

# **The Impact of Investment Adviser Regulations on Personal Actuaries**

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## **1. Introduction**

Actuaries are well known in the insurance and pension world for evaluating the likelihood of future events and designing ways to control their financial impact. Traditionally, insurance companies and consulting firms have been the primary employers of actuaries. However, actuarial expertise can also help individuals with personal financial decision making. Actuaries who specialize in this type of practice are commonly referred to as “personal actuaries.”

Personal actuaries work with individuals (or other professionals or firms representing individuals) in various capacities, such as advising them on retirement, pension, and insurance matters. To understand how the role of personal actuaries developed, one need look no further than an experience shared by many actuaries: being approached by family and friends for financial advice. As actuaries begin to offer advice to individuals, the role of an actuary as a personal financial adviser is emerging as a potential specialty area of actuarial practice.

Expertise in financial risk management and life contingencies gives actuaries a unique and critical perspective for evaluating many personal risk and investment decisions. For instance, incorporating actuarial assumptions such as the effect of mortality (and/or morbidity) into investment analysis yields additional insight for an individual’s decision process. Thus, individuals who seek advice from personal actuaries on investment decisions benefit from the added value an actuary can provide.

Generally, federal and state laws have specific requirements for professionals who provide investment advice, and require that representatives of investment advisory firms either pass certain investment-related examinations or hold certain professional credentials for which the laws grant examination exemptions. However, actuarial designations are not among the list of exempted credentials. Traditionally, actuaries have worked for insurers and other corporate firms, not individuals, and as a result they were probably not considered at the time investment adviser laws were drafted. This paper was motivated by the potential detrimental impact these laws have on personal actuaries and the extent to which the laws pose a competitive disadvantage.

## **2. Overall Purpose**

The Society of Actuaries Task Force on the Personal Actuary (hereafter the Task Force) is charged with monitoring current and emerging trends in personal actuarial services such as benefit counseling, entitlement counseling, and life and health expectancy counseling, and developing educational material in support of these activities. In addition, the Task Force also monitors potential barriers to personal actuaries in their relevant specialty areas and markets.

When the Task Force became aware of the regulatory predicament for personal actuaries wanting to provide investment advice, it decided that the issue merited further exploration and research. Consequently, the Task Force proposed that a research project be conducted to review the pertinent federal and state regulations and recommend action, as needed. With the funding support of the Society of Actuaries Committee on Finance Research, a formal research effort with this overall purpose in mind was initiated.

The authors concede that the scope of this paper is not intended to be so broad as to comprehensively catalog and contrast the specific areas of knowledge covered by the actuarial exams and those covered by the exams for designations given exam exemptions under state laws. Nor is a comparison of international practices in this regard, such as with Canada, the U.K., and Australia, within the scope of this paper. These are areas ripe for additional research, and we hope that the SOA will take advantage of this opportunity to dedicate resources toward further research that will hopefully result in greater public recognition of the value of an actuarial education.

It is the view of the Task Force that actuaries who have achieved fellowship in the SOA, the Canadian Institute of Actuaries (CIA), or the Casualty Actuarial Society (CAS) should be added to the list of exempt professionals in state regulations (examples are provided later in the paper).

### **3. Current Investment Adviser Environment**

To become an Investment Adviser Representative, in many states, one must pass either the Uniform Investment Adviser Law Exam (Series 65) or both the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (Series 66) exams. However, most states exempt a number of credentialed professionals from these exams. These professionals typically include those who hold designations as a Certified Financial Planner (CFP), Chartered Investment Counselor (CIC), Chartered Financial Consultant (ChFC), Personal Financial Specialist (PFS), or Chartered Financial Analyst (CFA).

Some actuaries have obtained such designations and/or have taken the mandated investment adviser exams. The SOA's *Employer and Member Survey Report*, published in September 2003, indicated that 4 percent of actuaries also hold the CFA designation, and 23 percent were pursuing it at that time. This can be interpreted in many ways, including the possibility that many actuaries view obtaining the CFA designation as important in securing wider recognition of their investment knowledge. If a statutory exemption from investment adviser exams were added for credentialed actuaries, pursuit of the CFA designation may be viewed as less essential for actuaries to gain recognition of their investment knowledge.

It is generally the view among members of the Task Force (and among other actuaries contacted for this project) that while the actuarial exams may not be as solely focused (or comprehensive) on investments as the CFA exams, they are at least as thorough as other exams series for which exemptions exist (e.g., those given to life insurance agents to obtain the ChFC designation, without which they could not as easily sell investment-related products). Therefore, actuaries merit an exam exemption on at least as favorable terms.

In addition to considering actuarial education in investments as more than adequate compared to certain other exempted designations, the Task Force found that

other reasons supporting the recommendation for exempting credentialed actuaries understandably refer to the highly selective nature of the actuarial exams (low pass ratios) and the very long travel time typically involved in completing all the actuarial exams.

Attaining the FSA designation often takes many years, while the travel time to earn other designations is typically much shorter. For example, according to internal data from the SOA, the average age for attaining fellowship is 33. Also, many actuaries completed their actuarial exams when the average travel time to completion was in excess of 10 years. This dedication of time was found to be so lengthy that it prompted revisions to the SOA’s educational system; indeed, reduction of travel time is considered to be one of the most important principles in current revisions to the exam system. By contrast, according to the 2006 Annual Report of the CFA Institute, the average travel time to complete the three prescribed CFA examinations is approximately four years.<sup>1</sup>

Similarly, the SOA has traditionally passed about 30 to 50 percent of its candidates, widely considered a very high-caliber pool of candidates. The low pass rates are believed by the Task Force (and many actuaries) to be the lowest of any professional exam series, although pass rates for the CFA exams<sup>2</sup> have dropped in recent years:

CFA Examination Pass Rates			
	Level I	Level II	Level III
2004-2006	37%	45%	66%
1963-2006	47%	52%	68%

Note that these passing percentages exclude “no-shows.”<sup>3</sup> The effect of this is to boost the reported passing percentages, though not to the extent that the Society of Actuaries’ “% effective passing”, which excludes from the calculation all candidates who fail to garner 50% of the pass mark in grading points.<sup>4</sup> Logically, this would include more candidates than just “no-shows.”<sup>5</sup>

As implied above, the CFA exams cover several topics not directly covered in the actuarial exams that would be of use to personal actuaries. For example, considerable emphasis is given to equity valuation, financial statement analysis, and behavioral finance. However, the Task Force believes that these are advantages that the CFA exams have over other exempted designations as well, and thus are not a reason to refuse an investment adviser exam exemption to credentialed actuaries.

The Task Force also believes that actuarial exams cover certain topics that none of the other exam series do, such as life and health contingencies, which are especially important considerations when giving financial advice to elderly or impaired clients. When combined with the highly selective nature of the actuarial exams, and their comprehensiveness in topics, the Task Force believes the case for an exemption for credentialed actuaries is strong. Many other actuaries, including several not associated with the Task Force, concur.

<sup>1</sup> <http://www.cfainstitute.org/aboutus/reports/pdf/06annualreport.pdf>, last accessed 04/17/07

<sup>2</sup> [http://cfainstitute.org/cfaprog/pdf/candidate\\_results.pdf](http://cfainstitute.org/cfaprog/pdf/candidate_results.pdf), last accessed 04/17/07

<sup>3</sup> <http://www.cfainstitute.org/cfaprog/overview/pdf/IntoOur5thDecade.pdf>, last accessed 04/17/07

<sup>4</sup> <http://new.soa.org/files/pdf/edu-results-p1-per-feb07.pdf>, last accessed 04/17/07

<sup>5</sup> [http://www.cfainstitute.org/cfaprog/pdf/candidate\\_results.pdf](http://www.cfainstitute.org/cfaprog/pdf/candidate_results.pdf), last accessed 4/17/07

For example, Max Rudolph, an actuary with both the FSA and CFA designations, states, “No one who has taken both [series of examinations] will tell you that the CFA designation is as difficult to obtain as the FSA.”

Nevertheless, the CFA designation is more broadly recognized in the investment world, and as indicated above, this has prompted many actuaries to seek it to gain recognition for their investment knowledge. For instance, Prakash A. Shimpi, a consultant for Towers Perrin specializing in Enterprise Risk Management, explained: “The CFA designation was a more recognizable qualification for working in financial areas outside of traditional actuarial work, and my FSA designation—although technically more intensive—was viewed merely as a bonus.”

It has been pointed out to the task force that some actuaries are not sufficiently qualified to provide investment advice. Their actuarial roles may have limited their exposure to investment concepts such as swaps, derivatives, and portfolio theory. We agree, but note that some actuaries are not qualified to issue actuarial reserve opinions or sign pricing memoranda. The Actuarial Standards of Practice provide guidance regarding qualification standards for prescribed statements of actuarial opinion and other actuarial work. The Task Force believes that we can rely upon these standards in this field as well, because as long as the exemption in the law requires an actuary to hold an actuarial designation in good standing, the qualification standards will apply to them. Thus, the exemption can still be granted to all FSAs (for example), yet only those who are qualified will be able to practice.

This does not mean that all qualified actuaries should handle all investment matters. Just as a primary medical doctor refers patients to specialists, an investment advisor of any professional background should be expected to refer clients to other experts when and if he or she cannot serve clients in certain complex cases. It is the opinion of the authors that, in most cases, the typical clients’ needs could be met just as well by an actuary as other noted/listed designations that are exempted from SEC requirements. Given actuaries’ understanding of risk and knowledge of how to select appropriate assumptions for various future contingencies and expectancies, most actuaries can add much value to the investment-planning process, value that is not currently being provided.

It has been suggested that a separate actuarial designation be created to indicate that an actuary is qualified to provide investment advice, and that only holders of this new designation be recognized on par with other designations for exam exemption. The authors believe that a separate certification and/or credentialing process should not be the initial goal of the profession’s efforts at gaining recognition for our investment competence, but could be studied as needed to help extend the exemption for regulator satisfaction and public perception.

In summary, the Task Force believes that credentialed actuaries have already obtained and demonstrated at least as much investment expertise as holders of most of the exempt designations, and thus merit a statutory exemption also. Moreover, a statutory exemption for actuarial credentials would validate the profession’s reputation for comprehensive investment education and highly knowledgeable practitioners in the eyes of the investment community.

## 4. Review of Investment Adviser Regulations

Investment advisory firms register with the SEC and/or the states. According to the California Department of Corporations Web site, “generally the larger (assets under management of \$25 million or more) and multi-state investment advisers are registered with the SEC whereas the smaller investment advisers and fee-only financial planners are registered with the states. More than 9,000 investment advisers are registered with either the SEC or state securities administrators”<sup>6</sup> As stated above, a prerequisite to registering as an investment adviser representative is normally passing either:

- The Uniform Investment Adviser Law Examination Series 65 or
- Both of the following:
  - The General Securities Representative Examination (Series 7) and
  - The Uniform Combined State Law Examination (Series 66).

According to the North American Securities Administrators Association’s (NASAA) Web site ([www.nasaa.org](http://www.nasaa.org)), most states will allow an individual to substitute one of the following certifications for passing the Series 65 exam: CFP, CIC, ChFC, PFS, or CFA.

Investment adviser representatives usually work for registered investment advisory companies. For sole proprietors, it may be required to register both as an investment advisory company *as well as* a representative of that company. According to the NASAA, the laws regarding sole proprietorship investment advisers are complicated and vary by state.

This paper does not attempt to provide details on every state regarding pertinent administrative codes, statutes, or regulations. However, we did examine the situation in the four most populous states (California, Texas, New York, and Florida), and excerpts from the regulations appear below. As an example, here is the relevant exemption language in Florida law:

(5) The examination requirement for investment adviser principals, investment adviser representatives, and associated persons of issuer dealers shall not apply to an individual who currently holds one of the following professional designations: 1. Certified Financial Planner (TM) or CFP® awarded by the Certified Financial Planner Board of Standards, Inc.; 2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA; 3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; 4. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; 5. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc. (*Specific Authority 517.03(1) FS. Law Implemented 517.12(8) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.05, Amended 8-1-91, 1-11-93, 4-18-96, 4-2-00, 10-30-03, Formerly 3E-600.005.*)

For other states, the state statutes detailing investment adviser requirements can be found by using the following link:

[www.nasaa.org/industry\\_\\_\\_regulatory\\_resources/Directory\\_of\\_Securities\\_Laws\\_\\_\\_Regulations](http://www.nasaa.org/industry___regulatory_resources/Directory_of_Securities_Laws___Regulations). Note that personal actuaries should review the applicable statutes and seek qualified legal guidance, as appropriate. This paper does not attempt nor should be construed to provide legal advice in any way.

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<sup>6</sup> [http://www.nasaa.org/about\\_nasaa/2062.cfm](http://www.nasaa.org/about_nasaa/2062.cfm), last accessed 04/17/07

## 5. Proposed Action Steps

The Task Force recommends that actuarial organizations lobby the relevant legislative and regulatory bodies to provide actuaries pursuing an investment-focused career path with the same exemption status as other professionals.

It seems likely that such lobbying will require the substitution of “facts for appearances.” Consequently, the authors recommend that the SOA undertake a study to compare the depth and breadth of its required syllabus material on investments with that covered by other exempted designations, (for example, the ChFC). The purpose would be to test and document (for regulators and/or the NAIC) the hypothesis that the FSA designation provides an investment education that is at least as rigorous and thorough as other exempted designations, and therefore should be granted the same exemption.

It is possible that the NAIC and/or other regulators would agree to exempt some actuaries, but not others, and require a separate actuarial credential to indicate an actuary has sufficient investment knowledge. If that occurs, appropriate educational teams within the SOA could be assigned the task of recommending certification/recertification and professional development requirements, defining adequate experience, and so forth. It is presumed that any recommendations from the appropriate educational teams would be brought to a vote by the Board of Governors of the SOA.

The role of the Actuarial Standards Board/the Actuarial Board for Counseling and Discipline (ABCD) should also be explored during any study made regarding educational needs. Any materials involved in a certification process could potentially include international differences, if deemed to be needed by the educational team assigned to study this issue.

It is worth noting that regulatory action in the past has often led to actuaries serving in emerging roles. For example, the Sarbanes-Oxley Act of 2002 has significantly increased the need for actuaries in the broader business community. Jim Presmanes, assistant VP of risk management and insurance at Haverty’s, a retail furniture company, gives an example:

Sarbanes-Oxley legislation motivated us to hire a consulting actuary to evaluate our organizational risk. We hired the consulting actuary to assist in evaluating financial risk [reserve volatility and development]. We receive quarterly third-party actuarial analyses from an actuarial consulting firm. This keeps us on track and ensures Sarbanes-Oxley compliance with respect to retained loss development and associated expense drivers. We also hired a consulting intern from Georgia State University’s Department of Risk Management and Insurance to work with the actuary to enhance the model we use to estimate outstanding liabilities.

The Task Force recognizes that sometimes a professional accrediting organization will give partial or complete credit toward its own designation(s) through completion of another organization’s examinations. However, the Task Force recommends that encouraging legislators to provide an explicit exemption for credentialed actuaries would be far more practical than trying to work with other professional associations to recognize actuarial credentials through reciprocity agreements. The proposal to legislators to exempt actuaries could be bolstered by conducting a comparative study of the material included in the actuarial examinations and those required for designations that currently enjoy an exemption from the investment adviser examinations.

Including this exemption will require regulatory language revisions on a state-by-state basis and amending the Uniform Securities Act, as applicable. The Uniform Securities Act was drafted by the National Conference of Commissioners on Uniform State Laws. This act contains language some states use in defining credential-based exemptions from investment adviser examination requirements. It was approved by the American Bar Association on February 10, 2003. The complete Uniform Securities Act can be found at [www.law.upenn.edu/bll/ulc/securities/2002final.htm](http://www.law.upenn.edu/bll/ulc/securities/2002final.htm).

As of this writing, only twelve states had formally adopted the Uniform Securities Act, and only one other was planning to introduce it in legislative session for 2007. Therefore, state-specific revisions to regulatory language will be necessary for a majority of the states.<sup>7</sup>

## **6. Final Recommendations and Conclusions**

The Task Force recognizes that regardless of exemptions in statutory law, actuaries wishing to offer investment advice must still be subject to applicable actuarial professional standards and codes of conduct. Just as an actuary who has never worked in valuation might not be qualified to issue a reserve opinion without garnering adequate experience first, appropriate criteria should be required to ensure that actuaries who offer investment advisory services meet the applicable professional standards. This could be handled by the actuarial profession's established guidelines for actuarial practice. For instance, actuaries who have completed the investment track exams administered by the SOA could be deemed to have adequate professional education to offer investment advice.

Ultimately, only actuaries with relevant experience and current industry knowledge should be in the role of giving advice. Setting such a requirement would have the beneficial effect of maintaining high standards of professionalism, encouraging actuaries to keep abreast of current developments, and encouraging actuaries to seek more continuing education in the field of investments. At the same time, an exemption to investment adviser examinations would raise the awareness of and respect for actuarial designations.

Given that actuaries are at a competitive disadvantage to already more established professions in providing personal investment guidance, the Task Force believes time is of the essence to create a level playing field. Consequently, the Task Force recommends that an immediate and significant effort be made on behalf of actuaries to add the actuarial designations to the list of other professional designations that are exempted from the exam(s) prescribed under investment adviser statutes. A broad partnership of actuarial organizations in this endeavor will not only expedite this effort, but also greatly increase its chance of success. As in other critical matters of professional encroachment, the future of the actuarial profession depends on it.

*This paper was first drafted in early 2005. Our understanding of how the competencies of actuaries relate to the regulatory environment for investment advisers continues to evolve. We still believe that the adequacy of actuarial investment education can be demonstrated. Should a future study discover deficiencies in this education, e.g., with respect to investment adviser compliance topics, we hope that those topics can be*

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<sup>7</sup> [www.nccusl.org/Update/uniformact\\_factsheets/uniformacts-fs-usa.asp](http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-usa.asp), last accessed 4/17/07

*incorporated into the actuarial syllabus. Finally, while our actuarial knowledge may not be seen by regulators as an offset to any such deficiencies, we think that investment advice (particularly for retirees or the elderly) which excludes or misuses actuarial considerations is itself deficient.*

## **ACKNOWLEDGMENTS**

We thank Suzanne Merrall, attorney-at-law, for helping with legal research for this report. We also thank members of the Task Force on the Personal Actuary, who provided valuable input on the issues raised in this paper.

## **APPENDICES**

### ***New York Investment Advisory Services Regulation, Section 11.7:***

#### **11.7 Waivers.**

(a) An investment adviser who is an individual or a business engaged in advising members of the public as defined in section 11.12(f) that has been continuously registered in this jurisdiction for a period of five (5) years without any regulatory action or arbitrations shall be exempt from provisions of section 11.6.

(b) An individual who represents an investment adviser in doing any of the acts which make that person an investment adviser as defined in section 11.12(f), or solicits business for an investment adviser, and who has been continuously registered in any jurisdiction, other than New York, for a period of two (2) years prior to the date of filing registration information pursuant to section 11.4(c) without any regulatory action or arbitrations, shall be exempt from provisions of section 11.6.

(c) The examination requirement of section 11.6 shall not apply to any individual who currently holds one of the following professional designations in good standing:

(1) Certified Financial Planner(CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(4) Chartered Financial Analyst (CFA) awarded by the Association for Investment Management Research;

(5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(6) Such other professional designation as the administrator may by rule or order recognize.

(d) All requests for waivers under the subdivisions of section 11.7 must be made on Form NYIAQ (New York Investment Adviser Qualification).



**Florida (69W-600.005 Examinations/Qualifications):**

(3) Examination Requirements for Investment Adviser Representative and Principal: An individual applying to be registered as an investment adviser or investment adviser representative shall provide the Office of Financial Regulation with proof of passing, within two years of the date of application for registration, one of the following examinations: 1. the Uniform Investment Adviser Law Examination (Series 65) or 2. the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (Series 66)...

(5) The examination requirement for investment adviser principals, investment adviser representatives, and associated persons of issuer dealers shall not apply to an individual who currently holds one of the following professional designations: 1. Certified Financial Planner (TM) or CFP® awarded by the Certified Financial Planner Board of Standards, Inc.; 2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA; 3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; 4. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; 5. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc. (*Specific Authority 517.03(1) FS. Law Implemented 517.12(8) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.05, Amended 8-1-91, 1-11-93, 4-18-96, 4-2-00, 10-30-03, Formerly 3E-600.005.*)

## ***Texas***

Administrative codes, Title 7, Part 7, Chapter 116, Rule 116.3, found by the link [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=7&pt=7&ch=116&rl=3](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=7&ch=116&rl=3), are as follows:

(c) Waivers of examination requirements.

(1) All persons who were registered in Texas on August 23, 1963, are not required to take any examinations.

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) a person who was registered as an investment adviser or investment adviser representative on or before December 31, 1999, provided the person has maintained a registration as an investment adviser or investment adviser representative with any state securities administrator that has not lapsed for more than two years from the date of the last registration;

(B) applicants who are certified by the Association for Investment Management and Research, or its predecessors, the Federation of Chartered Financial Analysts or by the Institute of Chartered Financial Analysts, to be chartered financial analysts (CFA);

(C) applicants who are certified by the Certified Financial Planner Board of Standards, Inc., to use the mark "CERTIFIED FINANCIAL PLANNER" (CFP);

(D) applicants who are designated by the American Institute of Certified Public Accountants as accredited personal financial specialists (PFS);

(E) applicants who are designated by the Investment Counsel Association of America, Inc., as Chartered Investment Counsel (CIC);

(F) applicants who are designated by the American College, Bryn Mawr, Pennsylvania, as chartered financial consultants (ChFC); or

(G) a person who completed the examinations required under subsection (b) of this section, but whose registration has lapsed for more than two years and who has been continually employed in a securities-related position with an entity which was not required to be registered.

(3) The Association for Investment Management and Research, the Certified Financial Planner Board of Standards, Inc., the American Institute of Certified Public Accountants, the American College, and the Investment Counsel Association of America, Inc., are required to submit to the Securities Commissioner any changes to their certification programs as such changes occur.

## *California*

California's Code of Regulations (CCR) contains wording similar to that of Florida. Below is the text of Title 10, Section 260.236<sup>8</sup>:BARCLAYS OFFICIAL CALIFORNIA

CODE OF REGULATIONS  
TITLE 10. INVESTMENT  
CHAPTER 3. COMMISSIONER OF CORPORATIONS  
SUBCHAPTER 2. CORPORATE SECURITIES  
ARTICLE 10. LICENSING AND REGULATION OF INVESTMENT ADVISERS

This database is current through 03/30/07, Register 2007, No. 13

s 260.236. Qualifications of Investment Advisers and Investment Adviser Representatives.

References to an investment adviser representative shall mean both an investment adviser representative and an associated person of an investment adviser, as those terms are defined in Section 25009.5(a) and (b) of the Code.

(a) Qualification Requirements. An investment adviser and each investment adviser representative shall pass, within two years prior to the date of filing the application for an investment adviser certificate or becoming engaged as an investment adviser representative:

(1) the Series 65/Uniform Investment Adviser Law Examination in effect on January 1, 2000 ( "2000 Series 65 Examination"), or

(2) the Series 7/General Securities Representative Examination ( "Series 7 Examination) and the Series 66/Uniform Combined State Law Examination ( "2000 Series 66 Examination").

(b) Waivers: The requirements of subsection (a) do not apply to:

(1) Any investment adviser or individual employed or engaged as an investment adviser representative registered, reported or licensed in any state of the United States as of December 31, 1999. However, the Commissioner may require additional examinations for any individual found to have violated the Corporate Securities Law of 1968 or the rules promulgated there under.

(2) Any investment adviser or investment adviser representative who has been actively and continuously engaged in the securities business as a broker-dealer, an agent of a broker-dealer, an investment adviser, or an investment adviser representative without substantial interruption (two or more years) since passing the qualifying examination(s) and who has:

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<sup>8</sup> See <http://ccr.oal.ca.gov/>

(A) passed the Series 2 Examination (SECO/NASD Nonmember General Securities Examination) or passed the Series 7 Examination before January 1, 1998, or

(B) passed the Series 65 Examination or Series 66 Examination before January 1, 2000 and has passed the Series 7 Examination.

(c) Exemptions. Subsection (a) shall not apply to:

(1) any individual who has been registered as an investment adviser or employed or engaged as an investment adviser representative in any state for two consecutive years immediately before the date of filing an application or notice pursuant to Corporations Code Section 25230(b) or 25230.1(c) in this state. This provision shall not apply to an individual using the exemption in subsection (c)(2).

(2) any investment adviser representative employed by or engaged by an investment adviser only to offer or negotiate for the sale of investment advisory services of the investment adviser.

(3) any individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst ("CFA") granted by the Association for Investment Management and Research;

(B) Chartered Financial Consultant ("ChFC") awarded by The American College, Bryn Mawr, Pennsylvania;

(C) Certified Financial Planner ("CFP") issued by the Certified Financial Planner Board of Standards, Inc.;

(D) Chartered Investment Counselor ("CIC") granted by the Investment Counsel Association of America; or

(E) Personal Financial Specialist ("PFS") administered by the American Institute of Certified Public Accountants.

(d) An individual who has not been registered in any state for a period of two years shall be required to comply with the examination requirements of this rule. This provision shall not apply to an individual using the exemption in subsection (c)(2) or (c)(3).

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Sections 25236(a) and 25610, Corporations Code.  
Reference: Sections 25230, 25230.1 and 25236, Corporations Code.

\*Section of California Law defining Investment Adviser:<sup>9</sup>

Section 25009 of the Corporations Code reads:

25009. (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, publishes analyses or reports concerning securities. "Investment adviser" does not include (1) a bank, trust company or savings and loan association; (2) an attorney at law, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his or her profession; (3) an associated person of an investment adviser; (4) a broker-dealer or agent of a broker-dealer whose performance of these services is solely incidental to the conduct of the business of a broker-dealer and who receives no special compensation for them; or (5) a publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation and the agents and servants thereof, but this paragraph (5) does not exclude any such person who engages in any other activity which would constitute that person an investment adviser within the meaning of this section.

(b) "Investment adviser" also includes any person who uses the title "financial planner" and who, for compensation, engages in the business, whether principally or as part of another business, of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, publishes analyses or reports concerning securities. This subdivision does not apply to: (1) a bank, trust company, or savings and loan association; (2) an attorney at law, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, so long as these individuals do not use the title "financial planner;" (3) an associated person of an investment adviser where the investment adviser is licensed or exempt from licensure under this law; (4) an agent of a broker-dealer where the broker-dealer is licensed or exempt from licensure under this law, so long as (A) the performance of these services by the agent is solely incidental to the conduct of the business of the broker-dealer, and (B) the agent receives no special compensation for the performance of these services; or (5) a publisher set forth in paragraph (5) of subdivision (a), so long as the publisher or the agents and servants of the publisher are not engaged in any other activity which would constitute that person an investment adviser within the meaning of this section.

25009.1. "Investment adviser" does not include persons excepted from the definition of "investment adviser" by Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq., as amended), except that with regard to those persons the commissioner may investigate and bring enforcement actions with respect to fraud and deceit, including and without limitation fraud and deceit under Section 25235, and any rules of the commissioner adopted there under.

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<sup>9</sup> <http://www.leginfo.ca.gov>, last accessed 04/17/2007

25009.5. (a) "Investment adviser representative" or "associated person of an investment adviser" means any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual, except clerical or ministerial personnel, who is employed by or associated with, or subject to the supervision and control of, an investment adviser that has obtained a certificate or that is required to obtain a certificate under this law, and who does any of the following:

- (1) Makes any recommendations or otherwise renders advice regarding securities.
- (2) Manages accounts or portfolios of clients.
- (3) Determines which recommendation or advice regarding securities should be given.
- (4) Solicits, offers, or negotiates for the sale or sells investment advisory services.
- (5) Supervises employees who perform any of the foregoing.

(b) "Investment adviser representative" means, with respect to an investment adviser subject to Section 25230.1, a person defined as an investment adviser representative by Rule 203A-3 of the Securities and Exchange Commission (17 C.F.R. 275.203A-3) and who has a place of business in this state.