

VIA ELECTRONIC MAIL

November 8, 2006

Office of the Secretary of the Commonwealth
Attention: Proposed Regulations
Securities Division, Room 1701
One Ashburton Place
Boston, MA 02108

RE: Proposed Regulations Concerning Educational Designation Usage

Dear Secretary Galvin:

The Financial Services Institute¹ appreciates the opportunity to submit these comments on the Massachusetts Securities Division's (Division) proposed regulations (Proposed Regulations) prohibiting the use of certain professional designations by broker-dealer agents and investment adviser representatives registered in the state. The Proposed Regulations would prohibit the use of any "purported credential or professional designation that indicates that a broker-dealer agent has special expertise or training in advising or servicing senior investors, unless such credentials or designations have been accredited by a nationally recognized independent accrediting organization whose purpose is to develop standards and implement methods for assuring competency."²

The Division would be empowered by the Proposed Regulations to approve certain independent accrediting organizations via the issuance of an order. The Division indicates in its proposal that "those professional designations that would be exempt from the prohibitions would have, at a minimum, accreditation by a nationally recognized independent accrediting organization such as the National Commission for Certifying Agencies (NCCA) of the National Organization for Competency Assurance or the American National Standards Institute/International Standards Organization/International Electrotechnical Commission 17024 (ANSI/ISO/IEC 17024) accreditation program."³

FSI supports the Division's continuing efforts to enhance protections for senior investors. However, FSI cannot support the Proposed Regulations due to the likelihood of substantial unintended consequences including depriving seniors of helpful information, creating a confusing regulatory scheme, and the unnecessary duplication of current regulations.

¹ The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed in 2004. Our members are broker-dealers, often dually registered as federal investment advisors, and their independent contractor registered representatives. FSI's 101 member firms have more than 127,000 registered representatives who serve primarily middle class American families. FSI also has more than 3,500 individual members.

² See at <http://www.sec.state.ma.us/sct/sctpropreg/propreg.htm>.

³ Id.

Background on FSI Members

The proposed regulations are of particular interest to FSI and its members. Our independent broker-dealer (IBD) members have a number of similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products by “check and application”; take a comprehensive approach to their clients’ financial goals and objectives; and provide investment advisory services through either affiliated registered investment advisor firms or such firms owned by their registered representatives.

Our registered representative members 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. These financial advisors are typically located in communities where they know their clients personally and provide them with investment advice in face-to-face meetings – often times over the client’s kitchen table. Although many do use educational seminars to market their services, most of their new clients come through referrals from existing clients or other centers of influence. Due to their close ties to the community in which they operate their small businesses, these financial advisors have a strong incentive to make the achievement of their clients’ investment objectives their primary goal.

If adopted, the Proposed Regulations would result in unintended consequences for seniors as well as for financial advisors and the IBDs that serve them:

1. The Proposed Regulations Impose Standards Likely to Deprive Seniors of Helpful Information - The accreditation standards contained in the Proposed Regulations will prohibit the use of many legitimate designations earned by financial professionals who desire to serve their clients fairly and honorably. A review of the web sites of NCCA and ANSI/ISO/IEC 17024 indicates a dearth of securities industry professional designations that have met their accreditation requirements.⁴ For example, use of the well recognized and respected Chartered Financial Analyst designation may be prohibited by the Proposed Regulations.⁵ As a result, investors will be deprived the opportunity to learn of the qualifications of well trained financial advisors who have invested time and resources into prestigious designation conferring educational and training programs that, unfortunately, are not yet accredited.
2. The Proposed Regulations Set the Stage for a Confusing Regulatory Scheme – The adoption of state specific regulations prohibiting the use of certain professional designations will result in a confusing regulatory scheme. The typical financial advisor offers his services to investors residing in multiple states through the use of various marketing materials. If other states adopt unique regulations concerning the use of professional designations, financial advisors may be subject to conflicting and confusing

⁴ See a list of NCCA accredited programs at <http://www.ncca.org/ncca/accredorg.htm> and ANSI/ISO/IEC 17024 programs at http://www.ansi.org/conformity_assessment/overview/overview.aspx?menuid=4.

⁵ The CFA Institute was so concerned about the impact of the Proposed Regulations upon the use of the CFA designation by financial advisors that on October 31, 2006 the organization submitted a request for exemption from the proposal. Unfortunately, the Proposed Regulations do not appear to contain a provision that would allow the Secretary to consider a request for such an exemption. See the CFA Institute’s exemption request letter at http://www.sec.state.ma.us/sct/sctpropreg/cfa_comment.pdf.

requirements for their use. Since the production costs of marketing materials can be substantial, these conflicting requirements could also have an unreasonable financial impact upon financial advisors. These unintended, but foreseeable, consequences deserve further consideration. As a result, FSI urges the Division to coordinate its efforts with the SEC, NASD, and NASAA to insure the adoption of a consistent approach to professional designations utilized by broker-dealer agents and investment adviser representatives.

3. The Division Currently Has the Authority Necessary to Regulate the Offensive Activity - The Division seeks to adopt the Proposed Regulations to address its concern that certain individuals are using deceptive advertising to exploit Massachusetts' seniors need for investment advice, financial planning and brokerage services in order to mislead them into purchasing unsuitable products. However, the current regulations clearly prohibit the use of "any advertising or sales presentation in a deceptive or misleading manner"⁶ and the sale of unsuitable securities products.⁷ Since the Proposed Regulations are duplicative and would result in the unintended consequences described above, FSI urges the Division to withdraw the proposal.

As a result of these concerns, FSI cannot support the Proposed Regulations.

However, should the Division choose to regulate the use of professional designations, FSI urges you to consider whether the Proposed Regulations achieve their stated purpose. In particular, FSI notes the following specific concerns:

- The Proposed Regulations are unlikely to prove effective in limiting an unscrupulous financial advisor's ability to use "empty marketing devices"⁸ to lure clients to seminars designed to scare them into purchasing unsuitable products. Dishonest financial advisors seeking to avoid detection will simply drop the use of their designations from their marketing materials in favor of other claims of special knowledge and expertise. For example, a seminar advertisement indicating that the financial advisor sponsoring the event has been "Serving Area Seniors for 15 Years!" or that the advisor is an "Expert in Financial Planning Issues for Seniors" would not be impacted by the Proposed Regulation. The Proposed Regulations would thus burden law abiding financial advisors while failing to effectively deal with the conduct it is meant to address.
- The Division notes in the proposing release that one of the enforcement actions that gave rise to the current proposal involved insurance agents posing as elder planning specialists.⁹ Unfortunately, under the Proposed Regulations insurance agents would remain free to utilize professional designations indicating special training in issues important to seniors while those affiliated with broker-dealers and investment advisers would not. The Proposed Regulations, therefore, unfairly target the use of certain professional designations by broker-dealer

⁶ See 950 CMR 12.204(2)(b).

⁷ See 950 CMR 12.204(1)(a)4.

⁸ See at <http://www.sec.state.ma.us/sct/sctpropreg/propreg.htm>.

⁹ Id.

- agents and investment adviser representatives registered in the state, while failing to address a segment of the industry where problems are known to exist.
- The Division's proposing release states that the Proposed Regulations "would exempt from the prohibitions only those designations that are earned as a result of a meaningful educational or training process encompassing sufficient course work, examinations and experience. Those professional designations that would be exempt from the prohibitions would have, **at a minimum**, accreditation by a nationally recognized independent accrediting organization..."¹⁰ This text appears to be at odds with that of the Proposed Regulations. Under the Proposed Regulations, the Secretary is empowered to approve the independent accrediting organizations, but is not allowed to establish additional criteria for the approval of professional designations.¹¹ This contradiction between the language of the Proposed Regulations and their stated purpose must be resolved.

We wish to express our gratitude for your consideration of our comments, and we wish to assure the Division of our support for comprehensive and effective consumer protection programs.

Again, thank you for the opportunity to comment on the Proposed Regulations. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,



Dale E. Brown, CAE
Executive Director & CEO

¹⁰ Emphasis added. See at <http://www.sec.state.ma.us/sct/sctpropreg/propreg.htm>.

¹¹ The Proposed Regulation would include the following in a list of fraudulent or abusive practices: "Using a purported...professional designation that indicates that an [broker-dealer agent or] investment adviser representative has special expertise... in advising or servicing senior investors, unless such credentials or designations have been accredited by a nationally recognized independent accrediting organization whose purpose is to develop standards and implement methods for assuring competency. Such organization shall be approved by the Secretary by order..." The Proposed Regulation does not provide for the Secretary to establish additional criteria. See the full text at <http://www.sec.state.ma.us/sct/sctpropreg/propreg.htm>.