SIFMA Securities Industry and Financial Markets Association
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April 27, 2007

Bryan J. Lantagne
Director
Massachusetts Securities Division
One Ashburton Place
Boston, MA 02108

RE: Proposed Regulations on the Use of Senior Designations

Dear Bryan:

The Securities Industry and Financial Markets Association (SIFMA)[1] appreciates the opportunity to comment on the Massachusetts Securities Division's (the "Division") proposed regulations prohibiting broker-dealer agents and investment adviser representatives from using certain professional designations that state or imply a specialized knowledge of the financial needs of senior investors unless that designation has been accredited by an accreditation organization recognized by the Secretary of the Commonwealth. SIFMA applauds the Division's interest in ensuring that investors are not misled by meaningless titles and believes that the March proposed rule is a substantial improvement over its Fall 2006 predecessor.

At the same time, SIFMA continues to have some concerns with the rule as currently drafted. First, we remain worried that the industry ultimately could be subject to 50 widely varying regulatory schemes involving senior designations. Massachusetts, Nebraska and Washington State have each advanced different proposals. Other states are likely to follow suit. A state-by-state approach would clearly impose substantial additional administrative burdens and costs on the industry. It would also be confusing for seniors as different designations are deemed appropriate in different states. SIFMA urges the Division to work with the North American Securities Administrators Association (NASAA) on a model rule and to coordinate its efforts with the SEC and the NASD.

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[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington, D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

Second, the proposed rule notes that "[i]n determining whether a purported credential or professional designation indicates or implies that a broker-dealer agent has special expertise, certification or training in advising or servicing senior investors, *the primary factor shall be use of one or more words such as 'senior,' 'retirement,' 'elder,' or like words combined with one or more words such as 'certified,' 'adviser,' 'specialist,'* or like words in the name of the credential or professional designation (emphasis added)." This presumption is concerning as it casts too wide a net. For example, some member firms use the title "retirement specialist." A retirement specialist, which would presumably be prohibited under the proposed rule, does not necessarily focus on the over 60 population; rather he or she assists persons <u>of all ages</u> who are interested in planning for retirement. A "senior retirement specialist" is a more experienced "retirement specialist;" the use of the term senior refers to length of service and not client focus. Moreover, some existing titles use two or more of the presumptive words described above yet apply to persons who are not involved in sales to anyone much less to seniors. SIFMA recommends replacing "the primary factor shall be" with "a factor to consider is." It further recommends excluding titles where use of the term "senior' is not intended to suggest special expertise with the senior population, and it recommends providing an exemption for persons whose primary function is not sales.

Third, many of our larger member firms have substantial internal training programs in place. This is certainly something Massachusetts should encourage. We are not currently aware of an existing internal training program which results in the use of a specific designation expressing experience with senior citizens. We, however, can envision situations where member firms, unhappy with existing external programs, would want to develop their own senior programs and core curriculum. We can also imagine that firms will want to ensure that certain existing titles that aren't geared specifically towards the senior population, such as "retirement specialist," can be used without fear of state action. We therefore would recommend creating an exemption to the proposed rule for internal training programs based on time (<u>e.g.</u>, 30 hours of training) and the ability of state regulators to review the curriculum upon audit or request.

Fourth, in earlier comments, we note that the proposed rule is limited to investment advisers and broker-dealers and strongly encourage the Division to coordinate its efforts with the Division of Insurance to ensure that insurance agents, who may also hold themselves out as offering investment advisory or financial planning services, are subject to similar prohibitions on the use of misleading designations. In its "Discussion of Reasons For, And Objectives Of, Proposed Regulation Regarding Use of Senior Designations," the Division states that "[it] agrees with such comments and intends to continue its discussions with the Division of Insurance." SIFMA strongly recommends that the Securities and Insurance Divisions <u>jointly</u> issue any regulations on senior designations.

Fifth, SIFMA appreciates the Division's raising of the age of a "senior investor" from 50 to "60 years of age or older." While we believe this is a substantial improvement over the earlier draft, sixty is getting younger every day. For example, President Bush, Former

President Clinton, Connie Chung, Danny Glover and Mick Jagger are all over 60. The FAA plans to increase the retirement age for pilots from 60 to 65, and Massachusetts judges can serve until the age of 70. In addition, with life expectancy climbing, people are expected to work longer. According to Boston College's Center on Aging & Work, "approximately four of every five baby boomers think they will work past the 'normal retirement age'" and "a greater percentage of today's older works are more likely to continue to work than their counterparts did during the last several decades." For all of these reasons, SIFMA continues to believe that 67, the age at which a person can receive full Social Security benefits, is more appropriate.

Finally, it is very difficult to say whether SIFMA supports or opposes the rule when it is not clear what accreditation organizations the Secretary is likely to recognize by rule or order. We would encourage the Secretary to provide a list of those accredited organizations which will clearly be recognized prior to closing the comment period and finalizing the rule.

We appreciate the opportunity to provide input on this important issue. Should you have any questions, please contact me at 212-720-0611.

Sincerely,

Kim Chamberlain

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Vice President and Counsel
State Government Affairs
SIFMA

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