



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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March 12, 2014

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

**RE: FINRA Notice of Filing of Proposed Rule Change Relating to Per Share
Estimated Valuations for Unlisted DDP and REIT Securities; SR
FINRA-2014-006**

Dear Ms. Murphy:

The U.S. Chamber of Commerce (“Chamber”) is the world’s largest business federation representing over three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. To achieve this objective, it is an important priority of the CCMC to advance an effective and transparent system for capital formation. The CCMC welcomes the opportunity to provide comment on the Financial Industry Regulatory Authority’s (“FINRA”) Notice of Filing of Proposed Rule Change Related to Per Share Estimated Valuations for Unlisted DPP and REIT Securities (“the Proposed Rule Change”) published by the Securities and Exchange Commission (“SEC” or “the Commission”) on February 19, 2014.

The CCMC supports the efforts of FINRA to provide protections and greater transparency to investors through amendments to NASD Rule 2340 and NASD 2310. However, we have serious concerns that the Proposed Rule Changes could ultimately result in less transparency and increased investor confusion by requiring the reduction of estimated offering and organizational costs on initial investor account statements. We believe that adopting the Proposed Rule Change with this mandate will have repercussions to the commercial real estate market and the broader U.S. economy

without commensurate benefits. In this regard, we recommend that the SEC reiterate and enforce its view that FINRA must adhere to the same economic analysis requirements that the Commission itself complies to ensure the Proposed Rule Change promotes efficiency, competition and capital formation. Our concerns are more fully discussed below.

Share Value Reporting Based on “Net Investment”

Currently, unlisted DPPs and REITs use an arbitrary \$10.00 per share price during the offering period because it allows for ease and simplicity in determining the number of shares to be issued. This offering price, however, does not represent the book or net asset value of a share in the unlisted DPP or REIT, the amount of proceeds an investor would receive in the event of liquidation, or the price at which the shares would be traded if they were listed on an exchange. These factors are all clearly disclosed in the unlisted DPP or unlisted REIT’s prospectus.

Under the Proposed Rule Change, the “Net Investment” must be disclosed on investors’ account statements during the offering period prior to the development of an independent valuation and the amount shown reflect a reduction to the investors’ total investment of commissions and dealer manager fees. The Proposed Rule Change also requires that **estimated** offering and organizational expenses be netted from the investment value. Because costs vary based on the total amount of funds raised and the duration of the offering period – some that can last up to seven years, offering and organizational costs cannot be readily determined at the outset of an offering. In addition, there is no reliable methodology for accurately estimating these costs at the time of the offering. As such, the CCMC is concerned that using estimates of offering and organizational costs could result in a misleading investment value on customer account statements that will add to investor confusion.

Proposed Amendment Could Have Adverse Impact on Commercial Real Estate Market and the Broader Economy

Like many other financial/commercial sectors in the U.S. economy, the unlisted DPP and REIT markets experienced turmoil in the years following the financial crisis. As the industry continues to recover from the economic downturn and commercial real estate activity resumes healthy level activity, financial regulators

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should heed caution when considering rules that could hamper capital formation and job growth. If investors are misled to believe the value of their unlisted DPP or REIT investment has experienced an immediate loss because the amount listed on the customer account statement nets the estimated organizational and offering expenses, it could deter future potential investors from considering unlisted REITs and unlisted DPPs as a viable investment alternative. The effects of such actions could dampen capital formation in the commercial real estate market.

Moreover, the lack of capital flowing into the unlisted DPP and REIT markets will have repercussions for the broader economy. These products have played a key role in the recovery of distressed markets since the economic collapse, providing tens of thousands of Americans with employment directly and indirectly through the development, management, and maintenance of assets held by these unlisted DPPs and unlisted REITs. Only by the Commission, FINRA, and other regulators proceeding judiciously in a manner that promotes transparency without unduly inhibiting growth and capital formation will the U.S. economy return to its former vibrancy.

Cost Benefit Analysis

For more than three decades, cost-benefit analysis has been a fundamental tool of effective government. In this regard, we appreciate the SEC's adoption and implementation of guidance regarding enhanced economic analysis of SEC rulemakings. Likewise, FINRA has also taken efforts to make robust cost-benefit analysis a priority for the organization. In particular, we note FINRA's hiring of a chief economist to enhance its economic analysis of rules and the release of the Framework in September.

Despite these commendable efforts, however, FINRA has failed to conduct a robust cost-benefit analysis on the Proposed Rule Change. Merely stating that FINRA does not believe that the Proposed Rule Change will result in any burden on competition does not satisfy the requirements of sound economic analysis. Additionally, the U.S. courts have agreed that self regulatory organization (SRO) rulemakings, including FINRA, are final agency actions under the Commission, and therefore, are legally required to conduct a cost-benefit impact analysis of all rules. Because FINRA has blatantly failed to conduct such analysis, we urge the

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Commission to remand this rule back to FINRA for economic analysis before approving the Proposed Rule Change.

Conclusion

The CCMC believes that the Proposed Rule Change could have serious repercussions to the commercial real estate market and the broader U.S. economy. The requirement to deduct estimated offering and organizational costs from net investment values on initial investor account statements will mislead investors and could result in increased investor confusion. In addition, the inclusion of a cost-benefit analysis as required by law and reinforced by the courts will help ensure that such rule changes will not hamper capital formation, competition and efficiency.

Sincerely,

A handwritten signature in black ink that reads "David Hirschmann". The signature is written in a cursive, slightly slanted style.

David Hirschmann