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Sequence Number: 01-19-10  
 Notice ID(s): 1196  
 File Date: 01/22/2010

# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Department of Commerce and Insurance
<b>Division:</b>	Securities
<b>Contact Person:</b>	Barbara A. Doak
<b>Address:</b>	500 James Robertson Parkway, Davy Crockett Tower, 2 <sup>nd</sup> floor
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*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	Don Coleman
<b>Address:</b>	500 James Robertson Parkway, Davy Crockett Tower, 5 <sup>th</sup> floor
<b>Phone:</b>	615-741-6500
<b>Email:</b>	<a href="mailto:don.coleman@tn.gov">don.coleman@tn.gov</a>

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway, Davy Crockett Tower, 2 <sup>nd</sup> floor		
Address 2:			
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	03/17/2010		
Hearing Time:	10:00 AM	C.S.T.	

**Additional Hearing Information:**

Amendment to 0780-04-03-.02(6) prohibiting the use of job titles that imply senior specific certifications or professional designations

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)**

Chapter Number	Chapter Title
0780-04-03	Industry Regulation
Rule Number	Rule Title
0780-04-03-.02	Post Registration

Substance of Proposed Rules

Chapter 0780-04-03  
Industry Regulation

Rule Amendments

Rule 0780-04-03-.02, Post Registration, paragraph (6) is amended by adding new subparagraph (d) as follows:

- (d) The following shall be deemed “dishonest or unethical business practices” by a broker-dealer, agent of a broker-dealer, an investment adviser or an investment adviser representative under T.C.A. § 48-2-112(a)(2)(G), Use of Senior-Specific Certifications and Professional Designations:
1. 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 shall be a dishonest and unethical practice within the meaning of T.C.A. § 48-2-112(a)(2)(G). The prohibited use of such certifications or professional designation includes, but is not limited to, the following:
    - (i) 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;
    - (ii) use of a nonexistent or self-conferred certification or professional designation;
    - (iii) 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
    - (iv) 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 and/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. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subparagraph (d)1.(iv) 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 and/or marketing.
  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:

- (i) 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
  - (ii) the manner in which those words are combined.
4. 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
  - (iii) such job title is used in a way that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees.

For purposes of this subsection 4, 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 Commissioner's authority to enforce existing provisions of law.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 1/22/2010

Signature: *Barbara A. Doak*

Name of Officer: Barbara A. Doak

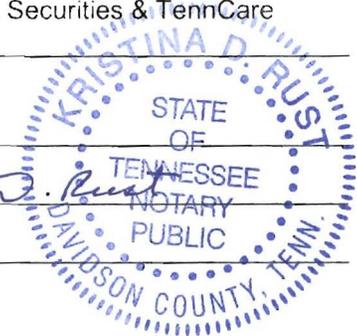
Chief Counsel for Insurance, Securities & TennCare

Title of Officer: Oversight

Subscribed and sworn to before me on: 1/22/10

Notary Public Signature: *Kristina D. Rust*

My commission expires on: 3/10/12



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Filed with the Department of State on: 1/22/10

*Tre Hargett*

Tre Hargett  
Secretary of State

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