

**20:08:03:01. Registration for broker-dealers, broker-dealer agents, and agents of the issuer.**

(1) Definitions:

(a) "Division" means the Division of Insurance, South Dakota Department of Labor and Regulation.

(b) "CRD" means the Central Registration Depository.

(c) "NASAA" means the North American Securities Administrators Association, Inc.

(d) "OSJ" means Office of Supervisory Jurisdiction as referenced in the FINRA Manual IM-1000-4 under Rule 3010 and defined in Rule 3010(g)(1).

(e) "FINRA" means the Financial Industry Regulatory Authority, Inc.

(2) Broker-dealer registration, supervision, post registration, renewal, and withdrawal requirements:

(A) Registration: Except as set forth in subdivision (2)(F) of this section, to register as a broker-dealer the applicant must be a member of FINRA, and file with the CRD the following:

(i) SEC Form BD (Uniform Application for Broker-Dealer Registration); and

(ii) The registration fee pursuant to SDCL 47-31B-410(a).

A certificate of registration will not be issued. Proof of status is available from the CRD.

(B) Supervision:

(i) Every registered broker-dealer must employ at its principal office and at each office of supervisory jurisdiction (OSJ) in this state, at least one person designated to act in a supervisory capacity, who is registered as an agent in this state and has satisfied the supervisory examination requirements of FINRA. For any other office in this state, not designated as an OSJ, a supervisor must be designated to supervise the office; however, the supervisor need not be

located in this state, but must be registered in this state as an agent and satisfy the supervisory examination requirements of FINRA.

Failure to abide by this subdivision for more than 30 days, may result in revocation or the suspension of the registered broker-dealer until such time as there is compliance with this rule.

(C) Post registration:

(i) The applicant must file amendments to SEC Form BD in accordance with the instructions on those forms with the CRD only.

(ii) The applicant must file SEC Form X-17A-5 FOCUS reports in a timely manner with FINRA. However, the division may request applicant to provide a copy of the FOCUS report.

(D) Registration renewal requirements:

(i) All registrations expire on December 31 of each year.

(ii) To renew registration, the applicant must submit to the CRD the registration fee pursuant to SDCL 47-31B-410(a) before December 31.

(E) Registration withdrawals:

(i) To withdraw a registration, the applicant must file with the CRD, or with the division if not required by the CRD, SEC Form BDW (Uniform Request for Withdrawal from Registration as a Broker-Dealer).

(ii) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the division notifies the applicant otherwise.

(F) Intrastate broker-dealers:

Every broker-dealer registered or required to be registered under SDCL chapter 47-31B, whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of

1934, shall be subject to the same broker-dealer requirements as set forth above, except that an intrastate broker-dealer does not need to be a member of FINRA and those documents required to be filed with the CRD shall be filed with the division.

(3) Broker-dealer agent registration, post registration, renewal and withdrawal requirements.

(A) Broker-dealer agent registration:

To register as a broker-dealer agent, the applicant or the sponsoring broker-dealer must file with the CRD the following, in addition to any information required by FINRA, the CRD, or the SEC:

(i) FINRA Form U-4 (Uniform Application for Securities Industry Registration or Transfer);

(ii) Proof that the applicant passed the Series 63 examination (Uniform Securities Agent State Law Examination) or the Series 66 examination (Uniform Combined State Law Exam) which are administered by FINRA, and any other exams required by the SEC or FINRA; and

(iii) The registration fee pursuant to SDCL 47-31B-410(b) and in the form of payment prescribed by the CRD.

A broker-dealer agent must re-take and pass the Series 63 Exam or the Series 66 Exam if the agent's most recent registration terminated two or more years before the date of receipt by the division of a new application.

A broker-dealer agent, who has been registered as a broker-dealer agent in any jurisdiction in the United States prior to January 1, 1989, is not required to pass the Series 63 examination provided there has never been a lapse of registration of more than two years. The director may require additional examinations for any individual found to have violated any state or federal securities law.

An out-of-state agent must be registered or exempt from registration in the agent's home state as a precondition of being considered for registration in South Dakota. The burden of proof for claiming an exemption is on the agent.

A certificate of registration will not be issued. Proof of status is available from the CRD.

(B) Broker-dealer agent post registration:

(i) The applicant must file amendments to FINRA Form U-4 in accordance with the instructions on this form with the CRD only.

(C) Broker-dealer agent renewal requirements:

(i) All registrations expire on December 31 of each year.

(ii) To renew registration, the applicant must submit to the CRD the renewal fee pursuant to SDCL 47-31B-410(b) before December 31.

(D) Broker-dealer agent withdrawal requirements:

(i) To withdraw a registration or application, the applicant must file with the CRD, FINRA Form U-5 (Uniform Termination Notice for Securities Industry Registration).

(ii) A withdrawal is effective 30 days following receipt of FINRA Form U-5, unless the division notifies the applicant otherwise.

(E) Dual registration:

A dual registration may be allowed by the director if:

(i) The applicant requests a dual registration in writing to the division which identifies the broker-dealers with which the applicant will associate and set forth the reasons for the dual registration;

(ii) Both broker-dealers with which applicant intends to associate represent in writing to the division that each assumes full responsibility for applicant at all times; and

(iii) The applicant discloses the dual registration to each client.

(F) Broker-Dealer Agent reentry:

(i) Any individual who is not registered as an agent in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program, pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the Maintaining Qualifications Program shall be deemed in compliance with the examination requirements of subsection 20:06:08:03:01(A)(ii), as long as the individual elects to participate in the NASAA Examination Validity Extension Program within two years of agent registration termination;

(ii) Any individual who has not been registered as an agent in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications program, pursuant to FINRA Rule 1240(c), and whose participation in the FINRA Maintaining Qualifications Program shall be deemed in compliance with the examination requirements of subsection 20:06:08:03:01(A)(ii); and

(iii) Successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 66 examination for purposes of investment adviser representative registration.

(F)(G) Agents of an Intrastate Broker-Dealer:

Every agent of a broker-dealer registered or required to be registered under SDCL chapter 47-31B whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, is subject to the same broker-dealer agent requirements as set forth in § 20:08:03:01,

except that an agent of an intrastate broker-dealer does not need to be a member of FINRA and those documents required to be filed with the CRD shall be filed with the division.

(4) Agent of the issuer, registration requirements:

(A) To register as an agent of the issuer, the applicant or the sponsoring issuer must file with the division the following:

- (i) FINRA Form U-4 with original signatures;
- (ii) Proof that the applicant passed the Series 63 Exam or the Series 66 Exam; and
- (iii) The fee as set forth in SDCL 47-31B-410(b).

An agent of the issuer must re-take and pass the Series 63 Exam or the Series 66 Exam if the agent's most recent registration terminated two or more years before the date of receipt by the division of a new application.

A certificate of registration will not be issued.

(B) Agent of the issuer post registration:

(i) An agent of the issuer must promptly file with the division amendments to FINRA Form U-4 or any other information which materially changes the information on file with the division.

(C) Registration renewals for agents of the issuer:

To renew a registration, the applicant must file the following with the division before December 31 of each year;

- (i) FINRA Form U-4 with original signatures; and
- (ii) The fee as set forth in SDCL 47-31B-410(b), to be submitted to the South Dakota

Division of Insurance.

All registrations expire on December 31 of each year.

(D) Registration withdrawal requirements:

(i) To withdraw a registration, the applicant must file a written request for withdrawal with the Division on Form U-5.

(ii) A withdrawal is effective 30 days following receipt of the written request for withdrawal unless the division notifies the applicant otherwise.

(iii) If an agent of the issuer applies for registration with two or more issuers in a twelve-month period, the division may deem the agent to be a broker-dealer and require the agent to register as a broker-dealer.

(5) Registration transfers:

A broker-dealer or broker-dealer agent may transfer a registration by following CRD procedures. The division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

**Source:** 27 SDR 5, effective July 31, 2000; 28 SDR 48, effective October 10, 2001; 30 SDR 58, effective November 5, 2003; 30 SDR 211, effective July 1, 2004; 37 SDR 112, effective December 9, 2010; 44 SDR 99, effective December 11, 2017.

**General Authority:** SDCL 47-31B-402(e), 47-31B-410(f), 47-31B-411(b), 47-31B-412(e), 47-31B-503, 47-31B-605(a)(1) to (3), inclusive, 47-31B-605(b).

**Law Implemented:** SDCL 47-31B-103, 47-31B-401, 47-31B-402, 47-31B-406, 47-31B-408, 47-31B-409, 47-31B-410, 47-31B-412(e).

## CHAPTER 20:08:05

### INVESTMENT ADVISER RULES

#### Section

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20:08:05:03	Repealed.
20:08:05:04	Repealed.
20:08:05:05	Repealed.
20:08:05:06	Repealed.
20:08:05:07	Repealed.
20:08:05:08	Repealed.
20:08:05:09	Repealed.
20:08:05:10	Repealed.
20:08:05:11	Repealed.
20:08:05:12	Repealed.
20:08:05:13	Repealed.
20:08:05:14	Investment adviser representative definitions.
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20:08:05:16	Notice filing requirements for federal covered investment advisers.
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- 20:08:05:19 Withdrawal of investment adviser and investment adviser representative registration.
- 20:08:05:20 Promptly remedied.
- 20:08:05:21 Minimum financial requirements for investment advisers.
- 20:08:05:22 Financial reporting requirements for investment advisers.
- 20:08:05:23 Recordkeeping requirements.
- 20:08:05:24 Bonding requirements for certain investment advisers.
- 20:08:05:25 Custody requirements for investment advisers.
- 20:08:05:26 Investment adviser brochure.
- 20:08:05:27 Examination requirements.
- 20:08:05:27.01 Investment adviser representative examination validity extension program.
- 20:08:05:28 Prohibited conduct in providing investment advice.
- 20:08:05:29 Contents of an investment advisory contract.

**20:08:05:27. Examination requirements.**

(1) Unless otherwise waived by the director, an investment adviser or an investment adviser representative shall take and pass ~~within the two year period immediately preceding the date of the application:~~

(a) The Uniform Investment Adviser State Law Examination (S65) within the two year period immediately preceding the date of application; or

(b) The Uniform Combined State Law Examination (S66) and the General Securities Representative Examination (S7) within the two year period immediately preceding the date of application; and

(c) the FINRA Securities Industry Essential Examination (SIE) within four years of the date of application.

(2) If the investment adviser is an entity, then a supervisory or control individual shall take and pass the examination(s) as required in § 20:08:05:27(1).

(3) Any person who has been registered as an investment adviser or an investment adviser representative in any state requiring the licensing, registration, or qualification of investment advisers or investment adviser representatives within the two year period immediately preceding the date of filing an application is not required to comply with the examination requirement set forth in § 20:08:05:27(1)(a) and (1)(b).

(4) Compliance with § 20:08:05:27(1) and (2) is waived if the applicant has been awarded any of the following designations and at the time of filing an application is current and in good standing:

(a) Certified Financial Planner (CFP) awarded by the Certified Financial Planners Board of Standards, Inc.

(b) Chartered Financial Consultant (ChFC) ~~or Masters of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania~~ awarded by The American College of Financial Services.

(c) Chartered Financial Analyst (CFA) awarded by the ~~Institute of Chartered Financial Analysts~~ CFA Institute.

(d) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

(e) Chartered Investment ~~Counselor (CIC)~~ Management Analyst (CIMA) awarded by the ~~Investment Adviser Association~~ Investment & Wealth Institute;

(5) An applicant who has taken and passed the Uniform Investment Adviser State Law Examination (S65) within two years prior to the date the application is filed with the director or at any time if the applicant has been registered or licensed as an investment adviser, investment adviser representative within the two years prior to the date the application is filed with the director, is not required to take and pass the Uniform Investment Adviser State Law Examination again.

(6) An applicant who is an agent for a broker-dealer/investment adviser and who is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative but who has previously met the examination requirement in § 20:08:05:27(1)(a) and (1)(b) necessary to provide advisory services on behalf of the broker-dealer/investment adviser, is not required to take and pass the Uniform Investment Adviser State Law Examination (S65) again.

(7) Persons deemed to be investment adviser representatives only because they solicit, offer, or negotiate for the sale of or sell investment advisory services in this state are not required to take and pass the examinations in § 20:08:05:27(1)(a) and (1)(b).

(8) Any individual who is not registered as an investment adviser representative in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program, pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall not have to retake the appropriate FINRA qualifying examinations to comply with the examination requirements in § 20:08:05:27(1); provided, however, that successful participation in the FINRA Maintaining Qualifications Program shall not extend the Uniform Investment Adviser State Law Examination (S65) or the Uniform Combined State Law Examination (S66) for purposes of investment adviser representative registration.

**Source:** 37 SDR 112, effective December 9, 2010.

**General Authority:** SDCL 47-31B-404(f), 47-31B-412(e), 47-31B-605(a)(1) to (3), inclusive, 47-31B-605(b).

**Law Implemented:** SDCL 47-31B-103, 47-31B-404(f), 47-31B-412(e).

**20:08:05:27.01. Investment adviser representative examination validity extension program.**

Notwithstanding § 20:08:05:27, an individual who terminates their registration as an investment adviser representative may maintain the validity of their Uniform Investment Adviser State Law Examination (S65) or the Uniform Combined State Law Examination (S66), as applicable, without being employed by or associated with an investment adviser or federal covered investment adviser for a maximum of five years following the termination of the effectiveness of the investment adviser representative registration if the individual meets all of the following:

1. The individual previously took and passed the examination for which they seek to maintain validity under this rule;

2. The individual was registered as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser representative registration;

3. The individual was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while registered as an investment adviser representative or at any period after termination of the registration;

4. The person elects to participate in the Investment Adviser Representative Exam Validity Extension Program (“IAR EVEP”) under this paragraph within two years from the effective date of the termination of the investment adviser representative registration;

5. The individual does not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective;

6. The person completes annually on or before December 31 of each calendar year in which the person participates in the IAR EVEP;

a. six credits of IAR CE Ethics and Professional Responsibility Content offered by an Authorized Provider, including at least three hours covering the topic of ethics, and

b. six credits of IAR CE Products and Practice Content offered by an Authorized Provider;

7. An individual who elects to participate in IAR EVEP is required to complete credits required by subsection 6 of this rule for each calendar year that elapses after the individual's investment adviser representative registration became ineffective regardless of when the individual elects to participate in IAR EVEP; and

8. An individual who complies with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c) shall be considered in compliance with subsection 6(b) of this rule.

**Source:**

**General Authority:** 47-31B-412(e), 47-31B-605(a)(1) to (3), inclusive, 47-31B-605(b).

**Law Implemented:** 47-31B-412(e), 47-31B-605(a)(1) to (3), inclusive, 47-31B-605(b).