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Details: Emergency Rule extension requests by Department of Financial Institutions.  
(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...**  
**PUBLIC HEARING - COMMITTEE RECORDS**

**2009-10**

(session year)

**Joint**

(Assembly, Senate or Joint)

**Committee for Review of Administrative Rules ...**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



State of Wisconsin  
Department of Financial Institutions

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

January 16, 2009

✓ The Honorable Jim Holperin, Co-Chair  
Wisconsin Senate  
Joint Committee for Review of Administrative Rules  
Room 409 South  
State Capitol  
Madison, WI 53708

1/16/09  
JGR

The Honorable Josh Zelnick, Co-Chair  
Wisconsin Assembly  
Joint Committee for Review of Administrative Rules  
Room 219 North  
State Capitol  
Madison, WI 53708

Re: Division of Securities Request for 60-day Extension of Emergency Rule Effectiveness

Dear Senator Holperin and Representative Zelnick:

Pursuant to sec. 227.24(2), Wis. Stats., The Division of Securities of the Department of Financial Institutions hereby requests that the Joint Committee for Review of Administrative Rules take action to extend for 60 days the effectiveness of the emergency rules adopted effective September 15, 2008 by the Division under the Wisconsin Uniform Securities Law.

Those emergency rules were adopted because of the need to immediately make several revisions to Wisconsin's Securities Law rules to make it a dishonest or unethical practice for securities licenses to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors. The emergency rules were enacted the purpose of providing immediate protection to seniors in Wisconsin from being misled through the use by securities licenses of designations and credentials that imply or represent that a person has special expertise, certification, or training in financial planning for seniors, but where such designations and/or credentials are either non-existent or do not involve significant education, testing, training or experience, and in reality are marketing ploys.

shooty for - April 1 date.

Because the above-described "senior designations/certification problem" was current and ongoing, and represented a serious source of potential harm for seniors in Wisconsin, the Division used the emergency rule-making procedures to adopt a Model Rule on the subject developed by the North American Securities Administrators Association to thereby immediately have rules in place to protect Wisconsin's seniors, rather than using solely the regular, permanent rule-making process which requires a 5-6 month process to complete.

Division of Securities

Mail: PO Box 1768 Madison, WI 53701-1768  
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The Division has instituted the permanent rule-making process to adopt permanent rules in this matter, including conducting a public rule-making hearing (on November 18, 2008). Additionally, the rules (as Clearinghouse Rule 08-095) were filed with the Senate and Assembly Chief Clerks' Offices on January 5, 2009 -- the first day of the new Wisconsin legislative session, and the first day after expiration of the "quiet period" from September 1, 2008 through December 2008 during which no proposed permanent rules can be filed for purposes of the 30-day legislative standing committee review period. However, because of the time needed to complete the 30-day standing committee review process, as well as the timing required to complete the printing and publication process following final adoption of the rule by the Division, such cannot be completed before the ~~February 11, 2008~~ expiration of the 150 day effectiveness period of the emergency rules.

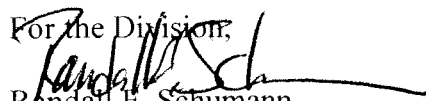
An emergency continues to exist requiring continuing applicability of the emergency rules for the preservation of the public peace, health, safety or welfare because the facts constituting the emergency triggering the original emergency rule adoption in September 2008 remain the same -- namely, the above-described "senior designations/certification problem" that continues to be a current and ongoing problem that represents a serious source of potential harm for seniors in Wisconsin.

The adverse consequences of potential harm to Wisconsin seniors if these "prohibited practice" emergency licensing rules do not remain in effect can be avoided only by extending such emergency rules for a 60-day period to enable the proposed permanent rules to complete the enactment process and become effective.

Copies are attached of the original emergency rules text containing the Finding of Emergency, and pursuant to sec. 227.24(2)(am), Wis. Stats., a copy of this extension request is being provided to: (i) the presiding officer of each house of the legislature; and to (ii) the Senate Committee on Veterans and Military Affairs, Biotechnology, and Financial Institutions, and the Assembly Committee on Financial Institutions, where the permanent rules in their proposed final form are being filed.

Any questions with regard to this request may be directed to me as the contact person for Clearinghouse Rule 08-095, at my direct dial telephone number 266-3414.

For the Division,

  
Randall E. Schumann

Legal Counsel for the Division of Securities  
Department of Financial Institutions

cc: Patricia D. Struck, Administrator, Division of Securities, Department of Financial Institutions  
Catherine Haberland, Executive Assistant, Department of Financial Institutions  
President, Wisconsin State Senate  
Speaker of the Assembly  
Chairperson, Senate Committee on Veterans and Military Affairs, Biotechnology  
and Financial Institutions  
Chairperson, Assembly Committee on Financial Institutions

Enclosure

**ORDER OF THE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SECURITIES  
STATE OF WISCONSIN  
ADOPTING EMERGENCY RULES**

To amend s. DFI-Sec 4.06(2)(i) and to create ss. DFI-Sec 4.06(1)(v), 5.06(14), Chapter DFI-Sec 10, and DFI-Sec 10.01 and 10.02 of the Rules of the Division of Securities relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

Statutory Authority: Sections 551.34(1)(g), 551.63(1) and (2), and 551.67, Wis. Stats.

Statute Interpreted: Section 551.34(1)(g), Wis. Stats.

**FINDING OF EMERGENCY AND ANALYSIS**

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The Division is taking immediate, emergency-rule action to protect seniors in Wisconsin from being misled through the use by securities licensees of designations and credentials that imply or represent that a person has special expertise, certification, or training in financial planning for seniors, but where such designations and/or credentials are either non-existent or do not involve significant education, testing, training or experience, and in reality are marketing ploys.

The Division's rulemaking is based on a "Model Rule On the Use of Senior-Specific Certifications and Professional Designations", developed by the North American Securities Administrators Association, Inc. ("NASAA Model Rule"), and adopted by the NASAA membership, including Wisconsin, on March 20, 2008. The Wisconsin rule-making involves amending the list of "dishonest or unethical business practice" provisions applicable to broker-dealers, agents, investment advisers and their representatives to provide that the misleading use by licensees of senior designations or certifications -- as particularized in the rules -- can be a basis for denial, suspension or revocation of a license.

Because the "senior designation/certification problem" is current and ongoing, and represents a serious source of potential harm for seniors in Wisconsin, the Division is using the emergency rule-making procedures to adopt the NASAA Model Rule to be able to have such rule in place immediately to protect Wisconsin seniors, rather than using the regular, permanent rule-making process which requires a 5-6 month process to complete.

Additional justification for taking emergency rule-making action at this time relates to the discussion in the following paragraphs which describes the need for acting on a uniform, Model NASAA Rule basis, and the involvement of U.S. Senator Herb Kohl who has expressed interest in this problem and has introduced federal legislation to promote action by individual states to adopt the uniform, NASAA Model Rule.

The background of the discovery by NASAA of the current and ongoing "senior designation" problem and development of the NASAA Model Rule began in 2004 when licensing examiners for the Securities Divisions in a number of states across the U.S., including Wisconsin, noted while conducting office examinations of securities professionals that some securities agents and advisers were using sets of various, new acronyms in their marketing materials. Such acronyms relate to numerous different certifications or designations to make it appear that the salesperson has special qualifications or specialized education in addressing the needs of senior citizens or retirees in areas of finance, financial planning, estate planning, or investing, and thus are used by those licensees to provide an edge in attracting seniors who are nearing retirement, or are in retirement, to become clients/customers.

Shortly after NASAA detected the misleading senior certifications/designations problem, Senator Herb Kohl of Wisconsin, who chaired (and continues to chair) the US Senate Committee on Aging, called a series of hearings in 2006 on various aspects concerning older investors, one of the results of which was Senator Kohl's interest in creating federal legislation to limit the use of misleading certification/designations. However, based upon NASAA's intent to create a model rule for its members to adopt on a uniform basis throughout the states, the Senator instead drafted legislation that recognizes the need for developing a uniform, model rule, and which rewards individual states for adopting such a model rule.

The need for uniform treatment in dealing with the problem was highlighted by a few states who undertook separate rule-making actions using divergent approaches in 2007 (before the NASAA Model Rule was completed), thus creating difficulties for large securities firms with brokers and advisers across the country trying to comply with non-uniform approaches to the problem. Those firms, justifiably, have asked for a single, uniform rule that would make it possible to design systems to facilitate compliance throughout all state jurisdictions. Several states have already adopted the NASAA Model Rule, including Virginia, Washington, New Hampshire and Alabama.

The NASAA Model Rule being adopted in Wisconsin covers a broad array of practices. It prohibits licensees from using any non-existent or self-conferred certification. Also prohibited would be any designation that "indicates or implies a level of occupational qualification obtained through education, training, or experience" that the person doesn't actually have. Furthermore, the proposed rule would disallow designations obtained from organizations that are "primarily engaged in the business of instruction in sales

and/or marketing." Additionally, reasonable standards for competency would be required, along with monitoring designees and minimum continuing-education standards. Also included is a listing of nationally recognized accrediting agencies whose accreditation of an organization would not be disqualified under the Model Rule.

\*\*\*\*\*

Pursuant to sections 551.34(1)(g), 551.63(1) and (2), and 551.67, Wis. Stats., the Division of Securities of the Department of Financial Institutions adopts emergency rules as follows:

**SECTION 1. DFI-Sec 4.06(1)(v) is created to read:**

**DFI-Sec 4.06(1)(v)** Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including but not limited to, the misleading use of a senior-specific certification or designation as set forth in Chapter DFI-Sec 10.

**SECTION 2. DFI-Sec 4.06(2)(i) is amended to read:**

**DFI-Sec 4.06(2)(i)** Engaging in any of the practices specified in sub. (1) (a), (b), (c), (d), (e), (f), (g), (h), (o), (p), (q), (r) ~~and~~ (t) and (v).

**SECTION 3. DFI-Sec 5.06(14) is created to read:**

**DFI-Sec 5.06(14)** Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including but not limited to, the misleading use of a senior-specific certification or designation as set forth in Chapter DFI-Sec 10.

**SECTION 4. Chapter DFI-Sec 10 is created to read:**

**Chapter DFI-Sec 10 USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS.**

**SECTION 5. DFI-Sec 10.01 and 10.02 are created to read:**

**DFI-Sec 10.01. Purpose of chapter.** The rules in this chapter apply to the use of senior certifications and designations.

**DFI-Sec 10.02. Use of Senior-Specific Certifications and Professional Designations.**

(1) The use of a senior specific certification or 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 dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of s. 551.34(1)(g), Stats.

(2) The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(a) 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;

(b) Use of a nonexistent or self-conferred certification or professional designation;

(c) 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 professional designation does not have; and

(d) Use of a certification or professional designation that was obtained from a designating or certifying organization where any of the following criteria are present:

1. The organization is primarily engaged in the business of instruction in sales or marketing or both.
2. The organization does not have reasonable standards or procedures for assuring the competency of its designees or certificants.
3. The organization does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct.
4. The organization does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(3) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of par. (2)(d) above when the organization has been accredited by any of the following:

(a) The American National Standards Institute.

(b) The National Commission for Certifying Agencies.

(c) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing or both.

(4) 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 senior citizens or retirees, factors to be considered shall include, without limitation, the following:

(a) 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.

(b) The manner in which those words are combined.

(5) For purposes of this rule, 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 that job title does either (a) or (b) below, or both:

(a) Indicates seniority or standing within the organization.

(b) Specifies an individual's area of specialization within the organization.

(c) For purposes of this subsection, the term "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(6) Nothing in this rule shall limit the division's authority to enforce existing provisions of law.



**EFFECTIVE DATE**

The emergency rules adopted by this Order shall take effect upon publication of the rules in the official state newspaper pursuant to the provisions of s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin, this 11<sup>th</sup> day of September, 2008.

[SEAL]

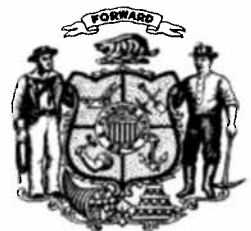


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Patricia D. Struck  
Administrator



# WISCONSIN STATE LEGISLATURE



SENATOR JIM HOLPERIN  
CO-CHAIR

PO Box 7882  
MADISON, WI 53707-7882

(608) 266-2509



REPRESENTATIVE JOSH ZEPNICK  
CO-CHAIR

PO BOX 8953  
MADISON, WI 53707-8953

(608) 266-1707

February 5, 2009

Randall Schumann, Legal Counsel for the Division of Securities  
Department of Financial Institutions  
345 West Washington Ave  
Madison, WI 53719

Dear Randall:

Re: Clearinghouse Rule 08-095 – Request for Rule Extension

The Joint Committee for the Review of Administrative Rules met in Executive Session on February 3, 2009 and adopted the following motion:

Moved by Representative Hubler, seconded by Representative Hebl that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Financial Institutions, relating to unethical practice (EmR0829), for a period of 60 days through April 15, 2009.

Motion Passed 9-0-1.

Pursuant to s. 227.24(2)(c), stats., we are notifying the Legislative Reference Bureau of the Committee's action through copies of this letter.

Sincerely,

Handwritten signature of Jim Holperin in black ink.

Senator Jim Holperin  
Senate Co-Chair

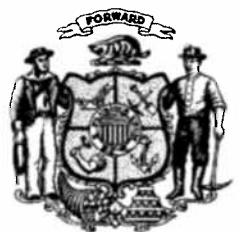
Handwritten signature of Josh Zepnick in black ink.

Representative Josh Zepnick  
Assembly Co-Chair

cc: Bruce Hoesly, Legislative Reference Bureau  
Ron Sklansky, Legislative Council



# WISCONSIN STATE LEGISLATURE



cc: Senator Holperin



**State of Wisconsin**  
*Department of Financial Institutions*

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

February 12, 2009

The Honorable Senator Fred Risser  
Room 220 South  
State Capitol  
PO Box 7882  
Madison, WI 53707-7882

Re: Department of Financial Institutions-Division of Securities Request for Extension of  
Emergency Rule CR-08-095 Relating to Prohibiting Securities Professionals from Using  
Misleading Certifications or Designations Purporting to Demonstrate Special Expertise in the  
Financial or Retirement Needs of "Seniors"

Dear Senator Risser:

This letter is a follow-up to your question during last week's hearing by the Joint Committee for Review of Administrative Rules on the DFI-Division of Securities' request to extend effectiveness of the Division's above referenced emergency rule until completion of the permanent rule-making process for such rule.

You asked if there was any particular age established for determining whether a citizen is deemed a "senior" for purposes of applicability of the rule.

This is to inform you that there is no specific age established for purposes of the rule because the NASAA Model Rule upon which the Division's rule is patterned is directed solely at terminology (such as "senior," "elder," or "retirement") used in combination with words such as "certified," "chartered," or "specialist" in a misleading manner (not dependent on, or tied to any minimum age) -- for example, "Certified Elder Planning Specialist" (a bogus designation which prompted an enforcement action by the Massachusetts Securities Division).

In that regard, please refer to Section 10.02 (4)(intro.), (a) and (b) of the Division's emergency rule which elaborates how various words/terms, used in combination with each other trigger applicability of the rule. [Other examples of bogus certifications/designations identified in investigations by various state securities agencies which prompted the development of the NASAA Model Rule include "Certified Retirement Financial Adviser," and "Senior Wealth Adviser."]

That the NASAA Model Rule does not make reference to a specific age for purposes of its applicability was an intended part of the drafting, and such does not impair the Model Rule's effectiveness -- as evidenced by the adoption, use and enforcement during 2008 of the NASAA Model Rule (without amendment) by 7 states to date, and its pending status in 8 other states.

*Division of Securities*

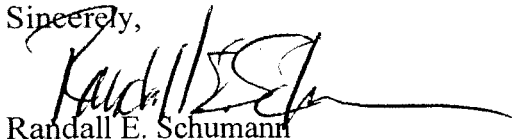
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Internet: www.wdfi.org

I trust that the above is responsive to your question, although if you have any comments or remaining questions, my direct dial telephone number is 266-3414. I am cc-ing the Co-Chairpersons of the JCRAR on this letter to enable their staff to forward copies to other Committee members for their information and files.

Sincerely,



Randall E. Schumann  
Legal Counsel for the Division of Securities  
Department of Financial Institutions

cc: [ The Honorable Senator Jim Holperin, Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 409 South Capitol ]

The Honorable Representative Josh Zelnick, Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 219 North Capitol

Patricia D. Struck, Administrator, Division of Securities, Department of Financial Institutions  
Catherine Haberland, Executive Assistant, Department of Financial Institutions