

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 11 SECURITIES
PART 17 USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS

12.11.17.1 ISSUING AGENCY: Regulation and Licensing Department - New Mexico Securities Division.
[12.11.17.1 NMAC - Rp, 12.11.17.1 NMAC, 1-1-2010]

12.11.17.2 SCOPE: All persons that engage in providing advice as to value of or the advisability of investing in, purchasing or selling securities.
[12.11.17.2 NMAC - Rp, 12.11.17.2 NMAC, 1-1-2010]

12.11.17.3 STATUTORY AUTHORITY Section 58-13C-605A NMSA 1978 authorizes the director to adopt, amend and repeal rules necessary or appropriate to carry out the provisions of the New Mexico Uniform Securities Act, Sections 58-13C-101 to 701 NMSA 1978, hereinafter referred to in this Chapter 11 as the “New Mexico Uniform Securities Act”.
[12.11.17.3 NMAC - Rp, 12.11.17.3 NMAC, 1-1-2010]

12.11.17.4 DURATION: Permanent.
[12.11.17.4 NMAC - Rp, 12.11.17.4 NMAC, 1-1-2010]

12.11.17.5 EFFECTIVE DATE: January 1, 2010, unless a later date is cited at the end of a section.
[12.11.17.5 NMAC - Rp, 12.11.17.5 NMAC, 1-1-2010]

12.11.17.6 OBJECTIVE: To prohibit use of certifications and professional designations in such a way as to mislead investors regarding whether the user has special expertise in advising or serving senior citizens or retirees in connection with the offer and sale of securities.
[12.11.17.6 NMAC - Rp, 12.11.17.6 NMAC, 1-1-2010]

12.11.17.7 DEFINITIONS: [RESERVED]
[12.11.17.7 NMAC - Rp, 12.11.17.7 NMAC, 1-1-2010]

12.11.17.8 USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS: The use of a senior-specific certification or 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 is prohibited and, in addition, shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of Section 58-13C-412C(13). The prohibited use of such certifications or professional designations 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 non-existent 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 designation does not have; and
- D.** use of a certification or professional designation that was obtained from a designating or certifying organization that:
 - (1) is primarily engaged in the business of instruction in sales or marketing;
 - (2) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
 - (3) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - (4) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

[12.11.17.8 NMAC - Rp, 12.11.17.8 NMAC, 1-1-2010]

[The text of this rule is consistent with the model rule on use of senior-specific certifications and professional designations adopted by NASAA on 3-20-2008.]

12.11.17.9 DESIGNATIONS AWARDED BY RECOGNIZED DESIGNATED OR CERTIFYING ORGANIZATIONS: There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of Subsection D of 12.11.17.8 NMAC when the organization has been accredited by:

- A. the American national standards institute; or
- 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* and the designation or credential issued therefrom does not primarily apply to sales or marketing.

[12.11.17.9 NMAC - Rp, 12.11.17.9 NMAC, 1-1-2010]

12.11.17.10 FACTORS TO BE CONSIDERED TO DETERMINE WHETHER A TERM IS A SENIOR-SPECIFIC CERTIFICATION OR PROFESSIONAL DESIGNATION: 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.

[12.11.17.10 NMAC - Rp, 12.11.17.10 NMAC, 1-1-2010]

12.11.17.11 EXCEPTION FOR CERTAIN JOB TITLES: 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. For purposes of this part, 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:

- A. indicates seniority or standing within the organization; or
- B. specifies an individual's area of specialization within the organization.

[12.11.17.11 NMAC - Rp, 12.11.17.11 NMAC, 1-1-2010]

12.11.17.12 APPLICATION OF PART NOT EXCLUSIVE: Nothing in this part shall limit the director's authority to enforce existing provisions of law.

[12.11.17.12 NMAC - Rp, 12.11.17.12 NMAC, 1-1-2010]

HISTORY OF 12.11.17 NMAC:

Pre NMAC History: none.

History of Repealed Material:

12.11.17 NMAC, Use of Senior-Specific Certifications and Professional Designations (filed 12-9-2008) repealed 1-01-2010.

NMAC History:

12.11.17 NMAC, Use of Senior-Specific Certifications and Professional Designations (filed 12-9-2008) was replaced by 12.11.17 NMAC, Use of Senior-Specific Certifications and Professional Designations, effective 1-01-2010.