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January 21, 2014

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

**Re: File No. SR-FINRA-2013-051 – Response to Comments**

Dear Ms. Murphy:

This letter responds to comments submitted to the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing,<sup>1</sup> a proposed rule change to amend the Uniform Branch Office Registration Form (“Form BR”), which is used by firms to register their branch offices with FINRA, the New York Stock Exchange (“NYSE”), and participating states via the Central Registration Depository (“CRD®”). The Commission received three comment letters in response to the Proposing Release.<sup>2</sup>

The proposed amendment would (1) eliminate Section 6 (NYSE Branch Information), which is currently applicable only to NYSE-registered firms; (2) add questions relating to space sharing arrangements and the location of books and records that are currently only in Section 6 and make them applicable to all members; (3) modify existing questions and instructions to provide more detailed selections for describing the types of activities conducted at the branch office; (4) add an optional

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<sup>1</sup> See Securities Exchange Act Release No. 71027 (December 9, 2013), 78 FR 75954 (December 13, 2013), (Notice of Filing File No. SR-FINRA-2013-051) (the “Proposing Release”).

<sup>2</sup> Letters from Jason Doss, President, Public Investors Arbitration Bar Association,, Atlanta, Georgia, dated January 2, 2014 (“PIABA”); Clifford Kirsch and Eric A. Arnold, Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers, dated January 3, 2014 (“CAI”); and David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute, Inc., dated January 3, 2014 (“FSI”).

question to identify a branch office as an “Office of Municipal Supervisory Jurisdiction,” as defined under the rules of the Municipal Securities Rulemaking Board (“MSRB”); and (5) make other technical changes to adopt uniform terminology and clarify questions and instructions (collectively, the proposed amendments to Form BR are hereinafter referred to as the “Updated Form BR”).

The comments received by the Commission on the rule proposal and FINRA’s responses to the comments are discussed in detail below.

#### **A. General Support**

PIABA, CAI and FSI expressed overall support for the proposed amendments to the Form BR. FSI noted that the changes to Form BR will make the branch office registration process more efficient and add clarity to the questions currently asked on the form. PIABA supports the increased efficiency of the streamlined Updated Form BR.

#### **B. Proposed Question on Space Sharing Arrangements (Section 4 of Updated Form BR)**

The Updated Form BR proposes to add a question about space sharing arrangements at the branch office. Specifically, the proposed space sharing arrangements question in Section 4 of the proposed Updated Form BR (“Question 4A”) asks “[d]oes this branch office occupy or share space with or jointly market with any other *investment-related* entity?” If the answer is “yes,” a member firm must provide the CRD number (if applicable) and name of the investment-related entity and select the type of investment-related entity. The term “investment-related” is defined in Section 1 (Explanation of Terms) of the proposed Updated Form BR to mean “pertains to securities, commodities, banking, insurance, or real-estate (including, but not limited to, acting as or being associated with a Broker-Dealer, issuer, investment company, Investment Adviser, futures sponsor, bank or savings association).”

##### **1. Support for Additional Disclosure Requirement**

PIABA supported the proposed space sharing arrangements question and stated, “[i]n addition to the increased efficiency of the streamlined Updated Form BR, the inclusion of details in the proposed form as to space sharing arrangements and locations of office records provide additional important information to the investing public. As such PIABA supports the disclosure of such information from all firms.”

2. Concern Regarding Burden for Independent Broker-Dealers; Request for Clarification Regarding the Scope of Question 4A and Term "Jointly Markets"

FSI and CAI expressed concern regarding proposed Question 4A and suggested that FINRA eliminate this question. CAI, in the alternative, requested sufficient time for member firms to collect the information necessary to respond to Question 4A. FSI specifically noted that if such space sharing arrangements exist at a branch office, then firms must provide the name, CRD number (if appropriate) and type of entity, which could be burdensome. FSI stated that "for independent firms, space sharing arrangements are not an uncommon practice and may include several different "doing business as" (DBA) entities. Because these different DBA businesses and entities may be changing frequently, this may create difficulty for firms to constantly update and monitor this information for purposes of filing Form BR." In addition, FSI stated that "while this information would not have been particularly burdensome for the business model of NYSE-registered firms under the current Form BR, the proposed changes would introduce challenges for firms in the independent channel."

CAI also expressed concern that disclosure of the "type of investment-related entity" includes insurance entities. CAI stated that such information is not readily maintained by insurance-affiliated and other types of member firms and collecting the information could prove to be burdensome. In addition, CAI requested that FINRA clarify the meaning and scope of the term "jointly markets," as used in the proposed space sharing arrangements question to make it clear that such term does not include every insurance product manufacturer that each branch office is authorized to offer. They asserted that "[o]therwise, this would produce a large volume of information and it is unclear how all that detailed information would be helpful to FINRA or other regulators."

Further, FSI and CAI raised concerns regarding the burdens of providing the information required under proposed Question 4A. CAI stated that "FINRA has underestimated the challenges and expenses insurance affiliated broker dealers would face." FSI stated that "[b]ecause clients do not view Form BR information, and the information provided in the proposed changes can be obtained by regulators during a scheduled examination and interview, FSI believes the burden of providing this information is not outweighed by any benefit to investors or regulators."

FINRA recognizes that members that were not previously required to complete Section 6 (NYSE Branch Office Information – Office Sharing) will have to provide the name, CRD number and type of investment-related entity with which a branch office occupies space on the Updated Form BR. As an initial matter, FINRA notes that the CRD system will automatically complete the CRD number field (if applicable) when the name of the investment-related entity is entered on the Updated Form BR

and vice versa. Therefore, a member firm will not be required to seek out the CRD number, if applicable, for each investment-related entity with which the branch office occupies space.

In addition, FINRA believes that the concerns raised by the commenters regarding the burden of collecting and monitoring information relating to space sharing arrangements at each branch office, particularly for member firms in the independent broker-dealer channel, stem from a misunderstanding regarding the scope of the proposed space sharing arrangement question. Question 4A on the proposed Updated Form BR seeks to elicit information regarding investment-related businesses that jointly occupy office space with the branch office. The term “jointly markets,” as used in the proposed Question 4A does not require disclosure of each insurance product manufacturer that each branch office is authorized to offer, but instead seeks disclosure regarding other investment-related businesses that operate or jointly market business services out of the same physical space as the registered branch office. The question is meant to capture, for example, instances where a registered representative at a registered branch office also operates an insurance business out of that same physical location, a registered branch office location jointly occupies the physical space with an investment adviser, or the registered branch office jointly markets the location with other investment-related entities as offering services. Given the more narrow scope of proposed Question 4A, FINRA believes compliance burdens associated with the proposed question are more limited in nature.

Moreover, FINRA strongly believes that the proposed space sharing arrangements question serves a valuable regulatory purpose. The proposed question will collect basic information on space sharing arrangements that will enable regulators to better conduct focused, risk-based examinations based on a greater understanding of the activities occurring at each branch office, and also will enable member firms to better focus on potential conflicts of interest, customer confusion, recordkeeping and other issues that may arise when one location is used for multiple business purposes.

FINRA disagrees with the commenters’ assertions that FINRA has failed to take into account the potential costs and burdens to member firms associated with adopting proposed Question 4A. FINRA notes that current Question 4A on Form BR already elicits information regarding space sharing arrangements with a bank, saving bank, saving association, credit union, or other federally insured depository institution and, therefore, member firms not previously subject to Section 6 of Form BR are nonetheless currently providing information relating to these more limited space sharing arrangements. Further, FINRA believes that member firms already should have information regarding outside business activities and space sharing arrangements at each registered branch office available to enable them to engage in effective supervision and inspections of branch offices. FINRA also notes that the commenters,



while expressing concerns regarding burdens and costs associated with the proposal, did not provide any specific estimates of compliance costs.

### 3. Miscellaneous and Technical Changes

CAI questioned whether the Form BR Working Group included insurance-affiliated broker-dealers and fully considered how the Updated Form BR might affect such member firms' sale of insurance products. FINRA notes that the Form BR Working Group consisted of representatives from a diverse cross-section of the securities industry and state regulators, including representatives from independent broker-dealer member firms, many of which sell insurance products.

CAI also recommended two technical changes to Section 4: (1) clarify that the CRD number requested in Section 4(a) is not calling for the CRD Branch Number but rather the CRD number of the investment-related entity (if applicable); and (2) revise the column in Section 4(a) currently titled "Name" to "Name of Investment Related Entity" for additional clarity.

FINRA believes that, by expressly using the term "investment-related entity," in the Instructions to Section 4A, member firms should not be confused regarding the entity about which they are being asked to provide information. FINRA further believes that member firms should understand that this Section elicits the CRD number of the investment-related entity (if applicable). To the extent member firms have questions when completing this Section, FINRA staff will provide guidance as necessary, including in the regulatory notice announcing approval of the rule change.

### **C. Implementation Timeline**

PIABA expressed concern that the proposal does not impose an affirmative duty for members to submit the Updated Form BR by a date certain. PIABA stated that the proposed implementation timeframe would require members to complete the proposed new questions only when a member firm's existing information on file has become inaccurate or incomplete. PIABA expressed concern that this vague standard would invite unnecessary problems and urged the Commission to require that all members submit completed Forms BR by a date certain. CAI, as noted above, requested sufficient time for member firms to collect the new information necessary to respond to Question 4A.

FINRA reiterates that it believes that the proposed implementation timeline is reasonable and strikes the correct balance, especially in light of the clarification provided above regarding the scope of the proposed space sharing arrangements question (Question 4A). The more flexible implementation approach will allow member firms to manage updating information as necessary, while limiting the associated burden on member firms. As noted in the Proposing Release, FINRA will

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evaluate the number of registered branch offices of FINRA member firms for which an Updated Form BR has not been filed one year after deployment and may consider imposing a future deadline for providing the proposed new information items if a significant number of registered branch offices have not filed the Updated Form BR in the ordinary course.

FINRA believes that the foregoing, along with the discussion in the Proposing Release, fully responds to the issues raised by the commenters. If you have any questions, please contact me at [REDACTED]

Sincerely,

A handwritten signature in black ink that reads "Kosha Dalal". The signature is written in a cursive, flowing style.

Kosha K. Dalal