Preventing the Misleading Use of Senior Designations—What States Should Do

To help protect older investors from the misleading use of senior designations, states should adopt and enforce the model regulations developed by the North American Securities Administrators Association and the National Association of Insurance Commissioners. These models deter fraudulent claims of investment expertise by financial services salespersons and help prevent unsuitable product sales that can cause significant harm to older investors.

One way financial services salespersons try to differentiate themselves from one another is to obtain a professional certification or designation. A salesperson may adopt a "senior designation" to indicate specialized knowledge and qualifications to better serve older investors, retirees, and those preparing for retirement. A salesperson with such a designation will typically put the designation—or initials representing it—on advertising material targeted at older investors.

Several organizations confer designations, including accredited institutions of higher learning, associations for financial professionals, and even for-profit companies. However, the requirements to earn and maintain a designation vary greatly. Some designations, like Certified Financial Planner, require a specified number of years of work in the field or hours of classroom study, passing an examination, and continuing education.[1]

The requirements for others are much less rigorous. Some designations may be obtained after a weekend seminar or through online self-study, with a self-administered examination.[2] Designations also vary as to whether they have continuing education requirements, formal complaint procedures, or compliance monitoring and disciplinary procedures.

As the types and uses of senior designations have grown, regulators and advocates have raised concerns about the potential for abuse and misleading claims. Misleading use of designations has been associated with so-called "free lunch seminars" and other questionable tactics to market unsuitable financial products to older investors and retirees.[3]

The potential for abuse exists because consumers may rely on a designation when choosing a sales professional but have difficulty judging whether the designation is "a meaningful educational achievement or merely a marketing tool."[4]

Confusion about Designations

The Financial Industry Regulatory Authority (FINRA), through the FINRA Investor Education Foundation, commissioned a survey in 2007 of investment fraud risk among "senior investors" who were identified as Americans age 55–64 with at least $2,000 in securities investments. A

second survey, also in 2007, studied "investment fraud victims" to compare their risk to the senior investors. Investment fraud victims, identified as known victims of financial fraud, ranged in age from 25 to 85. They had household investments ranging from less than $2,000 to more than $750,000.

In the FINRA surveys, respondents were asked a series of questions regarding designations, including their exposure to the designations and whether they would be more likely to take a salesperson's advice because of a designation.

Exposure to salespersons using a senior designation was fairly low. Only about 25 percent of those surveyed said an investment professional claimed to have a designation to give advice to older investors and retirees.

While exposure to designations was low, evidence suggests that investors will rely on a designation when choosing a salesperson. Almost half (46 percent) of those who had heard a salesperson claim a designation said they would be more likely to listen to that person's advice. [5]

All respondents were then asked a series of questions as to whether they would be more likely to take the advice of a salesperson using each of several designations. As shown in Table 1, the responses were similar for both the national sample and the fraud victim sample.

Respondents were more likely to accept advice from people holding the titles Certified Public Accountant, Certified Financial Planner, or Registered Broker. Beyond this top tier, confidence levels wane considerably. Some respondents were unable to distinguish between real designations and one fabricated for testing purposes.

The fictional designation "Certified Advisor for Senior Investing" ranked roughly in the middle of investors' confidence levels in both the national samples and the victims surveys, ahead of several designations in actual use.

Table 1
Investor Confidence in Various Designations: Percentage of Respondents Likely to Take Advise from Individuals with Specific Designations

Accreditation Title (Designation)	Percentage Likely to Take Advice	
	National Sample	Victims
CPA or Certified Public Accountant	71	78
CFP or Certified Financial Planner	64	73
Registered Broker	63	66
Registered Investment Adviser	39	51*
CLU or Certified Life Underwriter	24	18
Certified Senior Advisor	20	17
Certified Senior Consultant	19	22
Certified Advisor for Senior Investing **	17	15
CFA or Chartered Financial Analyst	17	18
Chartered Retirement Planning Counselor	17	16
Elder Care Asset Protection Specialist	14	9
Certified Elder Planning Specialist	13*	7
Chartered Advisor for Senior Living	7	9

* FINRA indicates that the reported percentage is significantly greater than in the opposing sample.

** Fabricated designation.

Source: FINRA Investor Education Foundation, Senior Fraud Risk Survey, 2007

These responses seem to indicate that a significant percentage of investors may be vulnerable to misleading claims, even investors who might be more wary because of previous experience as fraud victims.

Improving Consumer Information about Designations

This widespread lack of awareness about senior designations increases the potential for abuse.

To assist investors, FINRA maintains a database of senior designations on its Web site.[6] The database currently contains information on approximately 90 designations. In its disclaimer, FINRA warns that it does not approve or endorse any of the designations listed. However, FINRA does indicate that representatives of organizations that confer professional designations may submit the FINRA professional designation form to apply to have their designations listed in the database.

The listing provides an informal vetting process in the sense that designations not on the list might be considered lacking credibility by investors searching the site. The FINRA database contains information on each designation listed in a standardized format, as shown in Table 2.

Table 2
Contents of FINRA Designation Database

Designation title	Continuing education or experience requirements
Issuing organization	Complaint process
Prerequisites or experience required	Public disciplinary process
Educational requirements	Online check of a professional's status (yes or no)
Examination type	

Source: FINRA Designation Database, available at http://www.finra.org.

The database offers investors the opportunity to view the requirements for obtaining and retaining a particular designation, as well as the opportunity to compare the requirements for different designations. In addition, the database information page reminds investors that terms such as financial analyst, financial adviser, financial consultant, financial planner, investment consultant, or wealth manager are "generic terms or job titles and may be used by investment professionals who do not hold any specific designation."[7]

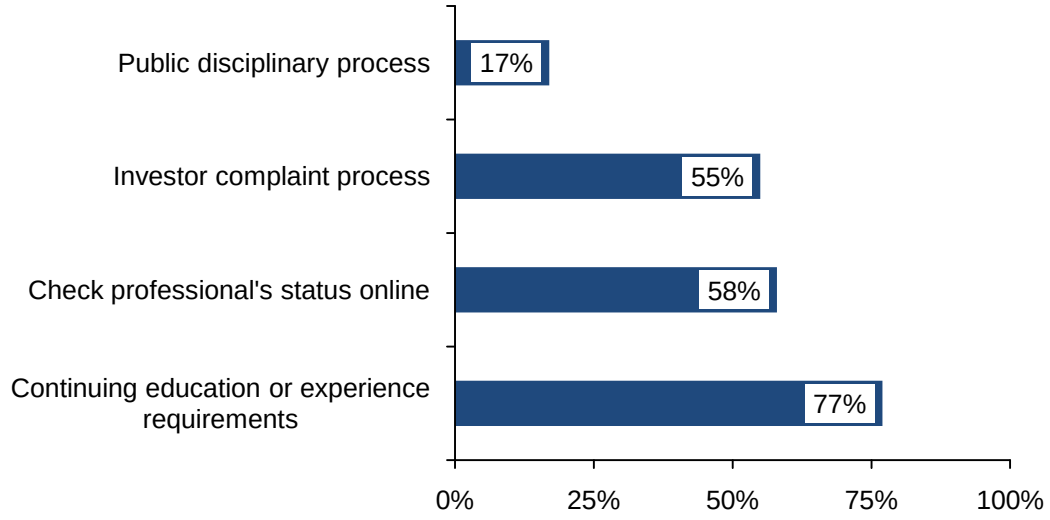
Although the FINRA database is self-selecting, analysis of the listings shows the disparity in accountability measures. As shown in Figure 1, more than three-quarters of the listed designations have some continuing education or experience requirement, but only about half have a formal complaint process or allow consumers to check a professional's status online. Moreover, only 17 percent have a public disciplinary process.

Regulating the Use of Senior Designations by Salespersons

Senior designations are regulated in two ways. The first is to punish deceptive uses of a senior designation as an unfair trade practice. FINRA follows this approach.[8] It advises members that its rules prohibit firms and registered representatives from making false, exaggerated, unwarranted, or misleading statements or claims in communications with the public.[9] The prohibition includes references to nonexistent or self-conferred degrees or designations as well as references to legitimate degrees or designations in a misleading manner. Some state insurance and securities regulators also use this regulatory method.[10]

The second, and more common, method of regulating the use of senior designations is to establish criteria for

Figure 1
Most Listed Designations Require Continuing Education or Experience, but Few Have a Public Disciplinary Process



Source: FINRA designation database, available at http://www.finra.org.

their use. This method limits the designations that may be used. The North American Securities Administrators Association (NASAA) adopted a model regulation establishing criteria for approval and use of senior designations in March 2008.

NASAA Model Regulation

The NASAA model states that the use of a designation in a manner 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 in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of [the state securities act]."[11] The model closely tracks a regulation on the use of senior designations adopted by the Massachusetts securities regulator.

NAIC Model Regulation

In September 2008, the National Association of Insurance Commissioners (NAIC) adopted a model regulation for life insurance and annuity products consistent with the NASAA model.[12] This consistency assists sales professionals who have licenses with both securities and insurance regulators and ensures adequate protection for older investors. Before adopting its model, NAIC adopted a model bulletin for use by state insurance commissioners on the use of senior designations.[13]

By the end of 2009, at least 17 states had adopted at least one of the two model rules.[14] Both the NASAA and NAIC models prohibit the use of the following:

- A designation by a person who has not earned it or who does not otherwise qualify to use it;
- A nonexistent or self-conferred designation;
- A designation that indicates or implies a level of occupational qualifications that the user does not have; and
- The use of a designation obtained from an organization that:

- Is primarily a marketing and/or sales organization;
- Does not have reasonable standards to ensure the competency of those who receive their designations;
- Does not have reasonable monitoring and disciplinary standards or procedures; or
- Does not have reasonable continuing educations requirements for the designation.[15]

Another approach is to create a list of approved designations. The Nebraska Department of Banking and Finance, which regulates securities in that state, has done this. In these jurisdictions, a salesperson may not use a designation unless it appears on an approved list.

While a list of approved designations does provide certainty to consumers, it does not provide as much information as other approaches about how the approval process works, and it may make it difficult to recognize new specializations with a designation. Providing selection criteria offers a more balanced approach, combining consumer protection with understandable standards for industry.

Conclusion and Recommendations

The misleading use of senior designations can result in the sale of unsuitable investments and can have a very significant adverse effect on the financial well-being of older investors.

The following actions are recommended to prevent such abuses:

- State insurance regulators should adopt the NAIC model regulation;
- State securities regulators should adopt the NASAA model regulation; and
- Regulators should vigorously enforce the regulations once adopted.

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[1] The designation of Certified Financial Planner (CFP) is issued by the Certified Financial Planner Board of Standards. A candidate must have three years of personal financial planning experience plus a bachelor's degree or five years of personal financial planning experience. Candidates must then complete a CFP Board-registered program or have one of certain titles, including Certified Public Accountant, Doctor of Business Administration, or an attorney's license. Applicants must pass an examination, and holders must complete 30 hours of continuing education every two years. CFP holders are subject to public complaint and disciplinary processes. Investors may search for a CFP or check a CFP's disciplinary status online at the CFP Board Web site. Source: FINRA Online Professional Designation Database, http://apps.finra.org/DataDirectory/1/prodesignations.aspx (accessed March 23, 2010).

[2] A Certified Equity Index Annuity Specialist, for example, must be a licensed insurance producer. Candidates must complete five and one-half hours of online, prerecorded sessions and must pass an online, open-book exam. There is no continuing education requirement.

[3] See, e.g., Eileen Ambrose, "Investment Advisor Title of 'Senior' Can Mislead," *Los Angeles Times*, April 13, 2008; Jay Fitzgerald, "Galvin Seeks to Protect Elder Investor from Scams," *Boston Herald*, May 17, 2007.

[4] See statement of Maryland Securities Commissioner Melanie Lubin in "State Securities Regulators Announce New Model Rule on the Use of Senior Certifications and Professional Designations," NASAA Press Release, April 1, 2008. Available at http://www.nasaa.org/NASAA_Newsroom?Current_NASAA_Headlines/8423.cfm (accessed March 23, 2010).

[5] The FINRA survey used the term "accreditation." Although the terms are synonymous, the term "designation" has become the term of art. Respondents were asked whether any investment professional had told them they

are specifically accredited to advise them on senior financial issues. Those who responded positively were asked whether telling them that a salesperson had a designation made them more likely to listen to the salesperson's advice. Of those who answered this question, 46 percent said yes, 51 percent said no, and 3 percent either did not know or did not answer.

[6] FINRA's Web address is http://www.finra.org. The URL for the database landing page is http://apps.finra.org/DataDirectory/1/prodesignations.aspx.

[7] FINRA, Understanding Professional Designations, http://apps.finra.org/DataDirectory/1/prodesignations.aspx.

[8] FINRA is a federally authorized industry self-regulatory organization.

[9] FINRA Regulatory Notice 07-43.

[10] The Arizona Department of Insurance, for instance, issued a regulatory bulletin on November 24, 2008, entitled "Improper Use of Producer Titles and Designations Targeting Senior Consumers." In the bulletin, the department advises that "producers who misrepresent their level of expertise in marketing and sales activities may be subject to disciplinary proceedings . . . ."

[11] NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, § 1.

[12] NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.

[13] The bulletin refers to a state's version of the NAIC Advertisements of Life Insurance and Annuities Model Regulation. Under this model regulation, insurance sales professionals are prohibited from implying that, by using various terms, they are engaged in advisory business in which compensation is unrelated to sales unless that is actually the case. NAIC Advertisements of Life Insurance and Annuities Model Regulation, § 5N.

[14] According to NAIC and NASAA, at least the following states have adopted one or both of the model rules by regulation or statute: Alabama, Alaska, Colorado, Illinois, Iowa, Kentucky, Maryland, Massachusetts, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Utah, Virginia, and Wisconsin.

[15] NASAA Model Rule on the Use of Senior Specific Certifications and Professional Designations, § 1; NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, § 5.

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