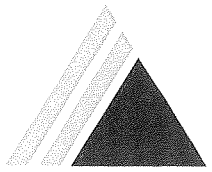

Real Estate Investment
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November 14, 2011

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

Re: *SR-FINRA-2011-057*

Dear Ms. Murphy:

On behalf of the Real Estate Investment Securities Association ("REISA"), this letter is submitted in response to the Securities and Exchange Commission's ("SEC") request for comments on Financial Industry Regulatory Authority, Inc.'s ("FINRA") Proposed FINRA Rule 5123 ("Proposed Rule"). REISA is a trade association serving the real estate securities industry including all professionals active in offering, managing and distributing non-traded REITs, real estate partnerships, tenant-in-common interests (TICs), Delaware statutory trust interests (DSTs), real estate income and development funds, oil and gas interests, natural resources and alternative energy investments.

REISA works to maintain the integrity and reputation of the industry by promoting the highest ethical standards to its members and provide education, networking opportunities and resources. REISA connects members directly to key industry experts through intimate forums providing timely trends and education and helping create a diversified portfolio for their clients. The association was founded in 2003 and has over 800 members who are key decision makers that represent over 30,000 professionals throughout the nation including:

- Sponsors and managers of real estate and related offerings
- Broker-dealers
- Securities licensed registered representatives
- Registered investment advisers (RIAs)
- Investment adviser representatives (IARs)
- Accountants
- Attorneys
- Mortgage brokers
- Institutional lenders
- Qualified intermediaries
- Real estate agents
- Real estate brokers

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REISA believes in the importance of protecting the investing public while balancing the need for businesses and sponsors of quality real estate investment products, along with the FINRA members who sell these products, to be able to efficiently raise capital without an overly burdensome regulatory scheme. REISA believes that the Proposed Rule continues to place undue burdens on FINRA members and could cause additional restraints on capital formation in the private placement of securities.

Discussion

In Regulatory Notice 11-04: Private Placements of Securities ("FINRA Notice 11-04"), FINRA originally proposed amendments to FINRA Rule 5122, which currently only applies in circumstances in which a participating broker-dealer or its control entity is the issuer, and requires

(a) disclosure in the offering document of the intended use of offering proceeds, expenses and the amount of selling compensation to be paid to the broker-dealer and its associated persons,
(b) at least 85 percent of the offering proceeds to be used for the business purposes identified in the offering document and
(c) each offering document to be filed with FINRA for an *ex post* review to assess compliance with the rule.

In the Proposed Rule, FINRA proposes to adopt new Rule 5123 to require that members and associated persons that offer or sell applicable private placements or participate in the preparation of private placement memoranda, term sheets or other disclosure documents:

(a) provide relevant disclosures to each investor prior to sale which describes the anticipated use of offering proceeds and the amount and type of offering expenses and offering compensation; and
(b) require that the disclosure document and all exhibits be filed with FINRA by every FINRA member participating in the offering no later than 15 calendar days after the date of first sale and any material amendments to such documents be filed no later than 15 calendar days after such amended documents are provided to an investor.

REISA has the following comments and observations relating to the Proposed Rule.

Imposing Burden to Provide Disclosure Where No Disclosure Requirement Exists in the Federal Securities Laws. Almost all of the private placements in which REISA members participate are private placements sold solely to accredited investors pursuant to Rule 506 of Regulation D. Pursuant to Rule 502(b)(1) under the Securities Act of 1933, as amended, there are no disclosures required in sales of securities solely to accredited

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investors. REISA's best practices for Regulation D offerings states that "[r]ecommended practices in offering and selling a Regulation D investment include preparation of a PPM that provides full and fair disclosure of the material aspects of the offering" and notwithstanding the fact that disclosures to accredited investors are not required "encourages disclosures that are commensurate with the information required in a prospectus filed with the SEC even where the offering is offered and sold only to accredited investors." However, if a private placement of securities was offered solely to accredited investors and no PPM or other disclosure document was prepared by the issuer of the securities, the FINRA member would be required to produce a document to provide its client with disclosures regarding the anticipated use of proceeds by the issuer, the amount and type of offering expenses and the amount and type of compensation provided to sponsors, finders, consultants and members in connection with the offering. In such event, the FINRA member would be forced to create a disclosure document that would include information to which it may not have full access, such as the issuer's anticipated use of all the proceeds from the offering, compensation paid to the sponsors, finders and consultants and compensation to be paid to other FINRA members. It is an unfair burden to the FINRA members selling securities of an issuer who is not required to produce an offering document and would likely result in the FINRA member determining not to sell such securities.

The production of such a disclosure document by a FINRA member would also increase the liability of the FINRA member in the offering. Rather than having a due diligence obligation with respect to the disclosures in an offering document created by the issuer, the FINRA member could now be viewed for liability purposes in the same way as the issuer since it is creating the document pursuant to which the securities are being sold. If FINRA members were considered to be the same as issuers because they created the offering document, REISA believes that private placements of such securities would cease and capital formation halted.

Requiring Every FINRA Member to File the Disclosure Document in an Offering. In some private placements, the selling group comprised of FINRA members can be very large – twenty, thirty and sometimes even fifty FINRA members can participate in some of the larger private placements. Placing a filing burden on each and every member of the selling group initially, as well as each and every material amendment, will mean significant numbers of duplicate filings. In SEC Release No. 34-65585, FINRA states that "[i]f one member engaged in the private placement under different compensation terms than another member, then it could further complicate such a single-filer regime." However, in the experience of REISA members, while there may be differences in compensation paid to participating FINRA members, all such compensation falls within the disclosure contained in the offering document and does not necessitate differing disclosures for each participating FINRA member. For example, in many private

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placements, a dealer manager fee is disclosed as "up to X%" of the gross offering proceeds with the ability to re-allow up to a certain amount based upon services provided by selling dealers. The entire X% is still paid to a FINRA member; however, the composition of that X% may vary amongst the different FINRA members. The disclosure in the offering document, however, does not get changed as the investor is still only paying X% of the gross proceeds – how it is shared amongst the various selling group participants should not make a difference to the investor. Requiring each FINRA member to file a private placement memorandum for each offering in which it participates and each material amendment for each offering in which it participates creates an ongoing burden for such FINRA member. A single filing for each offering should be sufficient for FINRA's purposes and if FINRA requires information regarding FINRA members who participated in the offering, the FINRA member (whether it is the affiliated dealer manager or a managing broker dealer or a mere participant in the selling group), could be tasked with disclosing the members of the selling group who sold securities in such offering.

Types of Penalties or Liability for Non-timely or No Filing. In addition, it is unclear what kind of penalty or liability would be incurred if a FINRA member did not file or did not timely file each private placement memorandum and each material amendment thereto or if such FINRA member did not file or timely file such disclosure documents it created to provide investors. If FINRA adopts the Proposed Rule, it should make clear whether or not any penalties will be imposed on or any additional liability incurred by its members for failure to file or failure to timely file such offering documents or disclosure documents and/or material amendments thereto.

The Filing Requirement Could Drive Issuers to Unregistered Persons to Raise Capital. The requirement to file offering documents with FINRA or create disclosures to provide investors may cause some FINRA members to delay selling securities in such offerings or cease selling private placement securities altogether. In such event, issuers may decide that their capital needs will not wait for the FINRA members to create offering disclosures or issuers may look to unregistered, unlicensed persons who do not have the same regulatory burdens to raise the necessary capital. These unregistered persons would not be subject to the SEC's or FINRA's rules and regulations and investors could be at even greater risk than they are currently. It does not appear that the best interests of investors will be served if the capital formation for small business and the private placement of securities ends up being handled by unregistered and unlicensed persons.

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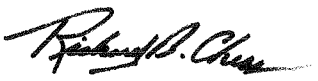
Conclusion

For all of the reasons set forth above, REISA believes that the proposed requirements are overly burdensome and potentially create additional liability to FINRA members. REISA believes that the Proposed Rule, with the modifications and clarifications discussed herein, would provide the protection for investors FINRA is seeking, while at the same time removing hurdles and burdens from the private placement market that drives many small businesses and capital formation throughout the country.

REISA appreciates the opportunity to comment on the Proposed Rule and looks forward to a continued dialogue with the SEC and FINRA on these and other important issues for the protection of investors and the capital markets.

Sincerely,



Richard B. Chess
President, Real Estate Investment Securities Association