INVESTMENT BANKERS
St Charles Capital

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MEMBER FINRA

February 26, 2012

Mr. Stan Macel
Assistant General Counsel
FINRA

Dear Mr. Macel and members of the FINRA Review Panel,

I am writing to express the views of my firm, St. Charles Capital, on the proposed FINRA Rule 5123 relating to Private Placements (SR-FINRA-2011 057). St. Charles Capital is a member firm with about 25 Registered Reps that specializes in merger & acquisition advisory and private placements, mostly of an institutional nature. Several senior members of our firm have been in this business for about 30 years.

Most of the private placements that we are engaged in or either 4(2) exempt transactions involving institutional investors or are Reg D offerings only to Accredited Investors or informed employees and affiliates of the issuer. I thank you for the amendments that have exempted these parties.

I am writing to express concern with one particular part of the rule and that is in Paragraph 1 (a) the seventh line, specifically the phrase "or participate in the preparation of Private Placement Memoranda (PPM), term sheets or other disclosure documents, in connection with such private placements…" We believe that this language will restrict us from a particular activity that will be harmful to capital formation among our small clients.

Most of the transactions that we are engaged in would either be exempted or are in the $10 to $100 million size; such clients can afford to pay investment bankers for the heightened scrutiny and efforts that go along with the greater liability that the investment banker takes on. We however have a number of small commercial banks that are engaged in very small offerings, typically under $5 million, and for whom the cost of paying full investment banking fees is unacceptable. In these cases, the banks seek to raise capital directly from their own customers, depositors, and business relationships in the community. They cannot afford to pay 6% (or something like this) for us to go out and raise the proceeds for them. Yet these business clients are unsophisticated, and although they may have experienced specialized counsel, they really don't know how to go about describing their bank, summarizing the merits and risks of the bank, and preparing a summary presentation to meet with potential investors. For these clients, our firm has engaged in consulting work to help them prepare for the offering, but we are not directly involved in communicating with any investors, and typically complete our assignment before the offering documents are printed. For this we are paid a fixed consulting fee, whether the transaction closes or not. We interpret the language of the proposed rule change that such

activity would be "participating in the preparation of PPM…." and would therefore subject us the rules on these transactions.

It is our firm's fear that, in addition to the items of additional disclosure (which is not a real problem), the spirit and intent of the rule changes is to place greater liability on the investment banking firms involved with such offerings. For larger deals with full compensation we do not object because we are appropriately compensated for such risks and have proceedures in place to mitigate them. But for these very small advisory projects, were we are not receiving contingent compensation, and have no involvement in the sales process, we believe that your heightened procedures will place greater liability on us and make us disinclined to assist these small firms with purely advisory services. The greater compensation we would require to conduct extensive due diligence and be exposed to heightened FINRA scrutiny will likely be unaffordable for the small firms that I am describing. Therefore these firms will miss out on affordable expert advice that might help them successfully complete their capital raise. We hope that the purpose of the rules is not to make access to capital more difficult for companies. We have read about well documented abuses in our business that FINRA is reacting to in these rule changes and we believe that it is not your intent to stop activity like we are discussing above. Yet the proposed rule changes might do just this!

We therefore ask that you consider two revisions for such rules that would resolve the particular problem that I am describing. First, place some kind of exemption for the rules for very small offerings, such as $5 million. Second, create an exemption for firms whose "participation" is solely advisory and without any direct communication with investors or without contingent compensation. We do not believe that such exemptions would in any way reduce the thrust of the new regulations and the kind of practices you seek to impact, but it would have a significant favorable impact on our firm, firms engaged in similar activities, and most importantly smaller businesses seeking capital.

Thank you for your consideration.

Sincerely,

Wesley A. Brown
Managing Director and Chief Compliance Officer