



VOICE OF THE INDEPENDENT CONTRACTOR BROKER-DEALER

VIA ELECTRONIC MAIL

April 27, 2007

Bryan J. Lantagne
Director, Securities Division
Massachusetts Securities Division
John W. McCormack Building
One Ashburton Place, Room 1701
Boston, MA 02108

RE: Proposed Regulations Regarding Use of Senior Designations

Dear Mr. Lantagne:

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 or implies that a broker-dealer agent has special expertise, certification, or training in advising or servicing senior investors, unless such credential or designation has been accredited by an accreditation organization recognized by the Secretary by rule or order."² The term "senior investor" would be defined as a person 60 years of age or older.³ The Proposed Regulations are designed to halt the use of misleading designations and credentials targeted at senior investors by financial advisors.

FSI supports the Division's continuing efforts to enhance protections for senior investors. The Proposed Regulations are well designed to achieve their stated purpose and set an example for other regulators to follow in this critical area. However, FSI remains concerned that the adoption of unique senior investor designation requirements by the various states could lead to an uneven playing field, unnecessary administrative costs and burdens on the industry, and confusion for seniors. As a result, FSI encourages the Division to work with the National Association of Insurance Commissioners (NAIC) and the North American Securities Administrators Association (NASAA) to develop model guidelines that will lead to the uniform application of senior designation requirements to all industry professionals, including insurance agents, broker-dealer agents and investment adviser representatives.

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

¹ The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed in 2004. Our members are independent broker-dealers, often dually registered as federal investment advisors, and their independent contractor registered representatives. FSI's 103 Broker-Dealer members have more than 130,000 registered representatives serving more than 14 million American households and generating in excess of \$13.5 billion in annual revenues. FSI also has more than 7,800 Financial Advisor members.

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

³ Id.

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. The typical financial advisor offers his services to investors residing in multiple states through the use of various marketing materials. 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, we believe these financial advisors have a strong incentive to make the achievement of their clients’ investment objectives their primary goal.

Detailed Comments

As stated above, FSI supports the Proposed Regulations as an appropriate effort to further the important goal of protecting senior investors from deceptive marketing practices. Nevertheless, FSI respectfully recommends that the Division work closely with NAIC and NASAA to develop Model Guidelines to ensure greater uniformity. This recommendation is based upon the concerns described below:

1. Uniform Application to Financial Services Industry Participants - The Division notes in the proposing release that several of the enforcement actions that gave rise to the current proposal involved insurance agents posing as elder planning specialists.⁴ Unfortunately, under the Proposed Regulations insurance agents would remain free to utilize professional designations indicating special training in issues important to seniors. The Proposed Regulations, therefore, fail to address a significant segment of the industry where problems are known to exist. This is contrary to the goal of protecting senior investors from the misleading marketing of financial services. FSI is pleased to note that the Division acknowledges the need to work with the Massachusetts Division of Insurance “to develop a coordinated regulatory approach.”⁵ FSI respectfully encourages the expansion of the Division’s efforts in this regard to include NAIC in the development of a set of Model Guidelines designed to protect seniors by leveling the playing field for all financial services industry participants.
2. Uniform Regulatory Scheme - FSI is concerned that, absent Model Guidelines, other state securities administrators may adopt unique regulatory schemes to deal with the problem of professional designations. In fact, Nebraska has already taken steps to limit the use of certain designations.⁶ Since the production costs of marketing materials can be substantial, these conflicting requirements would have an unreasonable financial impact upon independent financial advisors and IBDs. They would also likely lead to confusion for seniors as different designations are deemed appropriate in different states. As a result, FSI urges the Division to coordinate its efforts with NASAA to insure the adoption of a consistent approach to professional designations utilized by broker-dealer agents and investment adviser representatives. FSI understands from media reports that NASAA is

⁴ See at <http://www.sec.state.ma.us/sct/sctpropreg/adminrec.pdf>.

⁵ Ibid at page 18.

⁶ See at <http://www.ndbf.org/forms/bd-ia-special-notice.pdf> and <http://www.sec.state.ma.us/sct/sctmktSEN/workman/workmancomplaint1.pdf>.

engaging in such an effort.⁷ FSI applauds these efforts and respectfully urges the Division to continue its participation in these endeavors.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dale Brown", written in a cursive style.

Dale E. Brown, CAE
Executive Director & CEO

⁷ Charles Paikert, "Galvin leads charge against senior fraud," (Mar. 12, 2007), available at <http://www.investmentnews.com/apps/pbcs.dll/article?AID=/20070312/FREE/70312006/-1/INIssueAlert04&ht=>.