

CFPB Issues Report on the Use of Senior Designations and Recommendations for Regulation

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April 22, 2013 -- On April 18, the Consumer Financial Protection Bureau ("CFPB") delivered a report to Congress and the Securities and Exchange Commission ("SEC") entitled *Senior Designations for Financial Advisers: Reducing Consumer Confusion and Risks* ("Report"). The Dodd-Frank Wall Street Reform and Consumer Protection Act created within the CFPB the Office of Financial Protection for Older Americans and required it to make recommendations to assist older consumers in sorting out the numerous and varying "senior designation" titles that financial advisers use to market their services.

Confusing Characteristics of Senior Designations

The Report notes that there are more than 50 different senior designations currently used in the marketplace by investment advisers, broker-dealers, accountants, insurance agents, financial planners, and other general financial professionals. While these designations often have similar titles and acronyms, they vary greatly in qualification requirements and legitimacy. Thus, the Report found that the use of senior designations is increasingly confusing to consumers.

Complicating matters is the fact that a senior designee could be regulated by a number of entities such as the SEC, FINRA, state securities regulators or state insurance regulators (or any combination) depending on the type of product or service being sold. And, although the senior designation conferring organizations may require its designees to adhere to a code of ethics, the designees' regulatory status, and not any designations they may have, dictate any applicable legal duty.

Accordingly, ***many consumers incorrectly assume that financial advisers have a uniform legal duty.***

Early Regulatory Efforts

The Report recognized that the North American Securities Administrators Association ("NASAA") and the National Association of Insurance Commissioners ("NAIC") each adopted model rules in 2008 prohibiting the use of misleading senior-specific designations in connection with the sale of securities, insurance products and related investment advice. The NASAA/NAIC rules also regulate standards in the designating or certifying organizations. Roughly two-thirds of the states adopted the model rules.

Despite these regulatory efforts, the Report notes that ***substantial concerns still exist related to the wide range of training requirements associated with the various senior designations as well as the lack of a uniform standard of conduct for the designees.***

CFPB Recommendations

In response to these concerns, the Report made the following recommendations:

1. The SEC may wish to consider establishing a ***centralized tool*** through which senior investors can ***verify a financial adviser's*** designations. This would be similar to the SEC's Investment Adviser Public Disclosure or FINRA's *BrokerCheck*, which allow consumers to obtain background information on investment advisers and broker-dealers.
2. The SEC may wish to consider establishing a mechanism to ***capture complaints and enforcement actions against senior designation holders*** and consider reporting the data to designation providers consistent with and to the extent allowed by the Commission's legal obligations. The Report notes that this may help honest and qualified designees distinguish themselves in the marketplace.

3. Congress, the SEC, and state policymakers may wish to consider **requiring** financial professionals who utilize a senior designation to provide **disclosure to clients and prospective clients**. This could include disclosing (a) the adviser's qualifications; (b) the meaning of senior-specific certifications; (c) how consumers may obtain further information concerning the adviser's qualifications and disciplinary background; (d) fees and compensation, to the extent not already required by law; and (e) the duty of care owed to the consumer.
4. Policymakers may wish to consider providing **minimum standards for acquiring designations and providing standardized testing** to improve the consistency and quality of designations.
5. Policymakers may wish to consider **prohibiting the use of senior designations issued by any non-accredited conferring organization**.
6. Policymakers may wish to consider providing **minimum standards of conduct for any person holding a senior designation**.
7. Policymakers may wish to consider increasing enforcement authority and existing supervision at the state and SEC levels.
8. Policymakers may wish to consider providing consumers with a private right to seek appropriate relief for improper conduct in connection with the use of senior designations.

Notably, some of CFPB's recommendations, particularly those directed to the SEC, do not recognize the jurisdictional limits of the SEC over state registered investment advisers or non-securities licensed sales persons. The Report does not address next steps. Rather, it appears that it is up to Congress, the SEC, and federal and state policymakers to consider the recommendations included in the Report and take such actions as they consider appropriate.

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