



Invested in America

June 25, 2014

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

Re: Rule 21 VAC 5-20-280 A (32) – (38)
**Supplemental letter re: required amendments to
rules governing penny stock transaction**

Dear Mr. Thomas:

The Securities Industry and Financial Markets Association (“**SIFMA**”)¹ is writing to supplement our joint letter with the Financial Services Institute to you, dated May 30, 2014, entitled “Rule 21 VAC 5-20-280 A(32), *Joint legal analysis: NSMIA preempts the rule’s point-of-sale disclosure requirements*” (the “**Letter**”).

In the Letter, we explained that Rule 21 VAC 5-20-280 A(32) “(the “**Rule**”) was moved from its original location in Section E(6)(a), where the Rule’s application was narrowly limited to “*sale[s] of OTC (over the counter) unlisted non-NASDAQ equity securities.*” We further explained that the Rule created a books and record requirement that was preempted by Section 103 of the National Securities Markets Improvement Act of 1996 (“**NSMIA**”). Accordingly, we recommended that the Rule be amended to conform to its counterpart federal rules, Exchange Act Rules 15g-4 and 15g-5, as set forth in the Letter.

Likewise, Rule 21 VAC 5-20-280 A, Sections (33) – (37), were moved from their original location in Section E(6)(b) through (f), respectively. Rule 21 VAC 5-20-280 A (38) was moved from its original location in Section E(11). The application of each of Rule 21 VAC 5-20-280 A, Sections (33) – (38), was originally and appropriately limited to “*sale[s] of OTC (over the counter) unlisted non-NASDAQ equity securities.*” Accordingly, we further recommend that Rule 21 VAC 5-20-280 A, Sections (33) – (38), be amended by restoring the original preamble, as follows:

¹ 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. For more information, visit www.sifma.org.

“The following subsections A(33) through A(38) specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities.”

* * *

We truly appreciate your attention to our concerns with the revisions to 21 VAC 5-20-280 A in 2013,² which have created some unintended consequences and issues requiring amendments to the rules, as discussed above. We hope to continue our productive dialogue with you on these rules and any future rule changes.

If you have questions, or would like to further discuss this matter, please contact Kevin Carroll at 202.962.7382 or kcarroll@sifma.org, or Nancy Lancia at 212.313.1233 or nlancia@sifma.org.

Sincerely,



Kevin M. Carroll
Managing Director & Associate General Counsel
SIFMA

cc: Nancy Lancia, Managing Director, State Government Affairs, SIFMA

² Virginia Register of Regulations, Volume 29, Issue 20, June 3, 2013, available at: <http://register.dls.virginia.gov/vol29/iss20%5Cv29i20.pdf>, at p. 2482.