November 14, 2011

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

Re: File No. SR-FINRA-2011-057
Notice of Filing of Proposed Rule Change to Adopt New FINRA Rule 5123 (Private Placements of Securities)

Dear Ms. Murphy:

This letter is submitted on behalf of the National Society of Compliance Professionals, Inc. (hereafter referred to as the "NSCP")[1] in response to the Commission's solicitation for comments concerning **Proposed Rule Change to Adopt New FINRA Rule 5123 (Private Placements of Securities) (Release No. 34-65585; File No. SR-FINRA-2011-057)**. We appreciate the opportunity to provide our comments relating to this important proposal.

Our remarks reflect the NSCP's fundamental mission, which is to set the standard for excellence in the securities compliance profession. This commitment is exemplified by, among other things, the time and resources the NSCP, and the industry professionals whose volunteer services it marshals, have devoted in the past five years to the development of a voluntary certification and examination program for compliance professionals.[2]

Our mission is directed at the interests of compliance programs and compliance officers. We accordingly support a regulatory scheme that: (i) promotes practices that support market integrity and the interests of investors; (ii) creates clarity as to a firm's obligations to provide a reasonable system of supervision; (iii) promotes requirements that enable compliance officers to create reasonably workable programs; and (iv) avoids requirements or mandated tasks that are more costly or less efficient in realizing a regulator's public policy objectives, thereby increasing the difficulty facing a compliance officer in the discharge of his or her duties.

[1]The NSCP is a non-profit membership organization made up of approximately 1,900 securities industry professionals committed to developing education initiatives and practical solutions to compliance-related issues.

[2]Persons who complete NSCP's certification program (CSCP) qualify for the "Certified Securities Compliance Professional" designation.

Background

The Financial Industry Regulatory Authority ("FINRA") is proposing to adopt new Rule 5123 (Private Placements of Securities) (the "Rule") to ensure that investors in private placements are provided detailed information about the intended use of offering proceeds, the offering expenses and offering compensation. In addition, the Rule would provide FINRA, through a member "notice" filing requirement, with more timely and detailed information about the private placement activities of member firms.

The Rule as proposed includes a number of exemptions for various types of private placements, including exemptions for certain types of hedge funds and other private investment funds. This would include, for example, private funds relying on the exemption from registration under Section 3(c)(7) of the Investment Company Act of 1940, as amended (the "Company Act") that limits their investors to those that are "qualified purchasers" as defined under the Company Act and meet certain other conditions.[3] Private funds relying on a different provision of the Company Act, Section ("3c1 Fund"), would not be exempt from the Rule. Investors in a 3c1 Fund are generally limited to no more than 100 "accredited investors" as defined in SEC Regulation D, but are not required to meet the standards specified for qualified purchasers. The NSCP Hedge Fund Committee, pursuant to NSCP Policy, is focused on compliance issues and standards applicable to private funds and will therefore limit its comments in response to the Commission's questions below to the impact of the Rule on the 3c1 Fund.

Questions Posed by Commission

Whether the proposed rule would impact issuers' access to capital via the private placement market, particularly small issuers. If so, how?

Costly Additional Hedge Fund Regulation Contrary to Dodd Frank Act Hedge Fund Regulatory Policy. The Rule may limit access by 3c1 Funds to capital because of its additional costly layer of regulation at a time that this class of issuer has experienced a substantially increased level of regulation by the Securities and Exchange Commission (the "SEC") pursuant to the changes mandated by Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Rule fails to acknowledge this fundamental change in US regulation of private funds and the new US policy for regulating this class of issuer recently endorsed by Congress in its enactment of the Dodd-Frank Act.

Under the terms of Title IV of the Dodd-Frank Act, the United States established a new policy for regulation of funds relying on the private fund exemptions under the Company Act Sections 3(c)(1) and 3(c)(7). After reviewing a variety of alternative approaches to increase US regulation of these private funds, Congress focused on increased regulation through registration and regulation of the advisers to these funds pursuant to the Investment Advisers Act of 1940, as amended (the "Advisers Act"). The Dodd-Frank Act amended the Advisers Act to require that

[3] Qualified purchasers are investors that meet certain specified financial qualifications, e.g., individuals owning at least $5 million in investments.

the investment advisers to all but the smallest of these private funds be registered with the SEC under the Advisers Act. Generally advisers to funds with assets of $150 million or more are required to register with the SEC and advisers to funds managing between $25-150 million are required to register with one or more states. Advisers to funds with less than $25 million may or may not be required to register with one or more states depending on the requirements of applicable state law.

As a result of these Dodd-Frank Act changes, advisers registered with the SEC and the state authorities will be subject to regulatory examinations, recordkeeping obligations and increased regulation concerning investor communications and other matters. The focus of the Advisers Act and comparable state advisory laws is protection of the advisory client and fund investors. Offering materials for 3c1 Funds managed by registered advisers will be subject to a new level of scrutiny in this enhanced and increased regulatory regime as directed by the Dodd-Frank Act. Offering materials for 3c1 Funds are already subject to compliance with the antifraud standards for investor disclosure under the Securities Act of 1933, as amended (the "Securities Act"), the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the Advisers Act. This level of increased regulatory scrutiny of 3c1 Funds through regulation of their advisers has necessarily resulted in increased regulatory and related economic burdens on 3c1 Funds. The key offering materials utilized for the sale of the 3c1 Fund are the private placement memorandum and subscription agreement prepared by the adviser to the 3c1 Fund. These materials will be subject to the increased regulatory requirements imposed on registered advisers post Dodd-Frank. To the extent that an adviser to a 3c1 Fund is registered with the SEC ("Registered Adviser"), the Rule imposes an unnecessary duplicative set of regulatory requirements and injects a substantial level of uncertainty to the capital raising process with the potential for post-closing comments from FINRA. It also raises the potential for inconsistent guidance for the adviser materials which are already subject to SEC regulation under the Advisers Act, creating additional potential risk and uncertainty for compliance management at the 3c1 Fund advisory firm.

Whether the proposed rule would impact investors purchasing private placement securities through a broker-dealer subject to the new rule. If so, how? For example, would knowledge of the information contained in a mandatory disclosure improve an investor's ability to decide whether to invest in a private placement subject to the rule?

No Increased 3c1 Fund Investor Benefit from Rule. The Rule would not provide any significant additional protection for the investor in a 3c1 Fund managed by a registered Adviser since the offering materials would already be governed by the Advisers Act and related rules for investor materials and subject to SEC examination. The standards imposed pursuant to this adviser regulation already require the inclusion of the information specified in the Rule. The impact of the Rule for investors would be largely negative insofar as it may limit the availability of 3c1 Funds because of the incremental cost and uncertainty created by the additional layer of regulation.

Whether the proposed rule would impact registered broker-dealers' participation in private placements. If so, how?

Confusion between Broker-Dealer and Adviser Roles in Private Fund Regulation. The Rule assumes a role for broker-dealers in preparation of offering materials for the private placement of interests in a 3C1 Fund that does not accurately reflect the process. The fundamental offering materials are prepared by the adviser to the fund, not the broker-dealer. As a registered Adviser, the 3c1 Fund adviser is subject to recently expanded SEC regulation pursuant to the changes mandated by the Dodd-Frank Act. The adviser's activities including the preparation and use of fund offering materials are subject to SEC regulation under the Advisers Act. Congress focused on this route for increased regulation of the 3c1 Fund (and other types of private funds) rather than requiring registration of the funds under the Company Act or increased regulation of the broker-dealer offering these funds.

For the reasons provided above, we request that the SEC consider a revision of the Rule as proposed to add an exclusion from the Rule for private funds that meet 2 criteria: (1) all fund investors are accredited investors; and (2) the fund's adviser is registered with the SEC under the Advisers Act. This revision would acknowledge the new level of regulation of these private funds mandated by the Dodd-Frank Act and the focus of the Dodd-Frank Act on the regulation of the adviser to these funds, avoiding duplicative and costly additional regulation.

NSCP appreciates the opportunity to submit comments in response to the Invitation. NSCP would welcome the opportunity to answer any follow-up questions the Commission has on this submission.

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Thank you for your attention to these comments. Questions regarding the foregoing should be directed to the undersigned at (860) 672-0843.

Very truly yours,

Joan Hinchman
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