

GUIDANCE DOCUMENT

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

**NEBRASKA DEPARTMENT OF BANKING AND FINANCE
BUREAU OF SECURITIES**

**INTERPRETATIVE OPINION NO. 17: – USE OF CERTIFICATIONS AND DESIGNATIONS IN
ADVERTISING BY INVESTMENT ADVISER REPRESENTATIVES AND BROKER-
DEALER AGENTS**

The Nebraska Department of Banking and Finance, Bureau of Securities ("Department"), hereby issues an Interpretative Opinion regarding the use of designations in advertising by investment adviser representatives and broker-dealer agents. The Department has determined that it is in the public interest and is necessary for the protection of Nebraska investors to issue this opinion regarding the use of certifications and designations by agents of broker-dealers and investment adviser representatives authorized to do business in Nebraska.

This Interpretative Opinion dated February 22, 2018, supersedes and replaces all previous Interpretative Opinions issued by the Department regarding the use of certifications and designations on business cards, stationery, and advertising materials by investment adviser representatives and broker-dealer agents. Effective immediately, the Department will discontinue the practice of reviewing and identifying those certifications and designations that investment adviser representatives and broker-dealer agents are permitted to use on business cards, stationery, and advertising materials.

The certifications and designations set forth in Interpretative Opinion No. 17 reissued September 15, 2017, will be presumed to be in compliance with this Interpretative Opinion and shall be allowed on business cards, stationery, and advertising materials by investment adviser representatives and broker-dealer agents until March 1, 2019. Thereafter, any certifications or designations must comply with all provisions of this Interpretative Opinion dated February 22, 2018.

The Department takes the position that the use of a certification or designation on business cards, stationery, and in advertising materials confers an impression with potential clients that the adviser or agent has special qualifications in a certain area of finance or financial planning. The requirements to obtain certifications and designations vary greatly, as can the processes for monitoring compliance with any code of conduct adopted by the organization that awards the certification or designation.

Investors often have insufficient information about the designations when trying to determine which designations represent meaningful achievement by broker-dealer agents or investment adviser representatives and which designations are marketing devices. The Department is particularly concerned about the use of designations and certifications that incorrectly imply expertise in the special financial needs of senior citizens.

Some purported certifications and designations appear to be part of a larger, systemic trend of aggressively marketing investments to potential investors with pre-retirement concerns as well as those who are looking for ways to reduce taxes or supplement a fixed income. The Department is aware of instances in which individuals have used a certification or designation to create the impression that the advice being given was unbiased, independent, and based on special knowledge of the issues facing the investor, when the real objective was to convince the investor to sell existing financial assets to purchase financial products offered by the holder of the

certification or designation. The same advice appears to have been offered to investors without regard for the specific needs of the individual investor.

The use of designations, except as provided in this Interpretative Opinion, on business cards, stationery, and advertising materials shall be deemed an “act, practice, or course of business which operates or would operate as a fraud” for purposes of Section 8-1102(2)(b) or a “dishonest or unethical practice” as used in Section 8-1102(2)(d) and Section 8-1103(9)(a)(vii) of the Securities Act of Nebraska, Neb. Rev. Stat. §§ 8-1101 to 8-1123 (Reissue 2012; Cum. Supp. 2016; Supp. 2017) (“Act”), and may result in administrative action.

Broker-dealers and investment advisers must supervise the use of designations by their registered agents and investment adviser representatives. An agent or investment adviser representative may not use a certification or designation that falsely indicates or implies that the individual has special certification or training, 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, directly or indirectly, or through a publication or writing, or by issuing or disseminating analyses or reports relating to securities. Prohibited use of a certification or designation includes, but is not limited to, the following activities:

1. Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use the 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;
4. Use of a certification that falsely states or implies specialized knowledge of the financial needs of a particular segment of the population, or class of investors, that the person using the certification or professional designation does not have. Examples of a particular segment of the population, or class of investors, include, but are not limited to, senior citizens, elderly or retired persons;
5. 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, or both;
 - b. Does not have reasonable standards or procedures for assuring the competency of its designees or certificate holder;
 - c. Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificate holder for improper or unethical conduct; or
 - d. Does not have reasonable continuing education requirements for its designees to maintain the designation or certificate.

A designation will be presumed to be in compliance with this Interpretative Opinion if the issuing organization has been accredited by the American National Standards Institute, the National Commission for Certifying Agencies, or 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 and/or marketing.

The Department will consider at least the following factors in determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation that could falsely indicate or imply that a person has special certification or training in advising or servicing a particular segment of the population or class of investor:

1. The use of one or more words indicating specialized knowledge of the needs of a particular segment of the population or class of investors, including, but not limited to, "senior," "elder," "retired," or "retirement," 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
2. The manner in which the words in subsection (a) of this section are combined.

For purposes of this Interpretative Opinion, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state securities regulator or the Securities and Exchange Commission, when that job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization.

The Department does not endorse the use of any particular certification or designation or any registrant holding such certification or designation. Further, this Interpretative Opinion is not a determination concerning the qualifications of any person holding such certification or designation. Pursuant to Section 8-1114 of the Act, it is a violation of the Act for any person to make a contrary representation.

The Department encourages broker-dealer agents and investment adviser representatives authorized to do business in Nebraska to take advantage of programs that provide opportunities to continue their education, provided any certification or designation bestowed as a result of such programs is not used to imply financial expertise that does not exist.

Questions regarding this Interpretative Opinion should be addressed to:

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