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Via email: rule-comments@sec.gov

December 5, 2011

RE: File Number SR-FINRA-2011-064;
FINRA Proposed Rule 4524 (Supplemental FOCUS Information)

Integrated Management Solutions USA LLC ("IMS") is pleased to comment on FINRA Proposed Rule 4524 (Supplemental FOCUS Information) (the "Proposed Rule") requiring members to file such supplementary financial or operational schedules or reports to the FOCUS Report as FINRA may deem necessary. IMS is one of the largest providers of financial accounting and compliance consulting services to the securities industry, providing such services to about 100 broker-dealers.[1] We believe this perspective enables us to assess the impact of the Proposed Rule on FINRA member firms from both a regulatory and business perspective.

To implement the Proposed Rule, FINRA would file with the SEC a Regulatory Notice (or similar communication) to notify members of the content of proposed supplemental schedules or reports. As part of the proposed rule change, FINRA filed one such proposed schedule, a supplement to the Statement of Income (Loss) page of the FOCUS Report (the "Proposed Schedule"). The purported rationale for the Proposed Rule is to provide a mechanism

[1] The statements in this comment letter incorporate the views of IMS, not necessarily those of our clients.

by which FINRA can obtain from members more detailed financial information to clarify FOCUS Reports for the protection of investors or in the public interest. Yet in requiring details in the Proposed Schedule for what may be classified by one firm as trading income and another as investment income, FINRA has not taken into account how member firms operate, including how they categorize trading or investment strategies. These artificial distinctions will not provide the consistent results FINRA claims to be seeking.

What's Wrong with the Proposed Schedule

For about the past 35 years, the FOCUS Report has remained largely as first promulgated, despite significant changes in trading and investment practices in the broker-dealer world. We are commenting on the latest iteration of the Proposed Rule, which has been fine-tuned since initially proposed by FINRA in July of 2010 as part of Regulatory Notice 10-33 ("RN 10-33"). Although, in the current release, FINRA laudably addresses many of the concerns raised by the 28 comment letters, including ours, submitted in response to RN 10-33, FINRA has missed a fundamental premise in formulating the Proposed Schedule: other than market-making or perhaps block-positioning activities, there is little difference from a regulatory or managerial standpoint among the tax categories of securities transaction income generated by broker-dealers for their own proprietary accounts regardless of which market participant generates that income. Yet FINRA insists on forcing tax law classifications to govern regulatory reporting.

Generally accepted accounting principles ("GAAP") for broker-dealers require that all securities be marked to the market. Concomitantly, generally the income derived from proprietary securities transactions should also be combined into one category -- Gains (Losses) from Principal Transactions -- so that all broker-dealers and their regulators will always analyze

profits and losses in a consistent manner. To the extent that regulators or broker-dealers want to understand how the profits of a particular broker-dealer are derived, they can be divided by strategy, geographical origin, product[2], or any other categorical means that produce consistent, meaningful information. Internal Revenue Service definitions are intended to determine income taxability, not economic profitability.

We are perplexed why FINRA insists on ignoring member firm practices and procedures with respect to their books and records. Firms organize revenue data based on internal definitions of business lines and to comply with GAAP. These internal categories allocate income based on how member firms view the nature and scope of their business lines. Many firms look at the totality of revenue generated by a particular deal or strategy, regardless of whether, for example, the source was an equity security traded in tandem with an option to purchase or sell that security, or whether a particular spread was achieved through the use of certain hedging techniques. Firms employ a variety of techniques that combine different products and trading strategies to obtain desired economic results.

FINRA's emphasis on reporting by product lines may very well be, at best, helpful only to FINRA. More dangerously, it also contradicts well-established revenue reporting rules and procedures under GAAP as reflected in the most authoritative tome on the subject, the Audit and Accounting Guide for Brokers and Dealers in Securities published by the American Institute of Certified Public Accountants.

FINRA is artificially forcing firms to differentiate income generated by investments from that of trading by requiring that revenue be reported by how the income might be taxed. As we noted in our previous comment letter, we are surprised that FINRA is proposing to capture

[2] Although the Proposed Schedule uses "product" categories, the Instructions to the Proposed Schedule indicate a more nuanced understanding of the various treatments available to member firms for different products. Discussed in the next section of this comment letter.

trading income data for more than a dozen separate product categories but then provides only one line for capital gains or losses. For members, combining all securities transactional income which is considered to be capital gains defeats the very purpose of providing more granular information. As we noted in our earlier letter, why would FINRA propose to have the information for capital gains or losses reported in the aggregate on only one line when by combining gains or losses from all financial instruments into one section, without regard to how they are classified for tax purposes, the relevant information would be reported with greater detail? Instead, we anticipate that FINRA examiners will be forced to ask for a further breakdown of the income that is subject to capital gains treatment. We note that some broker-dealers classify as capital gains or losses the same income that other broker-dealers categorize as ordinary income. Why should the income be categorized that way for regulatory reporting purposes?

Moreover, a glaring omission remains that is likely to have the unintended consequence of generating inconsistent reporting within the industry. Inaccurate or incomplete data will also impair FINRA's ability to perform reliable evaluations of the financial health of member firms. It is, in truth, counterproductive.

The Inconsistent Instructions Accompanying the Proposed Schedule

Ironically, the Instructions to the Proposed Schedule contradict the Proposed Rule and more accurately reflect the discretion member firms have always exercised when categorizing revenues. For example, Instruction 4, "Net Gains or Losses on Principal Trades," states what must be included in this section, but then adds two instructions authorizing discretionary

treatment using what it calls "firm selected methodology," provided such discretion is consistently exercised:

> Firms may include related hedges in this section. Firms electing to include related hedges must report gains or losses from hedges on the line of the instrument being hedged in accordance with a consistently applied methodology selected by the firm. For example, if a firm is hedging government securities and corporate debt, the firm may report the aggregated transaction in either of these two categories. However, **firms' classification methodology with respect to including hedges must be consistent from one reporting period to the next for similar transactions.**
>
> Firms may include interest and dividends earned on the instrument traded in this section or in Section 6 (Interest /Rebate / Dividend Income).[3]

Similarly, Instruction 5, "Capital Gain (Losses) on Firm Investments," with respect to firm selected methodology again recognizes the discretion firms exercise in categorizing income:

> Firms may include interest and dividends earned on the investment in this section, or in Section 6 (Interest / Rebate / Dividend Income).[4]

What FINRA is proposing simply adds additional compliance expenses without any corresponding benefit to either FINRA or member firms. As long as revenues and expenses are reported consistently, member firms should be allowed to maintain books and records in a manner appropriate and useful for their operations. Whether the source of income is the result of trading or investment activity has long been treated as irrelevant by the accounting profession. In fact, even the SEC's uniform net capital rule, Rule 15c3-1, generally recognizes no distinction for financial instrument positions based whether they are held in a particular type of tax-defined account. Rather, all of the positions are treated in the same manner, as they clearly should be. No greater transparency or accuracy will result if FINRA forces member firms to set up books and records that are useless for accounting purposes.

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[3] http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p125016.pdf, Exhibit No. 3, Supplemental Statement of Income, General Instructions, p. 111 (page 3 of 11 of the Instructions) (emphasis added).
[4] Id., at p. 112.

The De Minimus Exception

As a sop to smaller firms, on which the impact of this new reporting scheme will fall disproportionately, FINRA includes a $5,000 de minimus exception and another bald statement that "…many of the line items will not apply to smaller firms with limited product offerings."[5] We believe strongly that the de minimus exception should be available for items that are less than a dollar amount minimum, such as $5,000, or a percentage of aggregate revenues minimum, such as 10%, for example. Broker-dealers would then not be required to analyze minor amounts which do not have significant meaning. We believe that the $5,000 exception is far too low. Without linking an exception to a percentage of the totality of a particular major category, the broker-dealer would need to report minor results which, in the scheme of things, are barely relevant. We note that part of the impetus for the Proposed Schedule is the fact that so many broker-dealers have been reporting most of their income or expenses on a single line. There is little reason to over-react by insisting on granularity where a particular item is greater than $5,000 but is still a minute percentage of a major category of a broker-dealer's income or expenses.

It is clear to us that FINRA's and regulators' needs have not been served as well as they could have been because the FOCUS Report has not been modified to keep up with the times. We believe that the preferable means for regulators to obtain more comprehensive information would be through a revised FOCUS Report that would incorporate regulatory needs and the ability for broker-dealers to provide meaningful data in a mutually acceptable format. The FOCUS Report is an SEC report. A joint task force consisting of FINRA and other regulators should be convened to produce a meaningful revised FOCUS Report. Using similar analytic

[5] Id., p. 8, §B.

tools in reviewing the data presented on these reports would also be a meaningful step. Indeed, it goes way beyond adding more line items, which may make some sense. In fact, we would suggest ridding the FOCUS Report of useless distinctions such as the separation of trading and investment income, or, worse yet, separating realized and unrealized income on investments.

Surely there will be some broker-dealers that may be intimidated by a report with more line items. Smaller broker-dealers should have a less detailed report than the larger ones, much as exists now. As for us, we would rather submit reports that have the information that regulators truly need than to receive telephone calls from regulators who seek greater clarity with respect to reported items. That not only wastes their time; it wastes ours, too.

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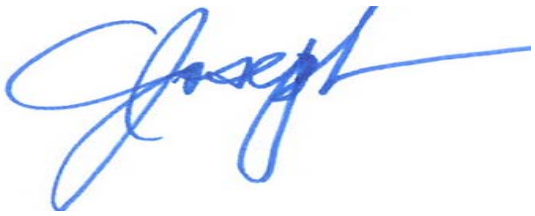
Thank you for the opportunity to comment on the Proposed Rule. Should you have any further questions, feel free to call Howard Spindel at 212-897-1688 or Cassondra Joseph at 212-897-1687, or by e-mail at **hspindel@intman.com** or **cjoseph@intman.com,** respectively.

Very truly yours,



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cc: SEC Commissioners