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November 14, 2011

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

RE: Release No. 34-65585; File Number SR-FINRA-2011-057

Dear Ms. Murphy:

This letter is submitted on behalf of our client, a registered broker-dealer that engages solely in the private placement of securities for affiliated private investment funds, in response to the request for comments by the Securities and Exchange Commission ("Commission") on the proposal by the Financial Industry Regulatory Authority, Inc. ("FINRA") to adopt new FINRA Rule 5123 relating to private placements of securities (the "Proposed Rule"). We appreciate the opportunity to comment on the Proposed Rule.

Our client is a wholly-owned subsidiary of an investment adviser registered with the Commission (the "Adviser") and a member of FINRA. The Adviser sponsors and manages private funds that rely on the exemption from registration in Section 3(c)(7) of the Investment Company Act of 1940, as amended (the "1940 Act). The Adviser also acts as an investment adviser to closed-end investment companies registered under the 1940 Act that are offered through private placements pursuant to Regulation D under the Securities Act of 1933, as amended (the "1933 Act").

We believe that, given the typical structure of private funds and the protections afforded to investors in closed-end funds registered under the 1940 Act, the exemptions under the Proposed Rule should be expanded in two ways. First, the exemptions for offerings sold only to certain purchasers should be expanded to include "knowledgeable employees" of a private fund or of the investment adviser that sponsors or manages a private fund. Second, the exemptions for certain types of offerings should be expanded to include private placements of securities of affiliated registered investment companies offered and sold in reliance on Regulation D under the 1933 Act.

<u>The Proposed Rule Should Include An Exemption for the Knowledgeable Employees of a Private Fund or of the Investment Adviser Affiliated with the Private Fund.</u>

Private funds differ from other issuers of securities in several key respects, particularly with regard to management of the issuer. A private fund typically is organized by an investment

adviser (or its affiliate) in order to pool assets to invest in securities. The private fund typically does not have its own officers or employees and, with the exception of a fund formed offshore as a corporation, has no directors. The private fund is administered and managed by the affiliated investment adviser and is wholly reliant on the officers and employees of the adviser to provide the management services. Offshore funds typically have directors, who may be residents of the offshore jurisdiction where the fund is formed or may be associated with the adviser but who also rely for the management and operation of the fund on the fund's affiliated adviser.

The Proposed Rule provides an exemption from its notice filing and disclosure requirements for offerings sold to "employees and affiliates of the issuer." As currently drafted, employees of an adviser that manages a private fund are not specifically covered by this exemption but have access to the same information with respect to the management and operation of a private fund as the employees of a business issuer have to the operation of their entity. Indeed, the fund could not operate without such personnel, who in effect know all there is about the issuer. The "oneness" of an investment adviser's employees with the fund itself is recognized by Rule 3a4-1 under the Securities Exchange Act of 1934, as amended, which provides a safe harbor from broker-dealer registration to the officers, directors, partners and employees of a company or partnership that controls, is controlled by or is under common control with, the issuer. This safe harbor is often used by the employees of an adviser to offer interests in an affiliated fund without the necessity of broker-dealer registration, subject to the conditions of the rule.

In addition, we note that the proposed exemption covers all employees and affiliates of an issuer, presumably including employees who perform clerical or administrative functions. This exemption is far broader than the one we propose for "knowledgeable employees"[1] of a private fund or of the private fund's affiliated adviser. Such employees are disregarded under Rule 3c-5 of the 1940 Act in determining whether a Section 3(c)(7) fund is owned exclusively by "qualified purchasers" because the Commission believed that due to their status with the issuer they were to be treated in the same way as qualified purchasers. In the release adopting Rule 3c-

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[1] As defined in Rule 3c-5(a)(4) under the 1940 Act, "knowledgeable employees" include executive officers, directors, trustees, general partners, advisory board members, or a person serving in a similar capacity of the Covered Company (a Section 3(c)(1) or 3(c)(7) fund) or an Affiliated Management Person (an investment adviser) of the Covered Company. In addition, knowledgeable employees include employees of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the Covered Company, other Covered Companies or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, provided that such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months. (Capitalized terms in this footnote are defined in Rule 3c-5)

5, the Commission indicated that the rationale behind that rule was that knowledgeable employees have the requisite experience to appreciate the risks of investing in the fund.[2]

We believe that many advisers, including our client, will find that they do not fall within the available offeree exemptions under proposed Rule 5123 solely due to the fact that they permit knowledgeable employees to invest in their private funds. However, an exemption specifically for knowledgeable employees of a private fund or of the affiliated adviser of a private fund would be consistent with the exemptions in the Proposed Rule for other offerees who meet criteria that indicate that they have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment (e.g. institutional accounts, investment companies and qualified institutional buyers). An expansion of the exemption to include knowledgeable employees of a private fund or of the affiliated adviser of the private fund fits well within the ostensible purpose of the offeree exemptions.

We believe that the list of exempted purchasers in proposed Rule 5123(c)(1) should be expanded to include knowledgeable employees of a private fund or of the adviser to a private fund, reflecting the fact that such knowledgeable employees have access to the documents and records of the fund and have the requisite financial sophistication required with respect to such investment.

The Proposed Rule Should Include An Exemption For Affiliated Closed-End Registered Investment Company Offerings

The Proposed Rule requires that a member or person associated with a member "provide a private placement memorandum or term sheet to each investor prior to sale that contains disclosures describing the anticipated use of offering proceeds, the amount and type of offering expenses, and the amount and type of compensation provided or to be provided to sponsors, finders, consultants and members and their associated persons in connection with the offering."

In the case of an investment company, the requirement for registration under the 1940 Act is entirely independent of the status of such investment company's securities under the 1933 Act. Under the 1940 Act, material information regarding an investment company is prescribed by the Commission, must be filed with the Commission on its EDGAR system, and is usually reviewed by the Commission prior to initial offer. These significant requirements exist without regard to whether the fund undertakes a private placement and, thus, without regard to the type of disclosure document the fund provides investors. Whether privately placed (using a private offering memorandum) or publicly offered (using a prospectus), a closed-end fund's disclosure is

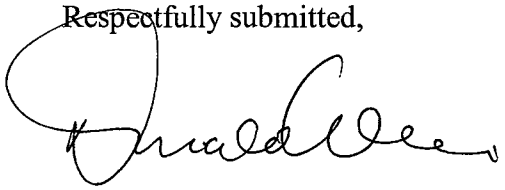
[2] Release No. IC-22597 (April 3, 1997).

governed by Form N-2 under the 1940 Act and is subject to review by the Commission staff upon filing.[3] Because the content of Form N-2, and usually the offering memorandum, is subject to Commission review, a filing with FINRA is not necessary to regulate the substance of the disclosure document. Although a few less disclosure obligations may apply to a privately offered fund under Form N-2, it must nevertheless file a registration statement with the Commission that is subject to review by Commission staff, and Form N-2 addresses all of the items in the Proposed Rule along with much more. In light of the above fundamental obligation, no interest is served by FINRA subjecting a privately placed investment company to an additional requirement to file its offering memorandum with FINRA, which would impose additional costs on the fund and cause potential regulatory disparity and uncertainty inherent in any filing with a second regulator.

FINRA has recognized in the Proposed Rule that certain offerings such as offerings of non-convertible debt or preferred securities by issuers on Form S-3 and offerings of commodity pools operated by a registered commodity pool operator subject to regulation and oversight by other regulators do not require further supervision by FINRA with respect to their disclosures. Likewise, private offerings of closed-end registered investment companies should be exempt from the notice filing and disclosure requirements of the Proposed Rule.

Thank you for the opportunity to comment on the Proposed Rule. Please do not hesitate to contact us if you have any questions or would like to discuss these issues.

Respectfully submitted,



Donald S. Weiss

[3] Similarly, an open-end fund's disclosure is governed by Form N-1A.