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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 441
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
FINANCE AND SECURITIES REGULATION

FILED

10/27/2020 3:35 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amendment of rule permitting use of certain special designations or professional certifications by securities professionals

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/30/2020 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/23/2020

TIME: 10:00 AM

OFFICER: Van Pounds

ADDRESS: Labor & Industries Building

350 Winter Street NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Conference call only due to COVID-19.

Dial-in: 888-808-6929

Access code: 4969117#

In case of technical issues, call Karen Winkel at 971-345-1108.

NEED FOR THE RULE(S):

Persons engaged in the offer, sale or purchase of securities, or in providing advice as to the value of or advisability of investing in, purchasing, or selling securities, frequently make use of special certifications, professional designations or titles in course of providing such services. Many of those certifications or designations imply or represent that the person has particular expertise in an area of securities or in providing advice to a particular segment of the population,

such as senior citizens.

The current rule sets forth standards to protect consumers from misleading and fraudulent marketing practices involving the use of designations and certifications in connection with the offer, sale or purchase of securities, or the provision of advice as to the value or 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. The rule protects consumers from misleading and fraudulent marketing practices by identifying the types of certifications or designations that are presumptively appropriate for use, and those that are not appropriate.

Notwithstanding current issuer accreditation requirements, this rulemaking would allow the use of designations or certifications that the director recognizes for securities licensing examination waiver purposes, under OAR 441-175-0120(6)(b), when used by a person currently holding such a certification or designation.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Administrative Rules (OAR) 441-135-0020 and 441-175-0120 are available on the Secretary of State's website at:

<https://secure.sos.state.or.us/oard/ruleSearch.action>.

Draft rules are available from the division's Rules Coordinator, Karen Winkel located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

FISCAL AND ECONOMIC IMPACT:

This rulemaking would allow persons engaged in the securities business to make use of additional certifications or designations, specifically recognized for licensing examination waiver purposes, notwithstanding the issuers' lack of ANSI, NCCA or USDOE accreditation. Such persons should incur minimal fiscal or economic impact, if any, and then only to the extent they choose to change their business practices or resources to take advantage of the amended rule.

This rulemaking should not affect small businesses any differently than other businesses. Small businesses may incur costs as a result of this rulemaking, but only to the extent they choose to change or replace business cards, stationary, advertising, etc. to add reference to an additional authorized certification or designation.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The proposed amendment of the rule should not affect the division. Nor should it impact other state agencies, units of local government or the public in general.

(2)(a) There are approximately 168,000 securities professionals who are authorized to do business in the state of

Oregon. Some of those securities professionals possess designations or certifications the use of which is addressed through this rulemaking. Many securities professionals that do business within the state of Oregon do so individually or within business organizations that meet the definition of small business under ORS 183.310(10).

(2)(b) None.

(2)(c) None.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Representatives of small business were invited to participate, and did participate, in the rulemaking advisory process.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 441-135-0020

RULE SUMMARY: Amends rule permitting use of certain special designations or professional certifications by securities professionals.

CHANGES TO RULE:

441-135-0020

Use of Certification or Professional Designation ¶¶

(1) A person may not use a certification or designation that falsely indicates or implies that the person 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:¶¶

(a) 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.¶¶

(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.¶¶

(d) 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.¶¶

(e) 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 certificants;¶¶

(C) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct;¶¶

(D) Does not have reasonable continuing education requirements for its designees to maintain the designation or certificate; or¶¶

(E) Has not been certified or accredited by one of the following organizations, or has been certified or accredited by one of the following organizations but the designation or credential issued from the organization primarily applies to sales or marketing, or both:¶

(i) The American National Standards Institute;¶

(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".¶

(2) The Director recognizes a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of section (1)(e) of this rule when the designation or credential does not primarily apply to sales or marketing or both, and when the organization is accredited by:¶

(a) The American National Standards Institute;¶

(b) The National Commission for Certifying Agencies; or¶

(c) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes".¶

(3) The Director 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:¶

(a) 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¶

(b) The manner in which the words in subsection (a) of this section are combined.¶

(4) This rule does not apply to use of any of the following designations, titles, degrees, or certifications used by a person unless the facts and circumstances associated with the use of the designation, title, degree or certification indicate that the use suggests or implies a greater degree of certification or training than the person possesses or that the designation, title, degree or certification otherwise misleads consumers:¶

(a) A job title within an organization that is licensed, registered or authorized by a state or federal financial services regulatory agency, when that job title:¶

(A) Indicates seniority or standing within the organization; or¶

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

(b) A degree, certificate, or designation evidencing completion of an academic program at an institution of higher education that has been accredited by an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."¶

(c) For purpose of subdivision (1)(e)(E) of this rule, a certification or designation recognized as a basis for licensing examination waiver under OAR 441-175-0120(6)(b), when used by a person currently holding such certification or designation.¶

(5) Violation of section (1) of this rule is an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, for the purposes of ORS 59.135(3) and OAR 441-205-0020(1).¶

(6) The prohibitions in this rule and the remedies available to the Director do not limit the Director's authority to enforce existing provisions of law and apply existing remedies.

Statutory/Other Authority: ORS 59.285, ORS 59.235

Statutes/Other Implemented: ORS 59.235, 59.135, 59.205