



State of Wisconsin
Department of Financial Institutions

Jim Doyle, **Governor**

Lorrie Keating Heinemann, **Secretary**

October 3, 2008

Wisconsin Legislative Council
Rules Clearinghouse
1 E. Main St., Suite 401
Madison, WI 53702

Re: Department of Financial Institutions, Division of Securities/
Proposed Order Adopting Rules Regarding Misleading Senior Designations/
Fiscal Estimate Relating to Proposed Rules

Gentlemen and Mesdames:

Pursuant to the requirements of sec. 227.15, Wis. Stats., the Division is filing for review by the Legislative Council/ Rules Clearinghouse staff, a copy of a Proposed Order Adopting Rules under Chapter 551, Wis. Stats., the Wisconsin Uniform Securities Law, 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.

An electronic (Word) version of the Proposed Order is being e-mailed to the Rules Clearinghouse separately, as well as to the Department of Administration for placement on their Administrative Rules website, and to the Legislative Reference Bureau.

The statutory rule-making procedures under Chapter 227 of the Wisconsin Statutes are being utilized for the purpose of adopting permanent administrative rules to be in place upon expiration of identical emergency rules regarding the above subject matter that were issued on September 11, 2008, and became effective September 15, 2008 upon publication in the official state newspaper and compliance with other emergency rulemaking requirements. The explanatory Analysis for the proposed permanent rules discusses the background information for, and structure of, the proposed rules, as well as the need for them.

The rules are the subject of a Notice of Rule-Making Hearing that was filed with the Legislative Reference Bureau on October 1, 2008 scheduling a Public Hearing for Tuesday, November 18, 2008 at 10:00 AM in Room 411 South of the State Capitol.

With regard to the two categories of requested supplemental information listed in Section 3.01(2)(a) and (b) of the Wisconsin Legislative Council's Administrative Rules Procedures Manual:

(a) There are no currently enacted Federal statutes or regulations that require adoption of the proposed rules. However, of relevance to the substance of the rules is the information recited in the Analysis

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contained in the Proposed Rule-Making Order that there has been federal legislation recently introduced on this subject by Wisconsin Senator Herb Kohl.

Specifically, shortly after North American Securities Administrators Association (“NASAA”) detected the misleading senior certifications/designations problem that was occurring on a multi-state basis, 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 certifications/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 legislation, S. 2794, the Senior Investor Protection Act of 2008, would establish a grant program under which a State may receive a grant of up to \$100,000 per year if it has "adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which ... conform to the minimum requirements of the NASAA Model Rule.”

(b) To date, there are no court decisions directly relevant to the proposed rules.

In addition, enclosed pursuant to sec. 227.14(4), Wis. Stats., is a copy of a completed Fiscal Estimate relating to the proposed rules (as previously prepared for, and equally applicable to, the identical emergency rules). A copy of the materials also is being filed with the Department of Administration.

If you have any substantive questions during the review period with respect to the proposed rules, please call me at 266-3414, and I also am the person responsible for this Division's internal processing of administrative rules.

Very truly yours,

Randall E. Schumann
Legal Counsel for the Division

Attachments (2)

cc: Patricia D. Struck, Division Administrator
Catherine Haberland,, DFI Executive Assistant
David Schmiedicke, Department of Administration