



March 15, 2013

Marcia Waters
Director
Colorado Division of Real Estate
1560 Broadway, Suite 925
Denver, Colorado 80202

RE: S.A.F.E. Act Compliance Rule

Dear Ms. Waters:

I am writing today on behalf of the Securities Industry and Financial Markets Association (SIFMA).¹ SIFMA is a trade association which represents the shared interests of hundreds of securities firms, banks and asset managers, many of whom have a strong presence in Colorado.

We understand that the Colorado Board of Mortgage Loan Originators (the “Board”) is considering amending certain sections of its S.A.F.E. Act Compliance Rule² (the “Rule”) that was issued in July of 2012 pursuant to the State’s Mortgage Loan Originator Licensing and Mortgage Company Registration Act (the “Colorado Act”).³ We support this amendment.

We are concerned that the Colorado Act, through the definitions currently appearing in the Rule, unintentionally encompasses the financial advisors of broker-dealer firms that sometimes make their clients and prospective clients generally aware of residential mortgage loans offered by affiliated lenders, and receive compensation from their broker-dealer firms for doing so. These financial advisors do not: (1) provide or take residential mortgage loan applications; (2) process residential mortgage loan applications; (3) offer or negotiate the terms of residential mortgage loan applications (within the plain meaning of the phrase); or (4) fund residential mortgage loans.

Financial advisors do not play any role in the application submission, negotiation of terms or approval process. However, because “offering or negotiating terms of a residential mortgage loan” is so broadly defined under the current Rule, they could be categorized as mortgage loan originators. This categorization would subject them to yet another layer of registration, education and training requirements.

The proposed amendment addresses our concern by recognizing that an individual’s generic referral to or recommendation of a particular lender does not fall within the definitions of “offering or

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>

² 4 CCR 725-3, 1-1-8-1 et seq.

³ Colo. Rev. Stat. § 12-61-901 et seq.

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negotiating terms of a residential mortgage” or “taking a residential mortgage loan application.” This interpretation is in line with guidance pertaining to financial advisors that appears in the supplementary information section to the final rule implementing the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the “SAFE Act”) that was published by the U.S. Department of Housing and Urban Development⁴ (“HUD”). The Rule was later adopted by the Consumer Financial Protection Bureau (the “CFPB”) as Regulation H,⁵ and is therefore consistent with the minimum standards established by the SAFE Act. Accordingly, we encourage you to adopt the proposed amendment.

Thank you for your consideration. Please feel free to contact me at 212-313-1311 should you have any questions.

Sincerely,

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

Kim Chamberlain
Managing Director and Associate General Counsel
State Government Affairs

⁴ SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities; Final Rule; 76 Fed. Reg. 38464, 38476 (Jun. 30, 2011).

⁵ The authority to administer the SAFE Act was transferred from HUD to the CFPB on July 21, 2011, pursuant to provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The CFPB formally adopted HUD’s final SAFE Act rule on December 30, 2011, as Regulation H. The CFPB has indicated that “for laws with respect to which rulemaking authority will transfer to the CFPB, the official commentary, guidance, and policy statements issued prior to July 21, 2011, by a transferor agency with exclusive rulemaking authority for the law in question...will be applied by the CFPB pending further CFPB action.” See 76 Fed. Reg. 43569.