact either the IARD Call Center at (240) 386-4848 or our Examiner of the Day at (608) 266-2139.

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TASK FORCE ON ELDER ABUSE RECOMMENDS LEGISLATION

Earlier this month, Attorney General Brad Schimel announced that his Task Force on Elder Abuse is recommending new legislation to fight elder abuse in Wisconsin. Created about a year ago, the Task Force has representatives from various agencies, including the Administrator of the Division of Securities, Leslie Van Buskirk. New legislation was just one of the recommendations made by the Task Force to strengthen consumer protection for seniors.

Based on the NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation, proposed legislation for Wisconsin would provide financial advisors and financial institutions with the ability to not only delay account disbursements, but to also block suspicious transactions. The legislation would also provide immunity to financial professionals for the voluntary reporting of suspected financial exploitation to the appropriate authorities such as Adult Protective Services, the Division of Securities, or law enforcement.

See the full news release for additional information by [clicking here](#).



Interested in Senior Safe Training?

Earlier this year, the Senior Safe Act became federal law and encourages financial service providers to report suspected financial abuse by providing immunity where appropriate training has taken place. The act links training to immunity for the reporters and the “covered financial institution.” Covered institutions include investment advisers and broker-dealers.

To qualify for immunity, training must be provided to staff on how to identify common signs of financial exploitation of seniors and report the suspected exploitation to government officials or law enforcement authorities.

The Division is considering whether training on these topics would be of interest to our community of registered investment advisers. Therefore, to indicate whether you have an interest in training related to senior financial exploitation, please [click here](#) to answer “yes” or “no.”

NASAA INFORMATION SECURITY PROPOSED MODEL RULE

Does your firm have information security policies and procedures in place to safeguard your clients' confidential information? Cybersecurity breaches are frequently reported in the news as hackers are getting more creative in finding ways to scam investors and obtain their personal and confidential information. With the advances in technology, the loss of clients' personal and confidential information is a threat to all businesses and firms.

If your investment advisory firm was recently examined by the Division of Securities, you may have been asked questions regarding your cybersecurity practices. The Wisconsin Uniform Securities Law does not specifically include a regulatory requirement that firms establish information security policies and procedures. However, the Division considers it a best business practice for all firms to have procedures in place.

When your firm is developing information security policies and procedures, the procedures should be tailored to your firm's business model, taking into account the size of the firm, the types of services the firm provides and the number of

locations of your firm. Once your firm has policies and procedures in place, they should be periodically reviewed to ensure they are adequate and updated to reflect any changes in the firm's business practices, and are being followed by your staff.

The North American Securities Administrators Association ("NASAA") has been working on addressing investment adviser-related needs and concerns regarding cybersecurity to protect and educate investment advisers and their clients. In 2017 NASAA created a **Cybersecurity Checklist** to help state-registered investment advisers evaluate their cybersecurity risks. To complement the cybersecurity tools and educational efforts, NASAA is proposing a model rule to require that state-registered investment advisers adopt policies and procedures regarding information security.

NASAA is currently requesting public comment regarding the proposed investment adviser model rule for information security and privacy. The proposal includes related amendments to the NASAA model Recordkeeping Requirement rule and the NASAA model Unethical Business Practices rule.



THE RULE PROPOSAL HAS THREE COMPONENTS:

- A proposed model rule to require investment advisers to adopt policies and procedures regarding information security (both physical and cybersecurity) and to deliver its privacy policy annually to clients ("Proposed Information Security and Privacy Rule").
- A proposed amendment to the existing investment adviser NASAA model Recordkeeping Requirements rule to require that investment advisers maintain these records ("Proposed Recordkeeping Rule Amendment").
- A proposed amendment to the existing investment adviser NASAA model Unethical Business Practices of Investment Advisers, Investment Adviser Representatives and Federal Covered Advisers and the Prohibited Conduct in Providing Investment Advice model rules (collectively "UBP Model Rules") to include failing to establish, maintain, and enforce required policy or procedure to the enumerated list of unethical business practices/prohibited conduct ("Proposed Unethical Business Practices Rules Amendment").

To review NASAA's request for public comment and the Rule Proposal, go to NASAA's website at **Notice of Request for Public Comment**. The notice includes a background and overview of the Rule Proposal and information on how and where to submit any comments. **Public comments on the rule proposal are due on or before November 26, 2018.**

2018 NASAA CYBERSECURITY ROUNDTABLE



On October 15, 2018, NASAA held a cybersecurity roundtable in Washington DC where experts from the public and private sector provided best practices for small to mid-sized investment advisers.

One growing concern is the increasing prevalence of the business email compromise (BEC) scam. According to the FBI, in a typical BEC fraud, "Scammers target employees with access to company finances and trick them into making wire transfers to bank accounts thought to belong to trusted partners - except the money ends up in accounts controlled by the criminals."

While variations on the BEC scam are not new, panelists remarked that scammers are getting increasingly sophisticated. Five years ago this scam might have been one bad actor sending emails including spelling and grammatical errors - now it is common to have lawyers, linguists, hackers, and social engineers from around the world working in concert to conduct this scam.

According to the [Internet Crime Complaint Center \(IC3\)](#), BEC scams are the most commonly reported complaint. They note that globally, between October 2013 and May 2018, over \$12.5 billion was stolen in 78,000 separate incidents.

Last year NASAA members from across the country conducted a cybersecurity sweep which found that the vast majority of state registered investment advisers intend to comply with cybersecurity best practices; however, the two most commonly found cybersecurity weaknesses were: (A) not having adequate cybersecurity insurance and (B) not testing for cybersecurity vulnerabilities.

By addressing those two areas, small investment advisory firms can go a long way to protect themselves from BEC and other common frauds. For more cybersecurity resources and best practices, visit [www. NASAA.org](http://www.NASAA.org).





FINRA Changes to Qualifications Exam

Investment advisory firms expecting to hire dually registered representatives (who in the past took the Series 7/66 or the Series 7/63/65) will be interested in the following information regarding the new FINRA exam structure.

On October 1, 2018, FINRA began requiring a new exam called the Securities Industry Essentials ("SIE") exam. Anyone 18 or older can take the exam and either be self-sponsored or firm sponsored. Applicants will be tested on their fundamental securities knowledge to include basic products, structure and function of the securities industry, the regulatory agencies and their functions, and regulated and prohibited practices. FINRA is implementing a pass/fail grade for the SIE exam which has 75 questions, a \$60 fee, and a time limit of 105 minutes. Once passed, the SIE is subject to a four-year expiration period.

After October 1st, someone applying for registration for the first time must pass both the SIE exam and the appropriate revised representative-level examination (e.g. Series 7) for his or her particular registered role (or obtain a waiver of the examinations). The "top off"

examinations, such as the Series 7, are still identified by the same Series number. However, the length of the exam is shorter. For instance, the Series 7 now has 125 questions instead of 250, with a revised fee of \$245. The revised representative-level qualification exams will test knowledge relevant to day-to-day activities, responsibilities, and job functions of representatives. Individuals who fail either the SIE or the applicable representative-level qualification exam will not qualify for registration as a representative.

Certain former and current registered representatives will be considered to have passed the SIE. If an individual left the industry prior to October 1, 2014, he or she will need to take the new SIE exam. An individual who left the industry between October 1, 2014 and September 20, 2018 will not be required to take the SIE if re-registering within four years from the date of their last registration. The format of NASAA's State Series 63, 65, and 66 exams will remain unchanged. For more information regarding FINRA's restructured qualifications exams, please refer to **[FINRA Regulatory Notice 17-30](#)** and **[FINRA Regulatory Notice 18-27](#)**.

THE FIDUCIARY DEBATE CONTINUES WITH THE SEC'S REG BI PROPOSAL

The fiduciary duty standard for investment advisers existed long before the U.S. 5th Circuit Court of Appeals struck down the Department of Labor (DOL) fiduciary rule. As the SEC proposes Regulation Best Interest (BI), the ongoing debate concerns the activities of broker-dealers, including agents dually registered as investment adviser representatives.

The DOL debate began in about 2010, and the new DOL rule became law April 6, 2016. The new DOL rule covered tax deferred accounts - not taxable accounts. The rule was essentially comprised of two parts. First was the Best Interest Contract Exemption (BICE), which allowed for many compensation models (fee and/or commission) as long as the firm entered into a best interest contract with the investor. Second, representatives of firms became subject to the "Impartial Conduct Standards" on June 9, 2017, which required them to give advice that is in the client's best interest, charge only reasonable compensation, and not mislead on conflicts, compensation and advice. The U.S. 5th Circuit Court of Appeals struck down the DOL rule on March 20, 2018, before its full future implementation date of July 1, 2019. The Department of Labor had until June 13, 2018, to appeal the decision to the Supreme Court - they chose not to.

Last April the SEC took up the lengthy debate over fiduciary duties by proposing Regulation Best Interest (BI) and form Customer Relationship Summary (CRS). The SEC sought comments from interested parties by August 7, 2018, and received thousands of comment letters that they continue to review.

SO WHAT HAPPENS NOW?

Being a fiduciary has not changed for investment advisers amid the DOL and SEC fiduciary debate. Fiduciary duties and concepts will continue to apply as they always have for investment advisers and ERISA accounts. Under Regulation BI, broker-dealers will be brought up to a "best interests" standard with new potential disclosure obligations and restrictions on the use of certain names or titles.

It appears Regulation BI and Form CRS will cover both tax deferred and taxable accounts, whereas the DOL rule covered only tax deferred accounts. Dually

registered representatives can serve in both broker and adviser capacities under the proposed Regulation BI. Registered representatives of broker-dealers may not be able to use the title "Advisor" if acting solely as a broker-dealer agent; however, dually registered representatives may continue to use the term Advisor/Adviser. Both investment advisers and brokers will use Form CRS. Also, consumers will have a private right of action as they did under the DOL rule.

The applicable standard under the proposed Regulation BI and its terminology is very fluid right now. The final definition and degree of a standard under Regulation BI, its implementation, and Form CRS details are up in the air, so stay tuned for further developments. According to DOL's regulatory agenda, they plan to issue a revised final fiduciary rule package in September 2019 to replace the one vacated by the 5th Circuit Court of Appeals. News sources report that the SEC's final advice standards package for advisers and brokers is also coming next September.

THE LONG HISTORY OF EVENTS...

- 2010 - DOL proposes original fiduciary duty rule
- 2012 - Rule re-proposal placed on the DOL calendar - deadlines are missed
- 2014 - DOL delays the re-proposal to Jan 2015
- 2015 - New draft of the rule released
- Aug 2015 - Hearings on DOL proposed rule
- 4/6/16 - Final rule adopted
- 2/3/17 - President Trump memo to DOL...DOL delays the rule by 60 days
- 4/10/17 - Parts of DOL rule become effective
- 6/9/17 - Parts of the DOL rule become effective, including the Impartial Conduct Standard
- 6/27/17 - SEC Chair Jay Clayton announces "coordinated" process with DOL on the fiduciary standard
- Firms have until Jan 1, 2018 and then July 1, 2019 to be fully compliant
- 3/20/18 - 5th Circuit Court of Appeals vacates the DOL rule
- 4/18/18 - The SEC proposes Regulation BI and Form CRS. Advisers are still fiduciaries and brokers are subject to Regulation BI
- 6/13/18 - DOL decides not to appeal the 5th Circuit's decision to the Supreme Court
- 8/7/18 - Interested party comment period to the SEC for Regulation BI and Form CRS ends

More ways to connect with DFI

The Wisconsin Department of Financial Institutions (DFI) Facebook page provides information on DFI activities, financial literacy, investor education, scam warnings, and other timely news to help protect investors.

Please check out DFI's Facebook page—www.facebook.com/wdfi and share any content that you find useful. Feel free to “like” our page so that you receive future posts in your Facebook newsfeed.

In addition, to keep up with the latest from DFI, follow us on Twitter [@WIS_DFI](https://twitter.com/WIS_DFI).

