

808 KAR 10:042. Use of senior certifications and designations.

RELATES TO: KRS 292.320(1)(c), 292.320(2)(b), 292.337(2)(h), 292.470, 292.530(1)(a)

STATUTORY AUTHORITY: KRS 229.336(6), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 229.336(6) authorizes the commissioner to promulgate administrative regulations for the conduct of business by broker-dealers and investment advisors. KRS 292.337(2)(h) authorizes the commissioner to take legal action against an applicant or registrant if the person has engaged in dishonest or unethical practices in the securities business. This administrative regulation sets forth practices that are fraudulent or deceptive within the meaning of KRS 292.320 or dishonest and unethical within the meaning of KRS 292.337(2)(h).

Section 1. Definition. "Financial Services Regulatory Agency" means an agency that regulates broker-dealers, investment advisors, or investment companies as defined under the Investment Company Act of 1940, 15 U.S.C. 80a.

Section 2. Misleading Use of Certification of Designation is Prohibited. As set forth in Section 2 of this administrative regulation, the use of a senior specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees shall be a fraudulent, deceptive, dishonest, or unethical practice in the securities business within the meaning of KRS 292.320(1)(c), 292.320(2)(b), or 292.337(2)(h), if used by any person in connection with:

- (1) The offer, sale, or purchase of securities; or
- (2) The provision of advice:
 - (a) 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
 - (b) By issuing or promulgating analyses or reports relating to securities.

Section 3. Prohibited Uses of a Certification or Designation. The prohibited use of a senior specific certification or professional designation in the securities business shall include 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 professional designation does not have; and
- (4) Use of a certification or professional designation that was obtained from a designating or certifying 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 designees or certificants;
 - (c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - (d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

Section 4. Rebuttable Presumption for Certifications or Designations Issued by Accredited Organizations. Solely for purposes of Section 3(4) of this administrative regulation there shall be a rebuttable presumption that a designating or certifying organization is not disqualified if the organization has been accredited by:

- (1) The American National Standards Institute;
- (2) The National Commission for Certifying Agencies; or
- (3) 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 from that organization does not primarily apply to sales or marketing.

Section 5. Certifications and Designations Indicating Special Training. 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:

- (1) Use of one (1) or more words such as "senior", "retirement", "elder", or like words, combined with one (1) 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.

Section 6. Rebuttable Presumption for Certain Job Titles. For purposes of this administrative regulation, there shall be a rebuttable presumption that 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, if that job title:

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

Section 7. This administrative regulation shall not limit the commissioner's authority to enforce existing provisions of law.

(35 Ky.R. 1373; Am. 1744; eff. 2-6-09; TAm eff. 11-7-2012; Crt eff. 2-27-2020.)