

VIA ELECTRONIC MAIL

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Melanie Lubin
OAG, Securities Division
200 St. Paul Place
Baltimore, MD 21202-2020
mlubin@oag.state.md.us

Rex A. Staples, General Counsel
North American Securities Administrators
Association, Inc.
750 First Street, N.E., Suite 1140
Washington, DC 20002
rs@nasaa.org

RE: Proposed Model Rule on the Use of Senior-Specific Certifications and Professional Designations

Dear Ms. Lubin and Mr. Staples:

The North American Securities Administrators Association (NASAA) has requested public comments on the proposed adoption of a NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (Model Rule).¹ The NASAA Model Rule is meant to prohibit the misleading use by any person of senior and retiree designations while also providing a means by which an administrator may recognize the use of certain designations which have been accredited. The Financial Services Institute² (FSI) appreciates this opportunity to comment on the Model Rule.

Background on FSI Members

The Model Rule is of particular interest to FSI and its members. The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice with little, if any, proprietary product bias.³ IBD members also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

¹ See the proposing release at http://www.nasaa.org/content/Files/Senior_Model_Rule110807.pdf.

² The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 110 member firms, with more than 130,000 registered representatives serving more than 14 million American households. FSI also has more than 8,100 financial advisor members.

³ Some large independent broker-dealer firms offer proprietary products such as mutual fund, variable annuity, and/or investment adviser products produced by an affiliated or parent insurance company, broker-dealer or investment adviser. Nevertheless, these IBD firms, and their proprietary products, represent the exception to the rule.

In the U.S., approximately 110,000 independent financial advisors – or approximately 20 percent of all registered representatives – practice in the IBD channel.⁴ These financial advisors are independent contractors, rather than employees of the IBD firms. Many of these financial advisors have invested their time and resources in educational and training programs that have conferred well-earned professional designations. Independent financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically “Main Street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market for advisors affiliated with IBDs is clients with a net worth of \$250,000. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. The typical financial advisor offers their services to investors residing in multiple states through the use of a variety of marketing materials. Although many use educational seminars to market their services, most of their new clients come through referrals from existing clients or other centers of influence.⁵ Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients’ investment objectives their primary goal.

Detailed Comments

FSI supports the Model Rule as an appropriate effort to further the important goal of protecting senior investors from deceptive marketing practices. The Model Rule is supported by FSI because it directly addresses IBD firms’ desire for uniformity among state regulators and provides an enforcement mechanism that will level the playing field for all financial industry participants by extending the state securities administrators reach to all persons using misleading designations. Nevertheless, FSI offers constructive feedback designed to improve certain provisions of the Model Rule. Specifically, FSI offers the following comments:

1. Supervisory Requirement Makes Broker-Dealers Second Guess Designations - The Model Rule is designed to prohibit the misleading use of a certification or professional designation that indicates or implies that the user has special education, training or experience in advising or servicing senior citizens or retirees. Subsections 1(a), 1(b) and 1(d) support this goal by requiring IBD firms to determine if the designation exists, if the financial advisor has in fact earned the designation, and whether the designation has substance. These are all reasonable burdens to place upon IBD firms who will be charged with supervising compliance with the Model Rule by their financial advisors. Unfortunately, subsection (1)(c) of the Model Rule seeks to impose an unreasonable supervisory requirement. This subsection appears to prohibit the use of a meaningful existing designation that has been properly earned by the financial advisor if “the person using the certification or professional designation does not have” the level of occupational qualifications implied by the designation. In effect, this provision requires IBD firms to second guess the designating authority’s assessment of the financial advisor’s education, training and/or experience. FSI believes that IBD firms should be allowed to rely upon the legitimate designating authority’s assessment of the financial advisor’s qualifications

⁴ Cerulli Associates, Quantitative Update: Intermediary Markets 2006. Please note that this figure represents a conservative estimate of independent financial advisors. In fact, more than 130,000 financial advisors are affiliated with FSI member firms.

⁵ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

and successful completion of the required program. As a result, FSI encourages NASAA to remove this provision from the Model Rule.

2. Clarify "Meaningful Standards and Procedures" - Subsection 1(d) of the Model Rule refers to "meaningful standards or procedures" for monitoring and disciplining designees, assuring their competency, and requiring their involvement in continuing education. FSI believes IBD firms' ability to comply with the Model Rule would be strengthened if NASAA provided specific guidance concerning the standards and procedures the states would deem meaningful in each of these areas. FSI encourages NASAA to include such guidance in the final Model Rule.
3. Provide a Safe Harbor - It appears that section 2 of the Model Rule was intended to provide a safe harbor to those persons who utilize a senior-specific designation which has been conferred by an organization that has been accredited by the listed accreditation organizations or such an organization designated by the securities administrator. FSI also recommends that NASAA provide safe harbor protection for certifications and designations specifically approved by any state regulator. The inclusion of this language will promote greater uniformity amongst the states, thus reducing the burden of compliance on IBD firms and their independent financial advisors. In addition, the use of the introductory phrase "In any action brought under this rule," in the last sentence of the section, suggests that the terms of section 2 apply to the rule as a whole. This cannot be NASAA's intent since such a reading would effectively nullify the provisions of section 1. As a result, FSI believes section 2 of the Model Rule should be amended as follows:

2. For purposes of this rule, a designating or certifying organization is presumed to be an educational organization and to possess the standards, procedures, and continuing education requirements referenced in paragraph 1(d) above, when such designating or certifying organization has been accredited by:

- (a) The American National Standards Institute;
- (b) The National Commission for Certifying Agencies; or
- (c) any other nationally-recognized accreditation organization designated by the Administrator by rule or order.

In addition, a designation or certification is presumed lawful in this state [jurisdiction], if any state regulator has approved it for use in their jurisdiction.

~~In any action brought under this rule, t~~The burden of proof in establishing compliance with the terms of this safe harbor is on the party using a certification or professional designation to show that such use complies with this subsection 2.

4. Expand and Clarify Job Title Exemption - FSI requests clarification of section 4 which exempts certain appropriate job titles from the requirements of the Model Rule. The Model Rule's subsection 4(b) limits the use of job titles that improperly suggest or imply certification or training beyond that which the titleholder possesses, or that would otherwise mislead investors. Examples of such titles would prove helpful to IBD firms attempting to comply with the Model Rule. In addition, FSI recommends the inclusion of additional language that recognizes titles acknowledging achievement or performance. As a result, FSI believes section 4 of the Model Rule should be amended as follows:

4. For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(a) indicates seniority within the organization; ~~or~~

(b) indicates a threshold of achievement or performance within the organization; or

(c) specifies an individual's area of specialization within the organization, unless the facts and circumstances associated with the provision or use of a job title indicate that it improperly suggests or implies certification or training beyond that which the titleholder possesses, or that it otherwise misleads investors. Examples of such titles would include, but are not limited to, [insert appropriate examples].

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, would welcome the opportunity to work with you to achieve your objectives without the unintended consequences we have outlined above.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,



Dale E. Brown, CAE
President & CEO