



June 22, 2011

Mr. Peter O. Jamison, III
Securities Commissioner
Delaware Division of Securities
Carvel State Office Building
820 North French Street, 5th Floor
Wilmington, DE 19801

RE: Notice of Proposed Revision to the Rules and Regulations Pursuant to the Delaware Securities Act

Dear Mr. Jamison:

On behalf of the Securities Industry and Financial Markets Association (“SIFMA”)¹ and its member firms, I am writing to request that you consider our comments on the Notice of Proposed Revision to the Rules and Regulation Pursuant to the Delaware Securities Act (“Notice”), which was released on June 1, 2011. The proposed revisions to the Securities Act appear to be primarily technical and conforming in nature. We respectfully request, however, that you consider our recommendation to forego making the two sets of changes that appear to be more substantive in nature and of great concern to our members. The two sets of revisions, which are unlike the majority of the revisions in the Notice, are outlined below. We have also provided additional information on our rationale for removing them from the final revision.

Specifically, the Notice proposes a substantial and non-uniform change to Section 609, dishonest or unethical practices by a broker-dealer, (page 49 paragraph 3), which currently reads "recommending a transaction without reasonable grounds ...", by replacing the phrase with the following new language "recommending a transaction or investment strategy involving a security or securities without a reasonable basis ..." The result is that the proposed rule would require the rationale to be based upon the information which the broker-dealer collects to ascertain the customer's investment profile.

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 <http://www.sifma.org>.

A similar change has been made to Section 709 (page 68) with respect to what constitutes "dishonest or unethical practices" for an investment adviser. The rule contains more specific details on what information the investment adviser should obtain so as to form a reasonable basis for providing advice.

We would ask you to reconsider making these changes. First, Delaware currently has sound and uniform rules for broker-dealers (see NASAA Statement of Policy on Dishonest or Unethical Business Practices of Broker-Dealers and Agents, Section I.c) and investment advisers (see NASAA Model Rule 502(b) (a)), that they adopted in September 2008, and are based on NASAA Model Rules under the 2002 Uniform Securities Act. Adopting the proposed revision language means Delaware will have a unique standard that goes beyond what is currently recommended by NASAA. As you know, SIFMA prefers states to adopt changes that are drawn from the Uniform Securities Act of 2002 and since Delaware already has that in place, we recommend it not be changed or altered. Further, these proposed changes to some extent appear to be based upon FINRA rules 2090 (Know your Customer) and 2111 (Suitability), which are not yet in effect. Since the date for the new FINRA rules to take effect has been pushed back to July 2012, we fear that Delaware will create a new separate standard in the area, causing inconsistencies in the rules.

The second set of changes removes from the rules the ability of the Securities Commissioner to waive examination requirements for salespersons (page 56) and investment adviser representatives (page 72). SIFMA recommends retaining this waiver. Although we understand and respect the fact that securities and investment advisor sales representatives should be well trained and informed on state rules and regulations, there are multiple situations when a conditional waiver of the state law exam is appropriate. For example, when a salesperson transfers from a member firm where he took the state law exam and maintained state registrations, to a non-member firm where he can no longer maintain his licenses. When he eventually transfers back to a member firm, he should be given consideration for a waiver since he was conducting the same business in the interim period between member firms.

We greatly appreciate the opportunity to provide you with comments on the Notice. Your consideration of our view to forego adopting two sets of substantive changes to Delaware's Rules and Regulations is highly valued. As always, we are available to discuss these issues further and to provide additional information. Please feel free to contact me in my office at (212)313-1233 or via email at nlancia@sifma.org.

Sincerely,

Nancy Donohoe Lancia
Managing Director
State Government Affairs