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March 29, 2012

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

Re: File Number SR-FINRA-2012-018

Dear Ms. Murphy:

I am very pleased to have the opportunity to comment on the proposed amendments to NASD Rules 1012 and 1017. Before offering my comments on the new proposed Form CMA, I would like to share with you my background and experiences with Continuing Membership Applications.

Like many of my colleagues in the broker-dealer industry, I am a lawyer focusing on broker-dealer regulation and the securities markets. For over a decade, however, much of my practice in this area has involved providing transactional regulatory advice to a wide variety of market participants including major international banks, domestic and foreign investment banks, full-service and boutique brokerage firms, introducing and clearing firms and Alternative Trading Systems. I have advised on domestic and cross-border capital market transactions; strategic corporate transactions, including mergers, acquisitions, joint ventures and dispositions involving broker-dealers; the creation and restructuring of major business units within broker-dealers and the rationalization and integration of broker-dealers within global financial services firms. As a result of my involvement in this transactional regulatory activity, I have worked very closely with FINRA on the 1017 process throughout the years and have filed more CMA applications than I can count at this point in my career. Because my representation of numerous firms on a wide array of 1017-related transactions is well known, FINRA requested my insights on the Form NMA when it was first contemplated in the mid-2000s. At the time I believed – and continue to believe – that the Form NMA successfully created a standardized application that all firms can utilize to apply for FINRA membership. In the context of new membership applications, one size really does fit all and regardless of the complexity of their business models, capitalizations, or organizational structures, all firms applying for FINRA membership must evidence, de novo, a basic ability to comply with the membership standards set forth in FINRA Rule 1014. The creation of a standardized form to collect basic required information is both appropriate and useful in determining the ability of the new member firm to meet these standards.

I am not convinced that the same can be said in the context of existing members and the proposed Form CMA.

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Before I express my concerns with the new proposed Form CMA, I do want to say that I have the utmost respect for the membership staff of FINRA and would like to commend FINRA on its move to centralize the filing and review process of both New Membership Applications and Continuing Membership Applications within the membership group located in District 10. I believe this centralization of FINRA staff has greatly improved both the quality and the efficiency of FINRA's review process of both NMA and CMA applications. I also see that FINRA desires to streamline and standardize the CMA process for existing member firms. I do not believe that the proposed changes to the Rule 1017 and the creation of Form CMA will achieve FINRA's stated aims.

Through my years of experience representing a variety of member firms requiring 1017 filings, I have become convinced that no two firms are the same, and no two CMA applications are alike. Every firm and every 1017 transaction requires the telling of a unique story – and transactions involving multiple firms only complicate the story. Firms with extensive regulatory histories (with numerous letters of caution and disciplinary actions) have very different obstacles to overcome and stories to tell than transactions involving firms with little or no regulatory history. Firms that have never undergone a 1017 event will approach the telling of their stories and the 1017 process very differently from firms that have experienced 1017 related events every year or two. While a seasoned firm faces its own challenges in succinctly compiling a 1017 filing, it benefits from the lessons learned from experiencing the process on numerous occasions. It acquires a better understanding of FINRA's role and objectives in the process and how to provide FINRA with the information necessary for FINRA to review and approve the 1017 event. While I commend FINRA in its desire to enlighten firms on how to file a 1017 application more effectively and to more efficiently comply with the standards of Rule 1014, I do not believe that the proposed version of Form CMA will accomplish either goal.

In my experience, the CMA process works best when the actual filing is made after consultation with FINRA. This preliminary conversation enables the member firm to preview its story with FINRA and for FINRA to form a basic understanding of the scope of the 1017 event through Q & A. I have found that these types of meetings help FINRA and the member firm to set realistic expectations, resulting in fewer information deficiencies and unnecessary delays. While I am not suggesting that FINRA require firms to have a pre-filing meeting, I offer up, from years of practical experience, that this practice has created a more efficient filing and review process than filings that do not have the benefit of FINRA input prior to filing.

I am concerned that the proposed Form CMA will not garner the same efficient results that pre-meetings do. The proposed Form CMA encourages firms to approach the 1017 filing with a "kitchen sink" mentality. Rather than tailoring the application to a firm's specific set of circumstances, the 60-page Form CMA attempts to treat the applicant like a "new member" rather than a "continuing member" applicant. The Form CMA casts too wide an information net in attempting to satisfy the standards set forth in Rule 1014. Proposed Form CMA, as it is currently drafted, will create unnecessary and burdensome information requirements on member firms, and equally unnecessary and burdensome demands on FINRA to sift through irrelevant information. As proposed, Form CMA will increase unnecessarily the time required for applicants to file, and for FINRA to review, a 1017 application.



In support of my contention that the proposed Form CMA is overly broad and confusing, and goes beyond the scope of a member firm's current obligations under Rule 1017, I offer the following examples:

1. Under Standard 1, Form CMA requests member firms to provide the "name of all persons or entities, including other broker-dealers and investment advisory firms that will become affiliated with the Applicant, describe the relationship, and the business conducted by such entity and identify whether the applicant will be conducting business with or on behalf of the entity." I believe this request exceeds the current scope of information sought by FINRA pursuant to this Standard. In addition, the request is too broadly written. Are firms expected to provide an SEC Rule 17H type of filing? Is the information listed on Schedule D of a Firm's Form BD that lists "Control affiliates engaged in securities activities or investment advisory activities" sufficient? For a firm that is the subject a global acquisition, the ability to obtain this information regarding all its affiliates prior to the close of the transaction is unrealistic. The burden this request creates on both the firm to produce and FINRA to review is unnecessary for compliance with Standard No 1: "Requiring complete and accurate application and documents."
2. Under Standard 1, FINRA requests "formation documents for any entities including holding companies that are or will be new owners, directly or indirectly of the firm." Once again this request goes beyond the current practice in complying with this standard in 1017 filings. Firms filing a change of control may be requested to file the corporate formation documents for its direct parent, but not for each and every entity in the chain of ownership. What purpose does it serve to provide formation documents for an ultimate parent entity that may be many levels removed from the broker-dealer and incorporated in a foreign jurisdiction or a public company? The burden this request creates on both the firm to produce and FINRA to review is, again, unnecessary for compliance with Standard No 1.
3. Under Standard 1, FINRA is requesting firms to verify current business activities. This is a deviation from the current practices required under a 1017 filing. Furthermore, Form CMA, as proposed, is unclear as to what circumstances a firm must verify its current business activities. For example, if the firm is undergoing a change of control and not applying for a material change of business, is it required to verify its existing business activities? Additionally, what constitutes a change in a current business activity? This concept is completely new to the 1017 process – FINRA has never before requested this information and member firms do not have guidance on how to respond. Is this a different standard from a material change of business?
4. Under Standard 1, FINRA requests a statement describing how the applicant and its associated persons will be compensated for the proposed activities. Once again, this request is for information not typically provided or required pursuant to Standard 1. Applicants are expected to provide a projection of income and expenses for a 12-month period, but not to address specifically how individuals will be compensated for activities. This request seems broad and confusing. For

example, to the extent a firm has numerous compensation structures for its registered reps based on complicated formulas, does FINRA now require that firms provide that kind of detail, and, if so, what purpose does this information serve to further FINRA's review for compliance with Standard 1?

5. Under Standard 3, "Ability to Comply with Laws and Rules," Question 3 of the Form CMA creates a new request of firms and their associated persons who "have been found in violation of federal securities laws or FINRA rules on **more than one occasion** to identify the nature of the repetitive occurrence, the corrective action the applicant has taken and the specific persons with responsibility for supervision in the areas noted." Once again, this is not data FINRA currently requests under its existing Standard 3 and the proposed request goes beyond the standard information sought by FINRA pursuant to this Standard 3, which is set forth in Question 2 of this section of the Form CMA. FINRA should provide guidance on why this "more than one time violation" is the new standard requiring explanation and additional information. In addition, should firms with thousands of associated persons be required to respond in the affirmative for actions committed by associated persons while at another firm or that occurred many years in the past? How should a firm be required to monitor this type of counting of similar violations? The burdens created by this request (especially for firms with lengthy histories and numerous associated persons) far exceed the probative value of any additional information garnered that Question 2 of the Form CMA does not already provide.
6. Under Standard 6, "Adequate Communications and Operational Systems," Question 6, FINRA asks the applicant to discuss its use of social media sites and how it ensures compliance with FINRA guidance regarding such mediums. Although I do not take issue with FINRA's desire to understand a firm's use of social media, this request coupled with its request for screenshots of both applicant-facing and outward-facing pages of the social media sites, does not currently fall within the scope of Standard 6, and FINRA should explain why it is now a required submission for CMA applications.
7. Under Standard 10, "Adequate Supervisory System," FINRA requests supporting documentation of all Rule 3270 notifications for principals, other than the FINOP, that have outside business activities. This request is overly broad and unnecessary. Who are considered the principals of a member firm? Is it every person with a principal's license or some smaller subset? Why is the actual Rule 3270 notification required to be submitted to FINRA in a CMA, when the rule itself does not require a filing with FINRA in the ordinary course of business? Furthermore, each registered person's U-4 (including principals) discloses an individual's outside business activities. Once again, this request for additional extraneous information defeats FINRA's stated purpose of "obtaining the basic information needed."

In addition to the confusion created by the Proposed Form CMA, the language FINRA proposes to add to Rule 1017 also creates confusion. The new language requires an applicant to submit an application that includes "Form CMA" and "a business plan, pro forma financials, an



organization chart and written supervisory procedures reflecting the change.” The information requested by FINRA of the Applicant pursuant to the proposed Form CMA would already include information on the changes to the business plan (See Standard 1); pro forma financials (see Standard 7), an org chart (See Standard 1) and written supervisory procedures (See Standard 9). If an important purpose of the creation of a Form CMA is to “provide continuing applicants with the benefits of a streamlined application process,” the rule should be written to reflect the utility of the Form CMA and not the redundancy and potential confusion the proposed language suggests. To the extent a member firm submits a completed Form CMA, the need for business plans, pro forma financials, organization charts and WSPs has been satisfied. The rule should not suggest that these items are required in addition to the submission of the Form CMA.

In conclusion, while I agree, in principle, with FINRA’s laudable goals of providing continuing membership applicants with the benefits of a streamlined application process and a reduction of administrative delays, I have serious concerns that the proposed Rule 1017 and Form CMA does not achieve either goal. The SEC should require FINRA to explain more thoroughly how the contents of the proposed Form CMA actually serve to benefit member firms in complying with Rule 1017. In my experienced opinion, the proposed form distracts both the member firm and the regulator who will review the contents of it from focusing in on the pertinent facts and analysis required to approve a 1017 application. NMA applications and applicants are very different from CMA applications and applicants. In an NMA context, the kitchen sink approach works nicely. In the CMA context, where all parties are focused on the timing of the transaction or event, precise information is what is required. The proposed Form CMA falls far short of obtaining the precise information needed to streamline the process and achieve more efficient review and approvals by FINRA.

Once again, I appreciate this opportunity to submit my comments on FINRA’s proposal, and would welcome the opportunity to discuss my comments in greater detail with either the SEC and its staff, or with FINRA and its staff. I am also happy to work with FINRA to create a better method of achieving its stated goals, which I whole heartedly support, of “reducing applicants’ administrative burdens and ensuring a more streamlined and efficient continuing membership application process for both FINRA and applicants”. If you have any comments or questions, please do not hesitate to contact me at (212) 407-4279 or scohen@loeb.com.

Sincerely,

A handwritten signature in black ink that reads "Stephen H. Cohen".

Stephen H. Cohen
Partner