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*Invested in America*

October 25, 2013

Mr. Ronald W. Thomas
Director
Virginia State Corporation Commission
Division of Securities & Retail Franchising
P.O. Box 1197
Richmond, VA 23218

RE: SEC-2012-00038 Order Adopting Amended Rules

Dear Mr. Thomas:

On behalf of the Securities Industry and Financial Markets Association [1]("SIFMA"), I am writing to you as a follow up to our brief discussion regarding the disclosure of agent compensation requirements which were included in recently adopted amendments to the Virginia Securities Act. While SIFMA appreciates your consideration of our comments to the proposed rule, our members are finding that both interpreting and complying with the requirements of 21 VAC 280-A-32 to be difficult. We respectfully request your consideration of our views and suggestions to address these difficulties in a revision to this rule.

Specifically, the new rule requires an agent compensation disclosure at the time of solicitation and on the confirmation of "any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions" (See page 39 of 147, #32). The impact of the new requirement is not minor and also not mirrored by the vast majority of states or in NASAA's model rules.

Upon further review of the proposed amendments, it appears that when the language of 260-E-6 was moved to 280-A-32, the following lead-in language was removed:

> *6. Although nothing in this subsection precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities:*

The removal of this qualifying lead-in language effectively applies the agent compensation requirement to all transactions. Accordingly, the structure of the new requirement is problematic, even though the wording of the specific provision has not changed.

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[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

Our recommendation is two-fold; first reincorporate the qualifying lead-in language of the former rule 260-E, or restore the original language with which both your staff and the industry are familiar. It is our understanding that the qualifying language that we are requesting to be reinstated stems from a concern with the solicitation to purchase unlisted equity securities:

> *"a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities"*

Second, if that is the case, then the securities covered in Rule 21 VAC 5-40-50 should be excluded because securities under that rule are securities of foreign issuers or American Depository Receipts ("ADRs") representing such securities that meet the marginability requirements of regulation T adopted by the Board of Governors of the Federal Reserve System ("Board"). The Board's criteria for determining which securities are eligible for margin include securities listed on the Financial Times/Standard & Poor's World Actuaries Indices (the "FTS&P") and securities deemed to have a "ready market" by the Securities and Exchange Commission ("SEC") pursuant to Rule 15c3-1 (the "Net Capital Rule") of the Securities Exchange Act of 1934. The criteria for stocks included in the subset of the FTSE All-World Index Series that is deemed marginable by the Board under Regulation T is based on three main factors: size, liquidity and free float, and the minimum market capitalization is 100 million US dollars. This includes many seasoned, substantial, reputable foreign securities with significant domestic market appeal that also possess a high level of liquidity, capitalization and market presence (e.g., Nestle, Nissan Motor, Nintendo, Roche Holdings, Volkswagen AG, Sharp Corporation, L'Oreal Co., Puma AG, etc.). Many world-class foreign issuers have ADRs that are not listed on any U.S. national stock exchange (see companies listed above) and Virginia has exempted these securities under the Rule 21 VAC 5-40-50 for solicitation in the secondary market (non-issuer transactions).

Given these factors, we would request you consider reinstating the preamble language and include the exclusion for secondary market securities, which are exempted under another section of the statute. The language would read as follows:

> *6. Although nothing in this subsection precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities* ***, excluding securities exempted in Rule 21 VAC 5-40-50:***

This recommendation, we believe, would provide greater certainty to the new compensation requirement and greater compliance with the newly adopted rules. We thank you for your consideration and look forward to working with you and your staff on this matter.

If you have any questions or need additional information, please call me at 212-313-1233 or contact me via email at nlancia@sifma.org.

Sincerely,

Nancy Donohoe Lancia
Managing Director
State Government Affairs