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Bryan Lantagne, Director
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, Massachusetts 02108

Re: Comments on Proposed Regulations 950 CMR 12.204(2)(i) and 12.205 (9)(c)(15) of the Massachusetts Security Division

Dear Director Lantagne:

This letter provides comments on the Reproposed Regulations which would be included as 950 CMR 12.204(2)(i) and 12.205 (9)(c)(c)(15) which relate to the use of professional designations indicating expertise, certification or training in advising or servicing senior investors (the "Reproposed Regulations"). Our firm is legal counsel to Society of Certified Senior Advisors ("SCSA"), Denver, Colorado, which is the owner of the designation Certified Senior Advisor ("CSA"®) and CSA. We appreciate the opportunity to continue our participation in your rulemaking process.

As you may be aware, by letter of October 30, 2006 to Secretary of State Galvin, our firm provided comments on behalf of SCSA to an earlier version of the Reproposed Regulations. A copy of our earlier letter is appended hereto, and incorporated by reference, since our earlier comments provide a discussion of the background of SCSA and legal limitations relating to any regulations which continue to apply.

We note that the Reproposed Regulations reflect modifications which appear to address some of the concerns which we raised in our earlier comment. We appreciate the effort that is being made to address points raised by commentors in this process, including ourselves, and are heartened by the Division's willingness to consider and address legitimate concerns.

We now ask that consideration be given to our view that the Reproposed Regulations should not be issued as final rules.

There is no serious dispute about two points raised in our earlier comment letter. The use of professional designations is a classic form of commercial speech which cannot be prohibited unless misleading. Where, as here, the government seeks to regulate, but not prohibit the speech in its entirety, the regulation must advance the governmental interest asserted, and be no more restrictive than necessary. Our review of the Discussion of Reasons for, and Objectives of, Proposed Regulations Regarding Use of Senior Designations ("Discussion of Reasons")

demonstrates that the Reproposed Regulations do not advance the asserted government interest, and are more restrictive than necessary. The Discussion of Reasons reinforces our view that the Division's legitimate concerns are best addressed through the establishment of regulatory safe harbors.

The Discussion of Reasons makes clear that the Division's concern is that unsuitable recommendations to both sell and buy financial products are being made to seniors. The use of designations implying expertise in senior matters is recognized as "only one small part" of a much larger problem. Discussion of Reasons, page 13. However, the Reproposed Regulations do not address at all the problem that seniors are in some instances getting advice that is unsuitable to their financial position and needs.

The Discussion of Reasons does not suggest that the problem of unsuitable recommendations is due to a lack of understanding by salespeople of the financial needs of seniors. To the contrary, the examples provided, and the administrative proceedings referred to, all involve allegations that unscrupulous persons are intentionally and fraudulently advising seniors to engage in transactions which such persons know are unsuitable. An accreditation process that is designed to enhance the understanding of those advising seniors will not have any effect on persons who knowingly make improper recommendations. The failure of the Discussion of Reasons to identify even a single instance where a holder of a senior designation made an unsuitable recommendation based upon a lack of understanding of the actual needs of seniors, as opposed to a fraudulent intention to take advantage of seniors, undercuts the entire rationale for the Reproposed Regulations.

Similarly, the Reproposed Regulations in no way address any issue of confusion about what a designation means. That confusion can be eliminated only by disclosure about the meaning of a designation which SCSA has previously suggested.

The rationale articulated in the Discussion of Reasons for rejecting fuller disclosure as the remedy for confusion about the meaning of professional designations is not well-founded. As noted in our earlier comments, the fundamental purpose of the Massachusetts Securities Act is to encourage full disclosure so that market participants can make their own determinations about what is in their best interests. The suggestion that disclosure is not the remedy for a possible misunderstanding of the significance of a designation flies in the face of the disclosure based regulatory scheme embodied not only in the Massachusetts Securities Act, but also in the federal securities laws.

While SCSA believes that the disclosure on its website is both beneficial and reasonable, the differing view taken in the Discussion of Reasons is not really relevant. A safe harbor based upon disclosure could include disclosure requirements that go beyond the disclosure that SCSA has voluntarily incorporated into its own website and senior-directed materials and which it will require of its members. A regulation establishing a safe harbor based on disclosure for the use of a designation could specify the elements that must be included in acceptable disclosure. A safe harbor regulation also can address the timing of disclosure in a manner similar to the disclosure

requirements applicable to registered investment advisors in 950 CMR 12.205(8). A safe harbor regulation can provide that the font used to make the disclosure be of a certain size. In summary, as suggested in our earlier comment, a safe harbor regulation allowing the use of a designation can be tailored to address the issues about which concern has been expressed, but which are not addressed at all by the current Reproposed Regulation.

The concern raised in the Discussion of Reasons regarding the monitoring of designation holders who may engage in improper conduct likewise does not support the Reproposed Regulations. Initially, SCSA takes issue with the suggestion made in the Discussion of Reasons that its monitoring of its members is insufficient. The assertion that no CSA designee was disciplined prior to 2006 is false: prior to 2006, there were 16 revocations, 18 suspensions, and 25 lesser forms of sanction, such as censures. Further, it appears that SCSA acted more promptly in revoking the designation of the individual identified in the Discussion of Reasons than did the NASD.

Since the Division has stated that it does not believe that it is in the best position to identify criteria which should be applied to accrediting a designation, it is uncertain whether approved accrediting organizations would require as part of the accreditation process any membership monitoring at all. To the extent that the Division believes that monitoring criteria are necessary for an organization certifying designees, the Division can articulate such criteria as part of a safe harbor regulation. For example, a safe harbor regulation could require a designating organization to require its designees to provide copies of any consumer complaints, along with an explanation by the designee of the circumstances giving rise to the complaint. That, of course, is the mechanism used by a number of self-regulatory organizations registered with the Securities and Exchange Commission.

Once again we urge that the Reproposed Regulations be reconsidered in light of our suggestion that a safe harbor regulation requiring disclosure and other reasonable elements is the proper direction to take.

We appreciate the opportunity to express our client's views.

Very truly yours,

David A. Zisser

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cc: Society of Certified Senior Advisors
Jon R. Tandler, Esquire

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