

November 14, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington D.C. 20549-0609

RE: SR-FINRA-2011-057

Dear Ms. Murphy:

The Investment Program Association (“**IPA**”)¹ respectfully submits this comment letter which expands upon certain comments made by the IPA in its comment letter filed with FINRA on March 14, 2011 regarding NTM 11-04 (the “**NTM 11-04 Comment Letter**”). The focus of this letter is more directly upon the “**filing requirement**” component of the Proposal.

The Proposal gives rise to concerns that considerable inefficiencies will result from the potentially duplicative filings that will be required under the current provisions of the “filing requirement” in the Proposal. Because it can reasonably be anticipated that many programs will assemble a “selling group” consisting of a significant number of FINRA member firms to market and sell the securities described in the offering document, FINRA will be beset with unnecessary, duplicative filings - perhaps 50 or more in some cases - of offering memoranda, plus all related amendments and supplements. The potential for inefficiency resulting from duplicative filings of the same offering document by each participating member firm may well impact the assessment of the economic effects of the Proposal – a subject that has received scrutiny as recently as this summer.²

In such cases, however, we respectfully reiterate the suggestion, set forth in the NTM 11-04 Comment Letter, that only the Managing Broker Dealer (“**MBD**”) be required to file the offering document and any amendments with FINRA, and then be required to certify, in writing, to the

¹ The IPA was formed in 1985 to provide the direct investment industry with effective national leadership, and today is the leading advocate for the inclusion of direct investments in a diversified investment portfolio. IPA members include direct investment product sponsors, FINRA member broker-dealer firms, and direct investment service providers. More information about the IPA is available at our website: <http://www.ipa.com>.

² *Business Roundtable and Chamber of Commerce of the United States of America v. Securities and Exchange Commission*, D.C. Cir., No. 10-1305, 07/22/11).

selling group member firms that such filing has taken place, with the certification being maintained among the books and records of the selling group member firms and auditable by FINRA and otherwise. Alternatively, depending on the technology to be implemented in connection with the filing of offering documents, the MBD could, upon making the requisite filing, receive a system-generated receipt or certificate evidencing that such filing was made and that the filing complies with FINRA's requirements.³ The MBD could be required to provide this receipt or certificate to selling group member firms such that they would have, and be able to rely upon, such evidence of the filing, thereby obviating uncertainty over which member firm had the obligation to make the filing and whether such filing had been made. Absent the involvement of a MBD, then each of the member firms would be required to file the offering document with FINRA as set forth in the Proposal.

FINRA raised the concern that a single filer option would limit FINRA's ability to gain timely access to information about the private placement business of FINRA members. Presumably, the information that FINRA would obtain by requiring each selling group member to file the offering document is the identification of the member firms who are participating in sales in an offering. FINRA could alternatively obtain this information by requiring the MBD, upon the termination of an offering, to file with FINRA a list of all selling group members that participated in the sale of securities in the offering. Under this approach, FINRA could obtain the information it seeks while avoiding the duplicative filing of offering documents currently required in the Proposal.

We also note FINRA's observation regarding its desire to obtain information about the different compensation terms offered to member firms. However, it is respectfully observed that the current Proposal may not provide FINRA with such information. The offering documents will most likely not include compensation information *specific to each* member firm, but rather will likely contain the range of potential compensation to member firms (in which case a single filing of the offering documents will provide FINRA with such range information). In any event, a single filing of the offering documents by the MBD would provide FINRA with whatever compensation information is disclosed in the offering documents, and, we respectfully suggest, obviate the necessity of duplicative filings of the same offering documents. If the MBD filing upon the termination of an offering is adopted as described above, FINRA could obtain the compensation information it seeks by requiring such information to be included in the MBD's filing upon the termination of the offering.

Finally, we note the requirement that the filing of the offering documents be made with FINRA no later than 15 calendar days after the date of first sale. FINRA's effort to align the timing of the proposed filing with the existing filing timelines under Regulation D is noted. However, to the extent FINRA is contemplating the use of enhanced computer capabilities to optically scan or otherwise search filed offering materials in an effort to enhance identification of problematic

³ FINRA could also consider including in such system-generated receipt a confirmation number unique to the offering, which confirmation number could be used to obtain independent verification from FINRA's website that the filing was made and complies with FINRA's requirements.

areas and concerns, then requiring the filing to be made *after* the first sale takes place will not afford FINRA the opportunity to address any identified issues in a timely manner that could be problematic to member firm participations in the offerings. Alternatively, a filing by the MBD could be reviewed by FINRA *prior to* any sales activity, which would allow FINRA the opportunity (within a reasonable window of time, such as 10 calendar days) to address any identified issues before sales are made to investors. As with the other comments noted above, the single-filing by an MBD would allow FINRA to achieve its goals, while avoiding the unnecessary inefficiency and expense of duplicative filings.

Respectfully submitted,



Martel Day
Chairman
Investment Program Association

Drafting Committee:

Wayne G. Souza, Esquire
Carey Cooley, Esquire
Ryan Kretschmer, Esquire