SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

125 Broad Street
New York, NY 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.
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February 23, 2012

Via E-mail

Elizabeth M. Murphy,
Secretary,
Securities and Exchange Commission,
100 F. Street, NE,
Washington, DC 20549-1090.

Re: SR-FINRA-2011-057.

Dear Ms. Murphy:

We appreciate the opportunity to comment on Rule 5123 proposed by the Financial Industry Regulatory Authority, Inc. ("FINRA"), as revised by FINRA's Partial Amendment No. 1 to the proposed rule change.

As reflected in our comment letter of November 10, 2011, and in common with many others, we had very serious concerns with Rule 5123 as originally proposed. In the revised version of the proposed rule, FINRA has, in our view, substantially addressed those concerns. Subject to the one suggestion set out below, we would therefore have no objection to the Commission's approving the proposed rule change as modified by Partial Amendment No. 1.

The revisions to the proposed Rule substantially address the concerns we raised as to the proposed Rule's scope and related exemptions. Our one suggestion is that the exemption for sales to "accredited investors" should cover all "accredited investors",

rather than excluding individuals who qualify as "accredited investors" under Rule 501(a)(4), (5) and (6). This particular exemption to Rule 5123 is effectively relying on the definition of "accredited investor" as a proxy for sophistication. We do not see why a different standard of sophistication should apply in the context of Rule 5123 than in the context of Regulation D under the Securities Act. We note, in this regard, that Rule 501(a)(5) was recently amended to tighten the net worth test for "accredited investor" status.

The proposed Rule provides that if a disclosure document is used in connection with a covered private placement, that disclosure document must include a description of the anticipated use of offering proceeds, the amount and type of offering expenses, and the amount and type of compensation provided to sponsors, finders, consultants, and members and their associated persons in connection with the offering. In principle, we do not think that it is FINRA's role to be imposing disclosure requirements on participants in unregistered offerings. But we also think that this particular disclosure requirement is narrowly drawn, and rationally related to FINRA's oversight of its members engaged in arranging private placements, and so, in this particular context, not objectionable.

In a similar vein, we think that FINRA has substantially addressed the various concerns raised as to the timing and other mechanics of filings required under the revised proposed Rule. The approach FINRA plans to take in reviewing filings made under the revised proposed Rule (as outlined in its Response to Comment letter of January 19, 2012) seems rationally designed to carry out FINRA's enforcement responsibilities in respect of members engaged in arranging private placements.

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Once again, we appreciate the opportunity to submit these comments. If you have any questions, please contact David Harms at 212-558-3882 or Robert Buckholz at 212-558-3876.

Sincerely,

Sullivan & Cromwell LLP

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