

DEPARTMENT OF JUSTICE
DIVISION OF SECURITIES

Statutory Authority: 6 Delaware Code, Section 7325(b) (6 **Del. C.** §7325(b))

PROPOSED

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA—Title 29, Chapter 101 of the **Delaware Code**) and section 7325(b) of Title 6 of the **Delaware Code**, the Division of Securities of the Delaware Department of Justice hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division proposes hereby to add a new Rule 800.

Persons wishing to comment on the proposed regulation may submit their comments in writing to:

James B. Ropp
Securities Commissioner
Department of Justice
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801

The comment period on the proposed regulation will be held open for a period of thirty days from the date of the publication of this notice in the *Delaware Register of Regulations*.

Summary of the Proposed Revision

The Securities Division proposes to add a new Rule 800 to govern the use of senior specific designations and certifications by persons (1) offering, selling or purchasing securities; or (2) providing advice as to the value of or the advisability of investing in, purchasing, or selling securities. The proposed revision is consistent with the model regulation as drafted by the North American Securities Administrators Association ("NASAA"). The provision is being proposed to protect the public from misleading senior specific designations and certifications.

Rules and Regulations Pursuant to the Delaware Securities Act

(Break in Continuity of Sections)

Part H. Provisions Applicable to Broker-Dealers, Agents, Investment Advisers and Investment Adviser Representatives

§800. Senior Specific Designations.

- (a) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of section 7316(a)(7) of the Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

- (1) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
- (2) use of a nonexistent or self-conferred certification or professional designation;
- (3) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
- (4) use of a certification or professional designation that was obtained from a designating or certifying organization that:
 - (A) is primarily engaged in the business of instruction in sales and/or marketing;
 - (B) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
 - (C) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - (D) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.
- (b) there is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (a)(4) above when the organization has been accredited by:
 - (1) The American National Standards Institute; or
 - (2) The National Commission for Certifying Agencies; or
 - (3) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.
- (c) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:
 - (1) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
 - (2) the manner in which those words are combined.
- (d) (1) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:
 - (A) indicates seniority or standing within the organization; or
 - (B) specifies an individual's area of specialization within the organization.
- (2) For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.
- (e) Nothing in this rule shall limit the Commissioner's authority to enforce existing provisions of law.

13 DE Reg. 48 (07/01/09) (Prop.)