Financial Industry Regulatory Authority

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May 18, 2012

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

Re: File No. SR-FINRA-2011-057 – Response to Additional Comments

Dear Ms. Murphy:

On October 4, 2011, FINRA filed with the Securities and Exchange Commission ("SEC" or "Commission") SR-FINRA-2011-057, a proposed rule change to adopt FINRA Rule 5123 (Private Placements of Securities). The Commission published the proposed rule change for comment in the Federal Register on October 24, 2011.[1] On January 19, 2012, FINRA filed Partial Amendment No. 1 to the proposed rule change and a letter responding to comments (the "Response to Comments").[2] On January 26, 2012, the Commission published in the Federal Register a notice and order to solicit comments on Partial Amendment No. 1 from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.[3] On March 12, 2012, FINRA filed Partial Amendment No. 2 and a letter rebutting any assertion that the proposed rule change, as amended, would not meet the statutory

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1 See Securities Exchange Act Release No. 65585 (October 18, 2011), 76 FR 65758 (October 24, 2011) (Notice of Filing of SR-FINRA-2011-057).

2 See Letter from Stan Macel, FINRA, to Elizabeth Murphy, Secretary, SEC, dated January 19, 2012; see also Partial Amendment No. 1 to SR-FINRA-2011-057, available on www.finra.org.

3 See Securities Exchange Act Release No. 66203 (January 20, 2012), 77 FR 4065 (January 26, 2012) (Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, etc.). The comment period closed on February 27, 2012.

requirements for approval (the "Rebuttal").[4] On March 22, 2012, FINRA filed Partial Amendment No. 3 to make a minor revision to the proposed rule change to clarify the filing requirement regarding materially amended versions of offering documents.[5] Since the time that FINRA submitted its Rebuttal, the Commission has received two additional comment letters.[6] This letter discusses these two comment letters and FINRA's responses thereto.

NASAA supports FINRA's efforts to increase disclosures to investors but finds it "disappointing" that the amended proposed rule change was "weakened" from what FINRA originally proposed. Although amendments were made to the proposed rule change through the notice and comment rulemaking process, the result is a rule that will protect investors by providing additional regulatory oversight of broker-dealers that sell securities in the private placement market.

Rutledge, on the other hand, suggests that recent legislative changes, and in particular, the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), should prompt a reevaluation of the proposed rule change. FINRA has reviewed the JOBS Act and believes that the proposed rule change is consistent with the Act.

Rutledge also states his opinion that the rule is unnecessary in the context of the current tools available to FINRA, and suggests, among other things, vigorous enforcement of existing rules and increased sanctions for private placement fraud. The proposed rule change will aid FINRA in more vigorous enforcement by providing more timely and complete information about member firms' private placement activities. Moreover, as FINRA noted in its Response to Comments and Rebuttal, a requirement to make a post-use notice filing[7] is not an unnecessary burden on members or capital formation and is appropriate in light of the intended regulatory

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4 See Letter from Stan Macel, FINRA, to Elizabeth Murphy, Secretary, SEC, dated March 12, 2012; see also Partial Amendment No. 2 to SR-FINRA-2011-057, available on www.finra.org.

5 See Partial Amendment No. 3 to SR-FINRA-2011-057, available on www.finra.org.

6 See Letters from Jack E. Herstein, President, North American Securities Administrators Association, Inc., dated April 23, 2012 ("NASAA"), and G. Philip Rutledge, Bybel Rutledge LLP, dated April 27, 2012 ("Rutledge").

7 Rutledge asserts that the proposed rule would inject uncertainty into the private placement process and disrupt the established securities regulatory scheme by setting up an implicit approval process. FINRA reiterates, as noted several times previously, that the proposed filing requirement is a notice requirement only and should not be seen as establishing any explicit or implicit review and approval process.

benefits for investors that would flow from enhanced oversight of, among other things, members' compliance with their suitability obligations.[8] Indeed, this requirement will promote investor confidence, which, as NASAA states, is essential to capital formation.

In addition, Rutledge asserts that the proposed rule would disrupt the established U.S. securities regulatory scheme ostensibly because it would expand FINRA's jurisdiction to cover issuers of private placements. As FINRA has noted previously, the proposed rule change is consistent with its jurisdiction over members and persons associated with members.

Lastly, Rutledge suggests that greater regulation on finders and business brokers, as recommended in a Report by the American Bar Association ("ABA"),[9] could supplant the need for the proposed rule change. FINRA is amenable to working with the SEC staff to address the issues raised in the ABA Report, but views those efforts as complementary to – and not a replacement for – the enhanced flow of information that would result from the proposed rule change.

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FINRA believes that the foregoing responds to the material issues raised by the two additional commenters to this rule filing. If you have any questions, please contact Gary L. Goldsholle, Vice President and Associate General Counsel, at (202) 728-8104; or me at (202) 728-8056.

Sincerely,

Stan Macel.

Stan Macel
Assistant General Counsel

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8 The information obtained from an issuer's Form D filing does not fully address the informational needs of FINRA with respect to oversight of its members' activities regarding private placements, and thus is not a viable alternative to the proposed rule change.

9 See Report and Recommendations of the Task Force on Private Placement Broker-Dealers, Business Law Section of the American Bar Association (June 20, 2005).