

APA-1  
07/04

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control No. \_\_\_\_\_ Department or Agency Alabama Securities Commission  
Rule No. 830-X-3-.28  
Rule Title: The Use of Senior-Specific Certifications and Professional Designations  
X New \_\_\_\_\_ Amend \_\_\_\_\_ Repeal \_\_\_\_\_ Adopt by Reference \_\_\_\_\_

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? Although the Rule significantly impacts the activity of securities registered agents and investment advisors, the Rule can be enforced by the Securities Commission without any additional cost to the agency.

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

\*\*\*\*\*  
Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

\*\*\*\*\*  
Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Jane L. Brannen

Date July 7, 2008

**REC'D & FILED**

JUL 07 2008 (DATE FILED)  
(STAMP)

APA-2  
07/04

(Agency Name)  
(Agency Division, if applicable)

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Securities Commission

RULE NO. & TITLE: Rule 830-X-30.28 - The Use of Senior-Specific Certifications and Professional Designations

INTENDED ACTION: To ensure that professional designations and senior-specific certifications used by registered persons in the securities industry are not misleading.

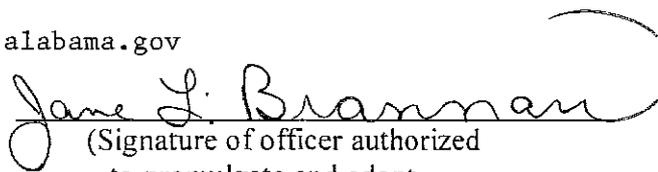
SUBSTANCE OF PROPOSED ACTION: The Rule requires that professional designations and senior-specific certifications are legitimate and not self-conferred. The Rule requires that the designation be earned and awarded according to accepted educational and training criteria.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Comments may be submitted in writing or via to Jane Brannan., Esq., Alabama Securities Commission, 770 Washington Ave., Suite 570, Montg., AL 36130-4700, (334) 242-2984. jane.brannan@asc.alabama.gov

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: September 4, 2008

CONTACT PERSON AT AGENCY:

Jane Brannan, Esq.  
Alabama Securities Commission  
(334) 242-2984  
jane.brannan@asc.alabama.gov

  
(Signature of officer authorized  
to promulgate and adopt  
rules or his or her deputy)

ALABAMA SECURITIES COMMISSION  
ADMINISTRATIVE CODE

CHAPTER 830-X-3  
REGISTRATION OF DEALERS, AGENTS,  
INVESTMENT ADVISERS AND INVESTMENT ADVISER  
REPRESENTATIVES

**RULE 830-X-3-28 The Use Of Senior-Specific Certifications And Professional Designations**

1. 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 dishonest and unethical practice in the securities business within the meaning of *Code of Alabama §8-6-17(b)(4)*. 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 that:
    - (i) is primarily engaged in the business of instruction in sales or marketing;
    - (ii) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
    - (iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical

conduct; or

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

- 2. (a) There is a rebuttable presumption that a designating or certifying organization is qualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:

- (i) The American National Standards Institute; or

- (ii) The National Commission for Certifying Agencies; or

- (iii) 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

- (iv) any other nationally-recognized accreditation organization designated by the director by rule or order.

- (b) In any action brought under this rule, the burden of proof is on the party using a certification or professional designation to show that such use complies with this rule.

- 3. 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:

- (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; and

- (b) the manner in which those words are combined.

- 4. (a) 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:

- (i) indicates seniority or standing within the organization; or

(ii) specifies an individual's area of specialization within the organization unless the facts and circumstances associated with the provision or use of a job title indicate that it improperly suggests or implies certification or training beyond that which the titleholder possesses, or otherwise misleads investors.

(b) For purposes of this section, 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.

5. Nothing in this rule shall limit the director's authority to enforce existing provisions of law.

**Author:** Joseph P. Borg, Esq.

**Statutory Authority:** Code of Ala. 1975, § 8-6-23

**History: Original Rule filed:** July 31, 2008; effective September 4, 2008