



September 27, 2013

Barbara A. Doak
Department of Commerce and Insurance
Chief Counsel for Securities
General Civil Division
500 James Robertson Parkway
Davy Crockett Tower
Nashville, TN 37243

RE: Proposed Rule 0780-04-02-.16 Unsolicited Transaction Exemption

Dear Barbara:

The Securities Industry and Financial Markets Association (SIFMA)¹ appreciates the opportunity to comment on “Proposed Rule 0780-04-02-.16 Unsolicited Transaction Exemption.” With the enactment of SB 151 earlier this year, Tennessee became one of 49 states that exempt unsolicited transactions from various registration requirements. The Proposed Rule would require broker-dealers and their agents to provide certain documentation upon request when the exemption is being claimed.

We are writing because we are concerned that, while the proposed regulation is well-intentioned, it appears to create new documentation burdens that are not required by any other state and that will limit the likelihood that the exemption is actually used. For example, we believe that the proposal’s reference to an “Unsolicited Transaction Exemption Form” suggests that either the Department or the broker-dealers themselves will need to create a new, separate document that reiterates a host of information that is already readily available. As we have discussed, customer confirmations contain the bulk of the information being requested under the Proposed Rule. Indeed, of the first ten items listed under 0780-04-02-.16(2) (a), the only information not on the confirm is the CRD numbers for the broker-dealer firm and the agent, and this information is easily accessible. We believe an “Unsolicited Transaction Exemption Form” creates extra work without providing any additional investor protection benefit. We respectfully suggest that you strike the reference to an “Unsolicited Transaction Exemption Form” and instead simply require that the broker-dealer retain such information in a manner consistent with books and records requirements.

We further suggest that the acknowledgement language in 0780-04-02-.16(2)(a)(11) be revised. First, the proposed language calls for a signed acknowledgement by the broker-dealer agent. Currently, a signature is not required on the confirm but there are places to designate that the transaction is unsolicited and that the broker-dealer is acting solely as agent. We believe such

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 has offices in New York and in Washington, D.C. For more information, visit <http://www.sifma.org>.

indications meet the Department's regulatory needs and objectives. In addition, we would request that language referencing that "all suitability requirements have been satisfied for the transaction" be struck from the Proposed Rule. An unsolicited transaction is not subject to suitability requirements. Such requirements apply when an agent is recommending a transaction; in an unsolicited transaction, the agent is simply executing the customer's specific unsolicited request.

We have taken the liberty of attaching a revised Proposed Rule that incorporates these concepts as well as a few technical changes. We greatly appreciate your willingness to consider our comments, and we would be happy to discuss them with you in greater detail at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Kim Chamberlain".

Kim Chamberlain
Managing Director and Associate General Counsel
State Government Affairs

Cc: Daphne Smith, Assistant Commissioner, Securities Division

Attachment