

VIA ELECTRONIC MAIL

May 20, 2015

Sarah Branch, Esq.
Assistant General Counsel for Securities
Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, TN 37423

Re: Tennessee's Proposed Rule on Senior-Specific Certifications and Professional Designations

Dear Ms. Branch:

On February 27th, the Tennessee Securities Division (Securities Division) published its request for public comment on proposed recommendations to rules on senior-specific certifications and professional designations (Proposed Rule).¹ The Proposed Rule will make it a dishonest or unethical business practice under TENN. CODE ANN. Section 48-1-112(a) (2) (G) to fail to disclose information about senior-specific certifications or professional designations that have been issued by certain certifying/designating organizations that are identified as illegitimate organizations.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI applauds the Securities Division's efforts to ensure senior-specific certifications are not misleading to investors and suggests that the Proposed Rule be interpreted consistently with existing FINRA regulations. Uniformity with existing regulations will assure firms and advisors have consistent and clear regulatory requirements which will assist them in complying with Tennessee's Proposed Rule.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives. These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions.

¹ Notice of Rulemaking Hearing, available at, <http://tn.gov/securities/documents/Notice-of-Rule-Making-Hearing-Senior-Specific-Certifications-Professional-Designations.pdf>.

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

FSI appreciates the opportunity to comment on the Securities Division's Proposed Rule on senior-specific certifications and professional designations. FSI suggests that the Proposed Rule be in line with applicable FINRA and state rules that are already in effect. These suggestions are discussed in greater detail below.

I. FSI Requests Uniformity of the Proposed Rule and Existing Regulations

A. Introduction

FSI commends the Tennessee Securities Division for its efforts to enhance protections for senior investors. FSI shares regulators' concerns about the unnecessary and misleading use of senior specific designations. As an indication of our commitment to protecting senior investors, FSI attended the open hearing on the proposed rule on April 22, 2015 in Nashville. The comments below reflect FSI's testimony delivered at the open hearing.

B. Uniformity Among Applicable Federal Regulations and Guidance

Tennessee's Proposed Rule deems it a dishonest or unethical business practice by a broker-dealer, broker-dealer agent or investment adviser to use a senior-specific certification that is not issued by an accredited certifying or designating organization. The proposed rule is an updated version of the North American Securities Administrators Association (NASAA) model rule.³

There are currently two FINRA rules that govern the use of senior specific designations. FINRA Rule 3110 requires broker-dealers to maintain a system to supervise financial advisor activities to ensure they are designed to achieve compliance with applicable rules. Further, FINRA rule 2210 prohibits registered persons and firms from making false, exaggerated, or misleading statements to the public.

In addition to its applicable rules, FINRA released guidance on broker-dealer obligations for supervision of registered persons using senior designations.⁴ In the guidance, FINRA released the results from a survey of 44 separate senior designations that are used by financial advisors. The results of the survey showed that the vast number of senior designations surveyed (31 of the 44) are used by less than 10% of financial advisors. Only 10 of the designations were used by more than 25% of advisors.

³ NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, available at, http://www.nasaa.org/wp-content/uploads/2011/07/3-Senior_Model_Rule_Adopted.pdf

⁴ 2011 Senior Designation Survey Results, available at, <http://www.finra.org/industry/2011-senior-designation-survey-results>.

FSI requests that the Securities Division work to ensure that its Proposed Rule is tailored and in accordance with applicable FINRA Rules. Specifically, we note that Section (7)(a)(1)(iv) of the Proposed Rule states that, “the use of a senior-specific certification or professional designation that was obtained from a designating or certifying organization that: does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct.” As written, the Proposed Rule does not provide guidance as to what constitutes “reasonable standards or procedures” and therefore leaves considerable room for interpretation.

FINRA already requires broker-dealers and registered representatives follow certain procedures when deciding to approve and display a senior-specific designation. In Regulatory Notice 11-52, FINRA outlines practices broker-dealers may use when deciding whether a designation is deemed legitimate. This includes a “rigorous curriculum, continuing education requirements and an emphasis on ethics.” The Securities Division should ensure that its Proposed Rule closely follows FINRA’s enumerated guidance.⁵ The Securities Division may accomplish this by referring to the FINRA guidance in the rule text to indicate that the states requirements are consistent with FINRA’s applicable rules. This will enable financial advisors to easily comply with both state law and FINRA requirements.

C. FSI Requests a Lengthy Grace Period

The Proposed Rule requires financial advisors to change their correspondence, business cards and other marketing material. Further, any new correspondence may require a review by FINRA in accordance with FINRA Rule 2210. Therefore, if the Proposed Rule is adopted, FSI requests a grace period of one year for advisors and firms to come into compliance with the rule. Such a time frame would enable advisors and broker-dealers ample time to come into compliance with any such rule.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with the Securities Division on this and other important regulatory efforts.

Thank you for considering FSI’s comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "B".

David T. Bellaire, Esq.
Executive Vice President & General Counsel

⁵ FINRA RN 11-52, available at, <http://www.finra.org/sites/default/files/NoticeDocument/p125092.pdf>

cc: Daphne Smith, Commissioner, Tennessee Securities Division