

BY ELECTRONIC MAIL

October 31, 2006

Bryan J. Lantagne
Director
Massachusetts Securities Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1701
Boston, MA 02108

Dear Mr. Lantagne:

The Financial Planning Association (“FPA®”)¹ is writing in response to a recent rule proposal by the Massachusetts Securities Division (the “Division”) that would prohibit broker-dealer agents and investment adviser representatives in the Commonwealth from using certain misleading professional designations.

The proposal, as we understand it, was prompted by fraudulent activities of insurance agents and others who falsely represented themselves to senior investors as having specialized knowledge in retirement or elder care planning. FPA supports the Division’s goal of protecting senior investors from fraud and abusive sales practices. Senior citizens in particular have been long identified as a vulnerable segment of the consumer population, especially with respect to investing for retirement. This problem is exacerbated by a bewildering number of designations currently in use in the marketplace that denote high levels of experience and expertise when, in fact, many are essentially marketing tools and nothing more.

FPA strongly supports the Division’s proposal to limit the use of designations to those that meet a commonly understood baseline such as accreditation by the National Commission for Certifying Agencies. We are pleased the Division recognizes that many designations are meaningful, and we pledge to continue to work with you, the North American Securities Administrators Association (“NASAA”), the SEC and others to provide resources to help consumers sort through the confusing array of designations.

¹The Financial Planning Association is the largest organization in the United States representing financial planners and affiliated firms, with approximately 28,500 individual members. Most are affiliated with investment adviser firms registered with the Securities and Exchange Commission, state securities administrators, or both. FPA is incorporated in Washington, D.C., where it maintains an advocacy office, with headquarters in Denver, Colo.

FPA holds out the CFP certification as an example of a respected professional standard for persons providing competent and ethical retirement and elder care advisory services to the public.² Achieving the CFP mark requires completion of a rigorous course of study and successful passage of a comprehensive exam testing an individual's ability to practice financial planning in an integrated format, two primary factors considered by the Division in evaluating a designation's merits. The CFP certification also meets another Division requirement, accreditation by the National Organization for Competency Assurance.³ FPA also encourages the Division to consider relevant experience, continuing education and ethical requirements as part of the criteria in determining designations that should be prohibited.

Persons holding the CFP designation must have met the CFP Board's education, examination and experience requirements, have agreed to adhere to high standards of ethical conduct, and must complete 30 hours of continuing education every two years. CFP candidates must complete a comprehensive course of study at a college or university offering a financial planning curriculum approved by the CFP Board.⁴ CFP candidates must then pass a comprehensive, two-day, 10-hour CFP certification examination covering the financial planning process, tax planning, employee benefits and retirement planning, estate planning, investment management and insurance. Approximately 18 percent of the exam is dedicated specifically to retirement planning. CFP candidates who have passed the exam also must have three years of experience in the financial planning process prior to using the CFP certification marks. CFP practitioners also agree to abide by a strict code of professional conduct, known as *CFP Board's Code of Ethics and Professional Responsibility* that sets forth their ethical responsibilities to the public, clients and employers.⁵ As you can see, there is a stark contrast between the CFP certification and the certified elder planning specialist ("CEPS") designation which the Division has targeted as a problem designation. The organization that granted the CEPS, the Institute of Elder Planning Specialists, no longer has an active Web site that we could locate; however, we understand that achieving the CEPS required an average time of 30 days to self-study and complete the entire program.

We note that the state securities administrators and FPA share similar public policy goals. In the late 1990s NASAA upgraded its securities exam for investment adviser representatives, Series 65, to reflect the need for minimum competency of investment advisers in key areas of personal investment. A predecessor organization of FPA, the Institute of Certified Financial Planners, strongly supported NASAA's efforts. Since then the Commonwealth, as well as nearly

² FPA's goal is to promote the value of financial planning for individuals and families through professional qualifications established by the CFP® Board of Standards, Inc ("CFP Board"). Approximately 70 percent of FPA members are CERTIFIED FINANCIAL PLANNER™ certificants.

³ NOCA develops and implements standards for accrediting certification programs.

⁴ Certain academic degrees, such as a licensed CPA or attorney, and certain professional credentials fulfill the educational requirement and allow an individual to sit for the CFP® certification examination. See <http://www.cfp.net/become/Steps.asp>.

⁵ All FPA members are required to adhere to the FPA Code of Ethics which is comprised of the principles of the Certified Financial Planner Board of Standards Code of Ethics and Professional Responsibility.

all other states, has instituted a waiver from the Series 65 exam for persons holding the CFP designation because of the high level of expertise required to maintain the CFP certification.

Although FPA supports the proposed rule in Massachusetts, we strongly encourage the Division to develop uniform and objective criteria to ensure that meaningful designations are not included in the prohibition. We anticipate that other states will follow the lead of the Commonwealth in reviewing professional designations and we would like to see clear objective guidelines. We also encourage the Division to consider the holding of the Supreme Court case *Ibanez v. Fla. Dep't. of Bus. & Prof'l Regulation* which limits restrictions on commercial speech that involve the use of a recognized educational certification.⁶ We also urge the Division to notify investment advisers and broker dealers and their industry or professional organizations in advance when the Securities Division is considering prohibition of a specific designation.

Similarly, we recommend that the Division work closely with the Division of Insurance to ensure that similar prohibitions on the use of misleading designations are imposed on insurance agents. The proposed rule targets investment advisers and broker-dealers. To have a meaningful effect on consumer protection, the Division should step up oversight in this area over individuals who are not licensed as brokers or investment advisers but hold out to the public as offering investment advisory or financial planning services.⁷ Similar efforts should be made by the Insurance Commissioner targeting persons selling insurance products as abusive sales practices in connection with certain annuities products have become a growing area of concern for regulators. The National Association of Insurance Commissioners ("NAIC") created a model rule that prohibits an individual from "holding himself or herself out as a financial planner or other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when such person is in fact engaged only in the sale of policies."⁸ We encourage you to work with the Division of Insurance to encourage adoption of a similar provision in Massachusetts. All persons holding out misleading designations to the public should be subject to the same prohibitions.

Our position with regard to the sale of retirement products is in keeping with our past support for added consumer protections in this area. For years FPA has supported more stringent suitability standards in the sale of annuity products. In 2001, FPA strongly supported the NAIC effort to draft suitability regulations for the sale of annuity products, but strongly recommend that the suitability requirement be applied to all consumers, not just persons over 65 years of age. We were therefore pleased when the NAIC recently approved an expansion of the suitability requirement to cover consumers of all ages, and not just seniors.

In closing, FPA looks forward to working with the Division on this and other initiatives to protect senior investors from fraud and abusive sales practices. I would be pleased to respond to any questions in connection with these comments. Please do not hesitate to contact me at 202.449.6342.

⁶ *Ibanez v. Fla. Dep't of Bus. & Prof'l Regulation*, 512 U.S. 136 (1994)

⁷ See SEC Release IA-1092, released in cooperation with NASAA and providing uniform interpretations of how state and federal advisor laws apply to people providing financial services. .

⁸ See NAIC model Unfair Trade Practices Act, Section 4.M.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert H. Neill Jr.", written in a cursive style.

Robert H. Neill Jr., Esq.
Assistant Director of Government Relations