

Public Investors Arbitration Bar Association

December 14, 2007

Laurence S. Schultz
President

Brian N. Smiley
*Vice-President/
President-Elect*

Jenice L. Malecki
Secretary

Scot Bernstein
Treasurer

2008 Directors
Ryan Bakhtiari
California

Robert S. Banks, Jr.
Oregon

Scot Bernstein
California

Gail E. Boliver
Iowa

Steven B. Caruso
New York

Jenice L. Malecki
New York

C. Thomas Mason
Arizona

Peter J. Mougey
Florida

J. Pat Sadler
Georgia

Laurence S. Schultz
Michigan

Scott R. Shewan
California

Rosemary Shockman
Arizona

Brian N. Smiley
Georgia

Jeffrey R. Sonn
Florida

Mark A. Tepper
Florida

Robin S. Ringo
Executive Director

Philip M. Aidikoff
Mark E. Maddox
Seth E. Lipner
Directors Emeritus

VIA E-MAIL AND FACSIMILE

Melanie Lubin
OAG, Securities Division
200 Saint Paul Place
Baltimore, MD 21202-2020
FAX: (410) 576-6532

Rex Staples
NASAA
750 First Street, NE Suite 1140
Washington, DC 20002
FAX: (202) 783-3571

RE: Proposed Adoption of a NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations

Dear Ms. Lubin and Mr. Staples:

I am the President of the Public Investors Arbitration Bar Association ("PIABA"),¹ a national bar association devoted to supporting the interests of public investors in arbitration proceedings. PIABA is pleased to provide comments on the proposed NASAA model rule on the use of senior-specific certifications and professional designations and our support for such a model rule.

Summary:

We believe strongly that it is in the public interest for protection of investors to adopt your proposed regulations to terminate the abusive practice of using misleading and deceptive professional designations or credentials to target vulnerable senior citizens. Senior investors require vigilant protection from predatory sales practices. They are often more trusting than younger investors. They often do not have access to information (particularly via the internet) as easily as younger investors. And, particularly important, a majority are dependent on their investments to meet their day to day needs and are unable to replace investment losses.

Discussion:

Over the years, our members have seen firsthand the financial, emotional, and social devastation that senior citizens suffer when their financial resources are decimated by the improper and illegal activities of purported professionals who claim special expertise in meeting the unique needs of older investors. Typically, a senior's investments are the

¹ PIABA, established in 1990, is a bar association consisting of approximately 470 attorneys. Its mission is to promote the interests of the public investor in disputes with broker-dealers or investment advisers by protecting investors from abuses in the arbitration process. We strive to create a level playing field for the public customer in all securities and commodities arbitration forums.

Ms. Melanie Lubin
Mr. Rex Staples
December 14, 2007
Page 2

product of accumulated lifetime savings and hard work, or of life insurance or other death benefits following the loss of a loved one. When subjected to financial losses, few seniors are in a position to re-enter the work force at their previous pay scale to enable them to rebuild their savings, and many are often physically unable to resume work at a time in their lives where they expected to be retired permanently.

While enforcement actions brought by state regulators may in recoveries for defrauded investors, most cases must be pursued by investors privately. And like other public investors, seniors are forced into mandatory arbitration, a process that is rife with inequity, unfairness and bias against the public customer. The majority of investors, including seniors, do not fare well in arbitration.

For example, in the calendar year 2006, public investors who brought claims to recover for the misconduct of their financial professionals before a panel of FINRA arbitrators experienced a customer "loss" rate (defined as the total dismissal of their claims without any award of monetary relief, after either an evidentiary hearing or based solely on written submissions) of approximately fifty-eight percent (58%). Customers who filed their cases with the NYSE arbitration forum fared even worse, with an astounding sixty-three percent (63%) "loss" rate. Even those investors whose arbitrations counted as a "win" many times received only a fraction of their claim; at times, the "winning" investor's recovery was insufficient to pay the fees charged by FINRA for the hearing.

As the prospects for recovering losses through arbitration are discouraging, at best, it is all the more important to protect seniors at the "point of sale." Our members have represented countless senior clients who have fallen victim to sales people who hold themselves out as holding some type of designation or credential that implies they have special knowledge or expertise in dealing with issues unique or important to seniors. Often these sales people recommend that seniors purchase high cost, unsuitable products, based upon misrepresentations regarding taxes, Medicaid planning, or expected returns and security of the investment. Typically, these products pay high commissions to the person who sells them and have punitive cancellation penalties. Seniors are easy prey for such sales people, due in large part to their desires to preserve and protect irreplaceable assets for their remaining years and for the next generation. Many seniors report not wanting to burden their children with requests for assistance in financial matters, and therefore rely upon the "nice young man/woman" who said he understood what seniors need. Seniors are also a desirable target because, quite simply, they have the money, a lifetime of accumulated savings to invest.

Senior citizens, like all public investors, are entitled to rely upon the supposed integrity and honesty of all professionals who are associated with the financial services industry. Permitting the use of titles or designations that impart specialized knowledge, experience or training without a meaningful foundation undermines the reputation of the entire financial services industry. Requiring legitimate support for a salesperson's designations of specialized expertise will protect seniors who are the intended recipients of such specialized knowledge.

Specific Comments on the Proposed Rule:

We support the efforts of NASAA to address the issue of misleading and deceptive designations that merely encourage seniors to misplace their trust in unqualified sales persons. We observe two specific issues in the current Proposed Rule. First, the term "senior citizen" is not defined in the NASAA Proposed Rule. As people tend to work later in life today than they did in the past, leaving the term open to definition may create problems in application. Use of the two terms "senior citizen" and "retiree" may also

Ms. Melanie Lubin
Mr. Rex Staples
December 14, 2007
Page 3

create confusion and certainly creates ambiguity. One who is retired may not be a senior citizen, and vice versa. One who retired from a lucrative profession and now works part-time at an ice cream store should still be a "retiree." Accordingly, the proposed rule is somewhat vague as to just whom it covers. We would propose that the Proposed Rule specify that a "senior citizen" is a person over the age of 55 and that "retiree" be defined as a person who is over the age of 55 and no longer works full-time.

Second, the Massachusetts rule (950 C.M.R. 12.204(2)(I)(5)) enacted earlier this year requires that organizations that issue accreditations must register with the Secretary of State and that the Secretary of State will maintain an accessible list of all recognized accreditation organizations. Making available a list of such organizations would serve the public interest by allowing investors to determine whether a sales person's alleged accreditation is from an organization that is recognized by an individual state.

Conclusion:

We believe that it is clearly a dishonest and unethical practice in the securities industry for any broker-dealer agent or investment adviser representative to represent to public investors that he or she holds a credential or professional designation that wrongfully or incorrectly indicates or implies that he or she has special expertise, certification, knowledge, experience, or training in advising or servicing senior citizens. Accordingly, we strongly support NASAA's effort to provide a model rule addressing this very important issue.

Thank you for providing us with the opportunity to submit our comments.

Yours very truly,

Laurence S. Schultz

Please direct all inquiries or replies to:

Laurence S. Schultz
Driggers, Schultz & Herbst
2600 West Big Beaver Road, Ste 550
Troy, MI 48084
Office: 248.649.6000
E-Mail: Issarb@aol.com