



January 6, 2009

By Telecopy and Overnight Mail

Ms. Florence E. Harmon, Acting Secretary
U.S. Securities and Exchange Commission
100 F St. NE
Washington, D.C. 20549

Re: Release No. 34-59075- Notice of Proposed Rule Change to Adopt FINRA Rule 2114 (Recommendations to Customers in OTC Equity Securities) in the Consolidated FINRA Rulebook

Dear Ms. Harmon:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is pleased to respond to the referenced Notice which, among other things, seeks to solicit comments from all interested parties regarding the proposed rule change. Specifically, FINRA proposes to adopt NASD Rule 2315 (Recommendations to Customers in OTC Equity Securities) as FINRA Rule 2144 in the Consolidated FINRA Rulebook, subject to certain amendments described in the Notice.

SIFMA fully supports FINRA’s continued efforts to address potential fraud and abuse in transactions involving high risk securities. As FINRA correctly notes in its Proposed Rule, the securities covered by current NASD Rule 2315 “may be more susceptible to fraud and abuse because they often are thinly capitalized or lack the profitability, liquidity or available business and financial information that listing standards require.”

However, SIFMA suggests that FINRA maintain the current rule’s exemption for securities with a world wide average daily trading volume value of at least \$100,000 during each of the six calendar months preceding the recommendation (see 2315 (e)(1)(E)).² SIFMA believes that the removal of this exemption would require a due diligence review to be conducted for large, well-capitalized companies whose securities likely do not pose the type of risk that is intended to be addressed by the proposed rule. For example, the

¹ SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C. and London, and its associated firm, the Asian Securities Industry and Financial Markets Association, is based in Hong Kong.

² Section (e)(1) (F) of the Rule extends the exemption to convertible securities, if the underlying security meets the requirement of Section (e)(1)(E).

elimination of this exemption would extend the due diligence review to large foreign companies that have elected to have their ADR's traded over-the-counter such as Roche Holdings Ltd., Volkswagen AG, Bayer AG, Nestle SA and BNP Paribas SA. To avoid such a result, SIFMA respectfully requests that the current exemption based on daily trading volume from Rule 2315(e)(1)(E) be retained in the proposed rule. As an alternative or addition to that exemption, FINRA may also wish to consider adopting an exemption based on the size of the underlying company's market capitalization.

In addition, SIFMA also respectfully requests that FINRA modify the proposed rule to permit the due diligence review to be conducted or supervised by a NYSE Series 8 or 9/10 qualified manager as an alternative to a Series 24 registered principal. This change would permit the review/oversight to be performed by local branch office management who may not hold the Series 24 license. Local branch management may be best-positioned to determine whether the requisite due diligence has been performed. For some FINRA member firms, the Series 24 principals are located at home offices rather than in the branch office network. We do not believe that such a modification to the proposed rule would harm investors.

SIFMA appreciates the opportunity to provide comments to proposed FINRA Rule 2114. If you have any questions or require further information, please contact the undersigned at (212) 313-1268.

Very truly yours,

Amal Aly
Managing Director and
Associate General Counsel