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December 9, 2007

VIA E-MAIL

Melanie Lubin
OAG, Securities Division
200 Saint Paul Place
Baltimore, Maryland 21202-2020

Rex Staples
NASAA
750 First Street, NE, Suite 1140
Washington, DC 20002

Re: NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations

Dear Ms. Lubin and Mr. Staples:

The Pace Investor Rights Clinic, operating through John Jay Legal Services, Inc. at Pace University School of Law ("PIRC"), welcomes the opportunity to comment on NASAA's model rule proposal to prohibit the misleading use of senior-specific certifications and professional designations in connection with the offer, sale, or purchase of securities. PIRC is a law school curricular program in which J.D. students, for academic credit and under close faculty supervision, represent individual investors of modest means in their arbitrable securities disputes with their brokerage firms. PIRC has represented many senior citizens over the past ten years, most of whom were otherwise unable to obtain representation due to their financial condition or the small size of their monetary claims.

PIRC supports the rule proposal and commends NASAA's efforts to protect senior investors from brokers and advisers who deceptively use senior credentials and provide misleading advice to senior citizens in connection with their investment recommendations. Although we are a New York-based legal services organization, PIRC fields inquiries from senior citizens across the country who have fallen prey to deceptive and misleading tactics used by broker-dealers and investment advisors in the securities industry. We have seen firsthand in our clinic that the elderly are particularly vulnerable to investment fraud. Senior citizens can easily be impressed by credentials, are particularly susceptible to trust those with fancy labels and beefed-up qualifications, and are more willing to listen to sales pitches.[1]

Securities regulators nationwide have recognized that senior citizens deserve special protection. In 2006, the Acting Director of Investor Education and Assistance for the Securities and Exchange Commission ("SEC") expressed concern to the U.S. Senate Special Committee on Aging that current efforts to protect and educate investors, especially senior citizens, were insufficient to combat the increased targeting of seniors by investment scams.[2] In September 2007, SEC Chairman Cox testified before the same Senate Committee to emphasize the vulnerability of the elderly and to describe the SEC's continuous efforts to educate and protect this group.[3]

Although post-hoc disciplinary efforts are welcome, they often do not offer remedies to investors in the form of compensation for their losses. Senior citizens frequently have the most to lose, as many of them rely on fixed income and modest returns from retirement funds to live. Moreover, studies have shown that investor education is not enough to prevent seniors from relying on senior-specific credentials.[4] Thus, senior citizens need additional protection to help ensure their financial security.

The proposed NASAA model rule provides just the type of additional protection that we believe is needed. By requiring that securities professionals obtain proper accreditation as senior specialists from recognized accreditation organizations such as the American National Standards Institute and the National Commission for Certifying Agencies (or by any other organization designated by the Administrator by rule or order), the model rule bars those professionals from -- and subjects them to disciplinary action for -- utilizing a senior-specific accreditation from a sham organization, not approved by NASAA. Moreover, the rule ensures that the requirements for such accreditation will be consistent among all securities professionals throughout the adopting state.

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[1] *See* The Consumer Fraud Research Group, Investor Fraud Study, Final Report (May 12, 2006), http://www.finrafoundation.org/WISE_Investor_Fraud_Study_Final_Report.pdf [hereinafter "CFRG Investor Fraud Study"]. This study investigated investment fraud that targets older Americans. The study showed that "pitches used by investment con criminals employ a wide variety of different psychologically manipulative tactics and those tactics are chosen to customize the pitch to match the psychological profile of the investor." *Id*. at 9.

[2] *Not Born Yesterday: How Seniors Can Stop Investment Fraud: Hearing Before the S. Spec. Comm. on Aging*, 109th Cong. (2006) (statement of Susan Ferris Wyderko, Acting Dir., Div. of Investment Mgmt., U.S. Securities and Exchange Commission), http://www.sec.gov/news/testimony/ts032906sfw.htm.

[3] *See Protecting Senior Citizens From Investment Fraud: Hearing Before the S. Spec. Comm. on Aging*, 110th Cong. (2007) (statement of Christopher Cox, Chairman of U.S. Securities and Exchange Commission), available at http://www.sec.gov/news/testimony/2007/ts090507cc.htm. He explained that the SEC's multifaceted approach to protecting elderly investors ranges from increasing investor education, to targeted examinations, to aggressive enforcement efforts.

[4] For example, the CFRG Investor Fraud Study showed that investment fraud victims scored higher on financial literary tests than non-victims which "suggests that traditional financial literacy education alone will not inoculate investors from being defrauded." CFRG Investor Fraud Study, *supra* note 1, at 9.

Several states already have begun enacting similar rules. For example, William Galvin, Secretary of the Commonwealth of Massachusetts, enacted a new regulation regarding Senior Financial Designations, effective on June 1, 2007.[5] This rule prohibits the use of "credentials or professional designations" that indicate or imply that an agent has "special certification or training in advising or servicing senior investors," unless the credential or professional designation has been "accredited by an accreditation organization recognized by the Secretary by rule or order."[6] Similarly, the Nebraska Department of Banking and Finance issued a special notice to all securities professionals asking that they refrain from utilizing senior-related designations on marketing materials that imply a specialized knowledge of the needs of senior investors.[7]

While we laud the efforts of these states to combat the proliferation of inappropriate senior financial advisor designations, a national standard proposed by NASAA allows for uniformity and consistency among states. Nationwide uniformity will help eliminate the burden on securities professionals who currently must become familiar with varying state rules. A national standard will also decrease confusion among investors.

In sum, we enthusiastically support NASAA's proposed model rule regulating senior-specific certifications and professional designations as a necessary step in investor protection of an especially targeted and victimized population.

Please do not hesitate to contact us if you have any questions concerning these comments.

Sincerely yours,

Jill Gross
Associate Professor of Law
Director, PIRC

Teresa Milano
Student Intern, PIRC

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[5] *See* Secretary of the Commonwealth of Massachusetts, Securities Division, Notice of Final Regulations, 950 CMR 12.200 (Registration of Broker-Dealer, Agents, Investment Adviser, Investment Adviser Representatives and Notice of Filing Procedures for Federal Covered Advisers) (June 1, 2007), http://www.sec.state.ma.us/sct/sctpropreg/propreg.htm.

[6] *Id.*

[7] State of Nebraska, Department of Banking and Finance, Interpretative Opinion No. 2, Use of Certifications and Designations in Advertising by Investment Adviser Representatives and Broker-Dealer Agents (amended November 16, 2007), http://www.ndbf.org/forms/opinion-26.pdf. Acceptable designations are stated in the securities rules of the Nebraska Administrative Code. *See* 48 Neb. Admin. Code § 9.004.02 (2007).