

Notice of Request for Public Comments
North American Securities Administrators Association
November 9, 2007

PROPOSED ADOPTION OF A NASAA MODEL
RULE ON THE USE OF SENIOR-SPECIFIC
CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS

Comments are being solicited from the public on the following proposed model rule concerning the use of senior-specific certifications and professional designations. The comment period will remain open for 30 days. All comments should be submitted on or before December 9, 2007. Please provide written comments to the following individuals:

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BACKGROUND

The use of a designation or a certification by salespersons, whether registered or not registered, confers an impression with senior citizens or retirees that the salesperson has special qualifications or specialized education in particular areas of finance, financial planning, estate planning, or investing. The requirements to obtain designations and certifications vary greatly, as can the processes for monitoring compliance with a code of conduct or ethics, if any, adopted by the organization which awards the designation or certification.

Investors often have insufficient information about the designation or certification when trying to determine which designation or certification represents meaningful educational achievement by the salesperson, or which designation or certification merely represents a marketing tool. This problem has been particularly pronounced in the area of so-called "senior designations." Certain segments of the financial services industry have aggressively used designations and certifications that incorrectly imply expertise in the financial needs of seniors. Such aggressive use often results in unsuitable investments being sold to unsuspecting seniors by apparent "experts" who are little more than salespersons with little or no expertise in the individual, specific needs of the senior client or understanding of the product that they are selling.

Accordingly, a NASAA task force was formed to study what approach, if any, NASAA members should consider in addressing this problem. In the course of their study, the

members of the task force considered a number of potential methodologies, including the regulatory initiatives undertaken by the securities regulators in Massachusetts, Nebraska, and Washington. As a result of the task force's deliberations, the following proposed model rule was developed.

OVERVIEW OF THE PROPOSED MODEL RULE

The proposed model rule incorporates aspects of the various regulations that are already in place or under consideration in other jurisdictions. The proposed rule prohibits 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. Violations of the rule may be prosecuted against any person under the administrator's anti-fraud authority or against registrants under the statutory prohibitions against dishonest and unethical business practices.

The task force observed that persons using senior-specific certifications are usually not registered as investment advisers. They also found that, for investors, a corollary of the use of such certifications was a reasonable belief that the person was engaged in the business of providing investment advice. In view of that, the task force has provided an alternate version of Paragraph 1 of the proposed model rule (found bracketed within the proposed rule). States whose statutes contain holding out language similar to that found in the definition of investment adviser within the Uniform Securities Act may find this alternate version preferable.¹

¹ The Uniform Securities Act (2002) includes in the definition of investment adviser: a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. USA (2002) §102 (15)