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SENT VIA E-MAIL AND U.S. POSTAL SERVICE 1ST CLASS MAIL

April 26, 2007

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

Re: Comments to Proposed Regulations From the Massachusetts Securities Division
Regarding 900 CMR 12.200: Registration of Broker-Dealer, Agents, Investment
Advisor, Investment Advisor Representatives and Notice Filing Procedures for
Federal Covered Advisors

Dear Director Lantagne:

Thank you for providing the Pension Action Center of the University of Massachusetts Boston with the opportunity to comment on these important proposed regulations. As we are committed to the interests and welfare of seniors and to combating financial fraud on that population, we are especially gratified to see Secretary Galvin and the Massachusetts Securities Division take such significant action to protect the Commonwealth's senior population. Enacting these proposed regulations is an important first step toward stemming deceptive practices aimed at senior citizens and will allow elders in the state to more reasonably rely on specialist designations that financial advisors advertise while attempting to obtain their business. As the administrative record for the proposed regulations clearly indicates, there is a far too common trend indicating fraudulent or deceptive use of these designations to entrap seniors into taking the money they have saved and earmarked for retirement and entrusting it with unscrupulous individuals and entities whose only interest is the commissions they will earn from the transaction. The record indicates a much-needed emphasis on establishing a valid standard for certifying these designations and limiting their use to those who have attained and achieved the appropriate level of knowledge, training and experience in the area of advising seniors concerning their retirement security.

The need for such protective measures is clear. Strong proof of the financial fragility of elders in Massachusetts was illustrated in a study recently completed through the Gerontology Institute of the John W. McCormack Graduate School of Policy Studies of the University of Massachusetts Boston:

“Many Massachusetts elders regularly struggle to make ends meet. Living costs are among the highest in the nation, especially in housing and health care. In the face of rising expenses, many elders’ incomes at best see a modest cost of living adjustment each year; they are spending down their retirement savings, and/or face growing debt. At the same time, seniors may be prepared for the present but face a challenging future if their life circumstances change due to illness, loss of a spouse or need for help with daily tasks.”

Laura Henze Russell et al., Elder Economic Security Initiative: The Elder Economic Security Standard for Massachusetts, at vi (December 2006). Seniors who have worked and saved for their entire lives are obviously dependent on the money they have secured for their retirement. Advisors should not be allowed to prey on senior citizens’ susceptibility by projecting a false level of expertise or knowledge when attempting to attain their business. The Institute applauds the Secretary and the Division for initiating such accreditation requirements and for attaching consequences to those parties perpetrating fraud on senior populations.

Summary of Comments

In addition to our general support of these proposed regulations, we recommend a few amendments to the regulations proposed by Secretary Galvin that we believe will give the regulations the teeth it needs to more effectively deal with illegitimate use of senior specialist designations. First, eliminate the grace period provided for under 950 CMR 12.204(2)(i)(3) and 950 CMR 12.205(9)(c)(15)(c), and draft a requirement that senior specialist designations may not be used prior to accreditation. Second, create a requirement that permits an entity or individual to cite these requirements for accreditation and note that accreditation is pending. Finally, we suggest that specific procedural requirements be implemented concerning the accreditation process. Each of these recommendations has been expanded upon in more detail below.

Elimination of the Proposed Grace Period

With or without these proposed regulations, seniors should have the freedom to select a financial advisor of their own choosing to assist with retirement financial decisions. This freedom to choose exists despite any designation that may or may not exist. However, as demonstrated through the administrative record presented by the Division, designations used by financial advisors purporting to possess special skills, knowledge or experience concerning seniors’ financial security decisions are in fact being utilized deceptively to influence elders’ financial decisions. This is not to say that all designations operate without validity. The administrative record makes it clear that there are reputable designations that require a wide range of training and study by those seeking to obtain and use such senior designations, and such credentials would clearly be beneficial to elderly populations. These proposed regulations seek to provide a

minimum standard for such using specialist-designations and oversight for ensuring that proper accreditation toward that minimum standard occurs.

The proposed grace period in Sections 12.204(2)(i)(3) and 12.205(9)(c)(15)(c) seems to countermand the objectives of the proposed regulations. The administrative record indicates that the grace period would lessen the burden for designations which are more “hollow” in comparison to the requirements needed for accreditation by allowing their continued use during the designation process. While the user will eventually be obligated to meet the minimum standards set forth by the accreditation organization, where the designation falls far short of that minimum standard it is likely that significant efforts would be required to eventually satisfy the standard. Allowing advisors in this situation to continue to use an empty designation during a potentially lengthy accreditation process will only perpetuate the potential fraudulent behaviors that these proposed regulations seek to obviate. It is the position of the Pension Action Center of the University of Massachusetts Boston that such a grace period is unnecessary and contrary to the intentions behind these proposed regulations.

More specifically, providing a grace period would allow advisors to continue using the designation to obtain new clients without having to take any of the necessary steps toward accreditation for a timeframe up to six months. During that period, advisors would be free to sell financial products to seniors under the guise of an empty designation, and the senior would be left with little recourse after being locked into an unfavorable annuity that they purchased from the advisor. An individual who made such a purchase while relying on an unaccredited designation may be successful in pursuing administrative action against the advisor through the Division of Securities. However, this is a costly process and could be avoided if advisors were only allowed to use senior-specialist designations that have been fully and formally accredited.

In addition, implementing a grace period creates a scenario in which there would be no mechanism for requiring advisors who have failed in their attempts at accreditation for notifying those clients whose business the advisor gained during the process of the rejection. While a decision not to accredit a designation prevents the advisor from continued use in attracting new business, the business that the advisor gained during the accreditation process may have already resulted in unscrupulous conduct against the senior client. Furthermore, there is no requirement on the advisor to forfeit any senior clients that were picked up during the accreditation process, and it may be some time before those senior clients become aware of any ill-effects of their decision to hire the advisor. In other words, by this point, the damage would already have been done. Were the Secretary to adopt these regulations without any grace period, financial advisors would only be allowed to make use of a senior specialist designation after having met the minimum standards set forth by the recognized accreditation organization. If the advisor does not take the necessary steps or is unable to implement the training and attain the expertise required to meet the standards for accreditation, then they should not be provided with a free-ride under a grace period.

Finally, creation of a grace period would encourage multiple attempts at accreditation in order to take advantage of the grace period. Absent any monitoring of applications for accreditation by the accreditation organization or the Secretary (discussed further below), an advisor might be able to gain significant benefits from designations used during those grace periods without ever

achieving accreditation. The impacts to seniors who were adversely affected by advisors' services engaged in reliance on an unaccredited specialist designation could largely be avoided by removing the grace period from the regulations.

Require Notification of Accreditation Requirements and Where Accreditation Is Pending

As an alternative to the use of the proposed grace period, the Pension Action Center proposes that during the accreditation process, and until accreditation is achieved, individuals and entities only be permitted to advertise: (1) that the Commonwealth requires any senior-specialist designation to be accredited; (2) the final regulations which prohibit the use of unaccredited senior-specialist designations; and (3) that accreditation is pending for designations where an application for accreditation has been made of the accrediting organization.

If adopted, advisors who elect to use this language should be required to do so in its entirety, not piecemeal. Providing model language to this effect will prevent serious and competent advisors with the requisite skills and knowledge from being penalized by an accreditation process by allowing them to notify clients that that they are in the process of having that expertise recognized by the Commonwealth. It also presents financial advisors with an opportunity to show potential senior clients how serious they are about attaining accreditation of a senior-specialist designation. This will increase the information that seniors have available to them when assessing options for a financial advisor, and it will enable them to make more informed decisions. Furthermore, this regulation would place seniors who are using such specialists, and who may not be aware of a need for accreditation in the first place, on notice that accreditation is necessary. Combined with the recommendation previously discussed that advisors attain accreditation prior to continuing use of the designation would also place the impetus on the advisor to strive for accreditation as quickly as possible.

Adopt Procedural Requirements for Accreditation of Senior-Specialist Designations

While it is the Division's opinion that it is not best suited to determine the actual minimum threshold requirements for accreditation, the Center would strongly encourage adding regulations concerning the accreditation process to ensure its effectiveness. First, the proposed regulations should establish requirements under sections 12.204(2)(i)(1) and 12.205(9)(c)(15)(a) for the recognition of the organizations who will be responsible for accreditation of senior-specialist designations. The Division and Secretary should at least specify the criteria and methods that are deemed to be important for an accrediting organization to attain the state's recognition.

Second, the proposed regulations should be amended to reflect an accreditation process that focuses on the entity or individual making the application as well as the designation being accredited. The objective of these proposed regulations is to curb deceptive use of senior-specialist designations by financial advisors. However, the designations themselves are not the problem, rather it is the individuals or entities behind the designation who are attempting to use these credentials without actually acquiring the knowledge, training or experience needed to support them. The language of the proposed regulations focuses only on the accreditation of the designation; it does nothing to curb the behaviors of those seeking to use them in a deceptive

manner. Accordingly, we recommend that the regulations be amended to reflect a requirement that all applications for accreditation be made in good faith.

By way of illustration, an advisor may submit a designation for accreditation knowing that it is not sufficient to actually be accredited. Once the accreditation is denied, there is nothing to prevent the advisor from make a new application for accreditation of a different designation that is equally inadequate. We recommend that the Secretary include limitations on individuals or entities in the number of accreditation requests made within a given period of time. The Division could limit the number of rejected accreditation request to two per year for any individual or entity attempting to have their senior-specialist designations certified. This would create an expectation on the advisor to submit an application in good faith with the necessary components in order to achieve accreditation. Additionally, we recommend that the regulations be amended to require that individuals and entities be required to renew their accreditation annually, ensuring that advisors are keeping up with the minimum requirements for certifying their credentials.

Finally, the regulations should be amended to require reporting of the applications for accreditation which have been made, approved and rejected. This reporting requirement will allow the Division of Securities to better monitor the designations which are validly in use, for parties who habitually make bad faith attempts at accreditation and for future adjustments to the regulations in the future to deal with abuses that occur. Such procedural requirements would place the emphasis of the regulations more squarely on addressing the deceptive tactics of financial advisors by the ability of those whose knowledge, training and experience is insufficient to achieve accreditation from slipping through the system.

Thank you again for providing us with the opportunity to provide comments to these proposed regulations. Should you have any questions or require additional information, please do not hesitate to contact me at (617) 287-7307 or Professor Ellen A. Bruce, J.D. at (617) 287-7315.

Very truly yours,

s/ Robert G. Nelson

Robert G. Nelson, J.D.
Pension Action Center