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**Via Electronic Filing**

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

**RE: File Number SR-FINRA-2011-057; Release Number 34-66203**

Dear Ms. Murphy:

The Cornell Securities Law Clinic (the “Clinic”) welcomes the opportunity to comment on FINRA Rule 5123 as modified by Partial Amendment No. 1 (“Amended Rule 5123”).<sup>1</sup> The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and public education as to investment fraud in the largely rural “Southern Tier” region of upstate New York. For more information, please visit <http://securities.lawschool.cornell.edu>.

In previous comment letters, the Clinic generally supported what has become Amended Rule 5123, while arguing that the rule’s protections for investors should be made stronger.<sup>2</sup> While Amended Rule 5123’s investor protections could still be made stronger without harming

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<sup>1</sup> Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Adopt FINRA Rule 5123 (Private Placements of Securities) in the Consolidated FINRA Rulebook, 77 Fed. Reg. 4,065 (January 26, 2012) *available at* <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p125461.pdf>

<sup>2</sup> *See* the Clinic’s March 14, 2011 comment letter, *available at* <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p123348>; *see also* the Clinic’s November 14, 2011 comment letter, *available at* <http://www.sec.gov/comments/sr-finra-2011-057/finra2011057-4.pdf>.



efficient capital formation, the Clinic nonetheless writes in support of approving Amended Rule 5123. Amended Rule 5123 takes important steps to protect investors, while promoting both efficiency and capital formation, as required by Section 15A(b)(6)<sup>3</sup> and Section 3(f)<sup>4</sup>, respectively, of the Securities Exchange Act of 1934. The Clinic addresses below the four areas in which SEC requested particular comment.<sup>5</sup>

1. The Clinic has not previously commented on the scope of the definition of “private placement” in Amended Rule 5123, and so takes no position on it here, except to note that FINRA has adopted the definition of “private placement” from FINRA Rule 5122.
2. Amended Rule 5123 should have a net beneficial impact on investors. Amended Rule 5123 requires greater disclosure of relevant information to investors, which protects investors, enables them to more efficiently allocate capital, and reduces fraud.
3. The direct compliance costs that Amended Rule 5123 poses to members are small. With the elimination of the provisions governing the substantive use of placement proceeds, the primary compliance cost that Amended Rule 5123 poses is procedural. Members must gather the required information and timely provide it to both investors and to FINRA. Members have ready access to the required information in the regular course of the relevant transactions, however. The procedural requirement, then, is one of compilation and provision. FINRA Rule 5122 has a similar requirement, with which members have complied since that rule’s adoption. Amended Rule 5123 would clearly apply to a broader range of members than Rule 5122, but FINRA has accordingly lengthened Amended Rule 5123’s filing period to 15 days after the first sale. Requiring this sort of “notice” filing, within this period of time, is, as FINRA noted, a modest burden.<sup>6</sup>
4. Amended Rule 5123 will not discourage members from participating in private placements. The low compliance costs will not place members at a competitive disadvantage relative to non-members and will not significantly encourage issuers to utilize unregistered firms to effect covered offerings.

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<sup>3</sup> 15 U.S.C. 78s(b)(2)(B)

<sup>4</sup> 15 U.S.C. 78c(f)

<sup>5</sup> See Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings, p. 10, *supra* at note 1

<sup>6</sup> See Notice of Filing of Proposed Rule Change to Adopt New FINRA RULE 5123 (Private Placements of Securities), 76 Fed. Reg. 65,758 (Oct. 24, 2011) *available at* <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p124886.pdf>

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The Clinic appreciates the opportunity to comment on whether to approve Amended Rule 5123, and hopes that SEC will consider some of the issues raised in this letter to further the goals of protecting investors and promoting capital growth.

Respectfully submitted,



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Cornell Law School 2012