

Senior Designations

FINRA Reminds Firms of Their Obligations Regarding the Supervision of Registered Persons Using Senior Designations

Executive Summary

FINRA is publishing this *Notice* to remind firms of their supervisory obligations regarding the use of certifications and designations that imply expertise, certification, training or specialty in advising senior investors (senior designations). This *Notice* also outlines findings from a survey of firms and highlights sound practices used by firms with respect to senior designations. Firms are encouraged to adopt the practices that are outlined in this *Notice* to strengthen their own supervisory procedures, as appropriate to their business.

Questions or comments concerning this *Notice* may be directed to Lisa Stepuszek, Associate Director, Office of Risk, at (561) 443-8015.

Background and Discussion

For several years, FINRA has focused on firms' fair dealings with senior investors, as well as investors at or approaching retirement (hereinafter together referred to as senior investors). In this regard, in September 2007, FINRA issued [Regulatory Notice 07-43](#), which highlighted certain issues that are common to many senior investors and reminded firms of their obligations in this area. In 2008¹ and 2010², FINRA joined with other regulators to issue findings and guidance on firms' practices relative to senior investors. Most recently, in the 2011 Annual Regulatory and Examination Priorities [Letter](#), FINRA reiterated that the protection of vulnerable customers, including senior investors, continues to be a high regulatory priority.

One area of particular focus is the use of certifications and designations that imply expertise, certification, training or specialty in advising senior investors.

November 2011

Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Advertising
- ▶ Compliance
- ▶ Continuing Education
- ▶ Legal
- ▶ Registered Representatives
- ▶ Senior Management

Key Topics

- ▶ Communications With the Public
- ▶ Designations & Credentials
- ▶ Retirement
- ▶ Senior Investors
- ▶ Supervision

Referenced Rules & Notices

- ▶ Regulatory Notice 07-43
- ▶ FINRA Rule 2010
- ▶ NASD Rule 2210
- ▶ NASD Rule 3010
- ▶ NYSE Rule 472

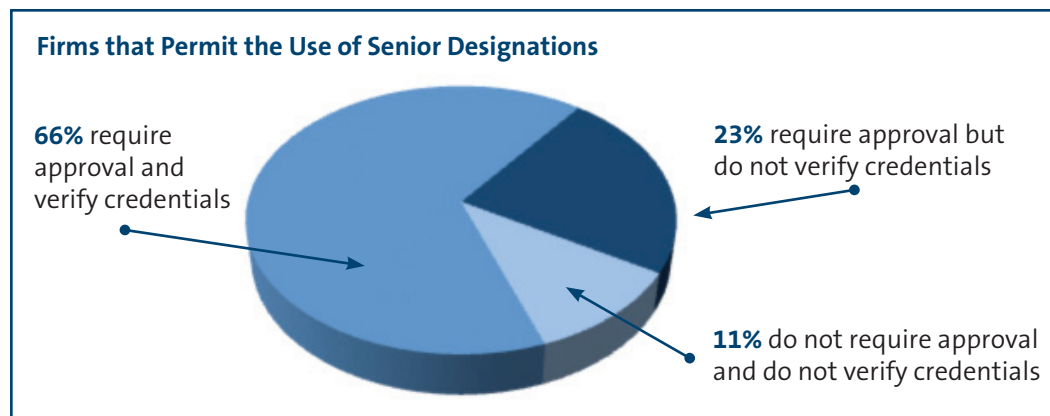
2011 Senior Designation Survey

To better understand the use and oversight of senior designations, in January 2011, FINRA surveyed retail broker-dealer firms that varied in terms of size, location, product mix and business model. One hundred fifty-seven firms provided responses to the survey, which focused on the prevalence of senior designation usage, the extent to which particular senior designations were used or prohibited and the supervisory systems in place regarding senior designations. Additional survey results are available at www.finra.org/industry/issues/seniors.

Survey responses point to widespread use of senior designations in the broker-dealer community. Specifically, 68 percent of firms that completed the survey indicated that they allow the use of senior designations by registered persons. Of the firms that permit the use of senior designations:

- ▶ 89 percent currently have registered persons who use senior designations; and
- ▶ 11 percent do not have any registered persons using senior designations at this time.

The following chart summarizes the survey responses of those firms that have registered persons who use senior designations.



Survey respondents that allow registered persons to use senior designations were asked whether they prohibit the use of any particular designations. While 73 percent of the responding firms reported that they prohibit the use of particular senior designations, 27 percent said that they do not have any such prohibitions. Of the firms that prohibit the use of particular designations, some banned the use of only one or two designations while other firms were much more restrictive—*i.e.*, allowing the use of only a small number of designations.

Firms were also asked whether they require registered persons to obtain senior or other professional designations prior to marketing certain products to senior investors. Only two responding firms indicated that they require designations relative to interactions with senior investors.

When asked how the firms determined which designations could be used by registered persons, a majority of firms that completed the survey indicated that they review course work, other prerequisites and continuing education requirements prior to allowing or approving a designation. A smaller number of the responding firms indicated that they took a narrower approach by permitting only a select few designations. Other criteria used to determine whether a designation would be permitted included an assessment of state requirements that regulate the use of designations.

In certain instances, senior designations approved by firms or widely used by registered persons did not require rigorous qualification standards. As a result, the existence of qualification standards to obtain a designation did not ensure that those registered persons holding the designation possessed financial services skills that were unique or valuable to senior investors. This finding was consistent across survey participants and is of concern to FINRA. Investors are unlikely to differentiate between designations that represent an enhanced level of proficiency in dealing with financial matters relevant to senior investors versus a designation that is simply a marketing tool.

Sound Practices

This *Notice* is not intended as a comprehensive summary of all compliance and supervisory matters pertaining to senior designations; rather, it discusses measures that may assist firms in complying with their supervisory obligations. FINRA encourages firms to consider the practices described below in assessing their own procedures and implementing improvements that will best protect their customers.

Most responding firms indicated that they have adopted and implemented policies governing the use of senior designations. Some firms simply ban the use of senior designations, while other firms establish standards necessary to obtain approval for their use. When standards and approvals are in place, most firms that completed the survey indicated that they monitor whether registered persons have met the criteria to use a particular senior designation.

NASD Rule 3010 requires each firm to establish and maintain a system to supervise the activities of each registered person that is reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules. As discussed in Regulatory Notice 07-43, firms, at a minimum, must have supervisory procedures in place reasonably designed to prevent their registered persons from using a senior designation in a manner that is unethical or misleading. Firms that allow the use of any title or designation that

conveys an expertise in senior investments or retirement planning where such expertise does not exist may violate FINRA Rule 2010, NASD Rule 2210, NYSE Rule 472, and possibly the anti-fraud provisions of the federal securities laws and FINRA rules.

NASD Rule 2210 and NYSE 472 prohibit firms and registered persons from making false, exaggerated, unwarranted or misleading statements or claims in communications with the public. This prohibition includes referencing nonexistent or self-conferred degrees or designations or referencing legitimate degrees or designations in a misleading manner. Firms therefore must have adequate supervisory procedures in place to ensure that their registered persons do not violate this requirement. As with all supervisory procedures, these procedures should be written, clearly communicated to employees, effectively enforced, and they should cover how approved designations may be used. In addition, FINRA reminds firms that all advertisements and sales literature as defined in NASD Rule 2210(a), including communications that include the use of these designations, must be approved prior to use and in writing by a registered principal pursuant to NASD Rule 2210(b)(1).

Firms may also want to consider adopting some of the practices and procedures described below, as appropriate based on their circumstances. For instance, firms may reduce the risk of confusion or overreliance by their customers by implementing procedures aimed at only permitting their registered persons to use senior designations that instill substantive knowledge to better serve and protect senior investors.

Designation Standards and Supervision

Some firms indicated that they prohibit designations that do not have:

- ▶ a rigorous curriculum;
- ▶ an emphasis on ethics;
- ▶ continuing education requirements;
- ▶ a method for determining the registered person's status regarding the designation; and/or
- ▶ a public disciplinary process.

When deciding whether to use or approve designations, certain firms stated that registered persons who want to use a senior designation and represent themselves as experts in senior and retirement investing must remain current with continuing education or other requirements necessary to remain in good standing with the issuing organization. The firms also require registered persons to demonstrate a level of experience in retirement planning and other related matters, as well as the ability to work with senior investors.

In addition, many firms indicated that they take into consideration whether a designation is recognized by a reputable or accredited organization and whether the issuing organization has a code of ethics or a standard of professional conduct that must be followed.

Communications With the Public

Many firms identified valuable practices focused on comprehensive reviews of advertising, sales literature, correspondence and emails to detect:

- ▶ registered persons who may be using a self-conferred or misleading designation without the knowledge of the firm; and/or
- ▶ designations being used that have not been earned or approved.

To detect and prevent these violative practices, some firms only allow registered persons to use business cards or letterhead stationery that is prepared centrally and approved by the firm. Other firms seek to curtail instances where senior investors could be most vulnerable by prohibiting the use of senior designations during sales seminars or “free lunches” with senior investors. Additionally, some firms use key word searches when reviewing correspondence and emails to monitor the use of designations. Certain responding firms also conduct unannounced audits of branch offices to ensure, among other things, that they are aware of all advertising, sales literature and correspondence being used with customers and that all materials are being used appropriately.

Training

Certain firms represented that they require registered persons to attend training sessions focused on:

- ▶ retirement planning;
- ▶ ethics in working with senior investors; and/or
- ▶ the proper use of senior designations in advertising, sales literature and correspondence.

This type of training enables firms to convey information to registered persons regarding the special issues that relate to senior investors.

Annual Attestations

In addition to requiring pre-approval to use senior designations, some firms required registered persons to periodically certify:

- ▶ the designations they use;
- ▶ that designations they use are not self-conferred;
- ▶ that they meet the continuing education requirements; and/or
- ▶ that they are in good standing with the organization that has conferred the designation.

While this information is self-reported by the registered person, it provides firms with an additional level of information to assist with monitoring and supervising the use of designations.

Conclusion

The survey results indicate that while some firms ban senior designations outright, it is more common for firms to permit the use of senior designations pursuant to specified supervisory procedures. The majority of firms responding to the survey that allow the use of senior designations require, at a minimum, registered persons to obtain prior approval or to use only designations that have been pre-approved by the firm. Some firms also verify required credentials underlying designations.

While these results are positive, the survey indicated that some supervisory procedures were not particularly discerning regarding the quality of the designations that registered persons were permitted to use. In addition, some firms had no meaningful procedures for determining the prerequisites for obtaining designations used by their registered persons. FINRA encourages firms to consider implementing, as appropriate to their business, the sound practices outlined in this *Notice* to strengthen their own supervisory procedures.

Endnotes

1. <http://www.sec.gov/spotlight/seniors/seniorspracticesreport092208.pdf>
2. <http://www.sec.gov/spotlight/seniors/seniorspracticesreport081210.pdf>