

2876.5025 PROHIBITED USES OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS.

Subpart 1. **Generally.** The provisions of this part apply to federal covered investment advisers to the extent permitted by the National Securities Markets Improvement Act of 1996, Public Law 104-290.

Subp. 2. **Prohibited uses of senior-specific certifications and professional designations.**

A. The use of a senior-specific certification or professional 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 fraudulent, deceptive, and manipulative act or practice in the securities, commodities, investment, franchise, banking, finance, or insurance business.

B. The prohibited use of senior-specific certifications or professional designations includes 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 designation does not have; and

(4) use of a certification or professional designation that was obtained from a certifying or designating organization that:

(a) is primarily engaged in the business of instruction in sales or marketing;

(b) does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(c) does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(d) does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

Subp. 3. **Regulated certifications and professional designations.**

A. There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subpart 1, item B, subitem (4), when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

- (1) the American National Standards Institute;
- (2) the National Commission for Certifying Agencies; or
- (3) any organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

B. 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 seniors, 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.

C. For purposes of this part, unless used in a manner that would mislead or confuse a reasonable consumer, 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 the job title:

- (1) indicates seniority or standing within the organization; or
- (2) specifies an individual's area of specialization within the organization.

For purposes of item C, financial services regulatory agency includes an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

Statutory Authority: *MS s 45.023; 80A.82*

History: *34 SR 593*

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