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VIA ELECTRONIC MAIL

March 12, 2014

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

Re: File No. SR-FINRA-2014-006, Proposed Rule Change Relating to Per Share Estimated Valuations for Unlisted DPP and REITS

Dear Ms. Murphy:

CNL Financial Group, LLC ("CNL"), appreciates the opportunity to comment on the proposed rule changes to NASD Rules 2340 and 2310 relating to the inclusion of a per share estimated value for publicly registered unlisted DPP and REIT securities on the customer account statement, and the modification of the requirements applicable to FINRA members' participation in public offerings of DPP or REIT securities (together, the "Proposed Amendments"). By way of introduction, CNL is a private alternative investment management firm currently advising a non-traded business development company and several non-traded real estate investment trusts. Since its inception in 1973, CNL and/or its affiliates have formed or acquired companies with more than $28 billion in assets.

We generally support the Proposed Amendments and the regulatory initiatives of promoting reliable investment transparency and increasing investor protections for publicly registered unlisted DPP and REIT securities. Given the potential for impact that the Proposed Amendments will have on the unlisted DPP and REIT industry, we would like to express our concerns with certain aspects of the Proposed Amendments that may pose significant challenges to rule implementation. Under the Proposed Amendments, we believe that deduction of organizational and offering costs from reported account statement values, adjustments for over distributions, and an inadequate time period for rule implementation may impose an unnecessary burden on competition and prevent capital formation for the unlisted DPP and REIT industry.

First, we are concerned that the "net investment" methodology under the Proposed Amendments may undermine the regulatory initiatives of investor protection and reliable investment transparency for publicly registered unlisted DPP and REIT securities.

Proposed Rule 2340 provides that "at any time before the second anniversary of breaking escrow, [a] member may include a per share estimated value reflecting the "net investment." The proposed rule explains that net investment must "be based on the 'amount available for investment' percentage in the "Estimated Use of Proceeds" section of the offering prospectus." The proposed rule further requires deduction "of cumulative distributions per share that exceeded GAAP net income per share for the corresponding period, after adding back depreciation and amortization or depletion expenses" to determine net investment.

CNL recommends that "net investment" be defined as Gross Offering Proceeds reduced by "point of sale" costs (selling commissions and dealer manager fees). We support this methodology as an approach more consistent with other "point of sale" disclosure requirements utilized by other investment securities. For example, a member is not required to deduct applicable surrender penalties from the reported value under current statement requirements for investments in variable annuity products. We feel that by deducting organizational and offering expenses from reported value, the Proposed Amendments go beyond account statement reporting requirements[1] for other retail investment products.

Application of the "net investment" methodology under the Proposed Amendments will result in either an understatement or overstatement of reported account value if organizational and offering costs are deducted from Gross Offering Proceeds. Organizational and offering costs are estimated at commencement of an offering and remain uncertain and indeterminate until the ultimate amount of capital is raised in the offering. As a practical matter, it is common practice for the unlisted DPP and REIT issuers to provide estimates of issuer organizational and offering costs in the Use of Proceeds section of the Prospectus based upon estimated minimum and maximum capital raise levels. We note that the use of either of these estimates would render a reported value stale and potentially inaccurate almost immediately. For example, if members are required to use the "minimum level" estimate from the use of proceeds table, at some point thereafter as capital is raised, the deduction of organizational and offering costs will be overstated when compared to the actual costs incurred.

We request clarity as to which of these two estimates it is intended a general member will utilize. We also question how using "outlier" estimates of organizational and offering costs will improve the reliability of reported account statement values. We feel that using a "net investment" methodology where Gross Offering Proceeds are reduced by "point of sale" costs offers the advantage of easily identified costs by firms participating in the offering. However, we also admit that implementation of such an approach will not be without its challenges and recommend that the industry is given until December 31, 2015, for transition time after final rules are adopted for implementation. We believe that this timing will allow enough time for issuers to make required adjustments to offerings, allow for resolution of any rule interpretive issues, and permit members to educate investors regarding changes to their account statements.

Second, we are concerned that differences between the requirements under the "Net Investment" and "Independent Valuation" methodologies and the valuation requirements required under the Investment Company Act of 1940 ("1940 Act") will create uncertainty for unlisted Business Development Company DPPs.

A business development company ("BDC") is a closed-end investment company that is regulated under a specialized regime of the 1940 Act. BDCs must invest at least 70% of their total assets into "eligible portfolio companies," which generally means the debt or equity securities of private U.S. companies or thinly traded public U.S. companies that have a public float of less than $250 million[2]. As of September 30, 2013, ten unlisted BDCs had total assets under management of

[1] We further note that in 2004 (and as further amended in 2005) the SEC proposed the adoption of two new rules under the 1934 Act that would require a point of sale compensation disclosure document for mutual fund, variable insurance product, and 529 Plan transactions. While the new rules have not been adopted and it is not clear what additional costs or expenses may be required to be disclosed, we note that the approach of providing increased point of sale disclosure is deemed to be adequate for other investment securities. Please see Exchange Act Release no. 49,148 and no. 51,274.

[2] Please see Section 80a-2(a)(46) of the 1940 Act.

approximately[3] $11.7 Billion. Unlisted BDCs continue to play a critical role in the U.S. economy as a source of capital and expertise to U.S. middle market businesses.

As an advisor to an unlisted BDC, we can attest to the robust framework required by the 1940 Act for determining and publishing net asset value of unlisted BDCs on a regular basis. Under the 1940 Act, the board of directors for an unlisted BDC is required to: (i) adopt valuation policies and procedures that are consistent with the requirements of ASC Topic 820 Fair Value Measurements and Disclosure, (ii) value the unlisted BDC's portfolio securities and establish a net asset value ("NAV"), and (iii) publish such NAV at least quarterly. As part of this process, each debt and equity security is separately valued and disclosed on a "Schedule of Investments" contained in the unlisted BDC's financial statements. Importantly, we note that the 1940 Act prohibits unlisted BDCs (and other 1940 Act Companies) from selling their shares at a price below NAV, after deducting selling commissions and dealer manager fees.

As currently drafted, we are concerned with the distinctions between the "independent valuation" methodology under the Proposed Amendment and what is required for unlisted BDCs under the 1940 Act. We observe that the independent valuation methodology requires the use of, or material assistance from, a third-party valuation expert. Although most board of directors[4] of unlisted BDCs use third-party valuation firms or pricing services as part of their regular valuation procedures, the 1940 Act does not require the use of third-party valuation firms or pricing services in connection with quarterly valuations. In our view and in light of the valuation requirements under the 1940 Act, the independent valuation methodology is not appropriate for unlisted BDCs. While not necessarily inconsistent with each other, the Proposed Amendments would introduce uncertainty to the industry. Consequently, we recommend that members are permitted to use the published NAV of an unlisted BDC on customer account statements.

Third, we are concerned that the adjustment for over distributions under "Net Investment" methodology imposes numerous implementation difficulties on members and undermines a level regulatory playing field across various securities types.

As stated above, the "net investment" methodology under the Proposed Amendments requires the reported value on customer account statements to be reduced to the extent "cumulative cash distributions per share that exceeded GAAP net income per share…after adding back depreciation and amortization or depletion expenses." As an initial practical matter, we question the ability of general members to make the appropriate adjustments to the estimated per share value on shareholder accounts. We anticipate difficulty because general member firms will not have the required information in a timely manner to make such a calculation. As drafted, we also question the appropriateness of making such adjustments to certain other investments that are virtually certain to be depreciating. For example, while deduction of distributions in excess of GAAP net income plus depreciation and amortization may make sense for real estate assets, such an approach would not make sense for an equipment leasing program with depreciating assets. In the case of certain asset classes other than real estate, we believe extensive accounting

[3] Based on the public filings as of September 30, 2013.

[4] We note the 1940 Act requires that a majority of the directors of a BDC must be persons who are independent (i.e., not "interested persons" as defined under the 1940 Act. The term "interested person" is defined in Section 2(a)(19) of the 1940 Act. In general, the term includes any affiliated person or member of his/her immediate family of the BDC, its investment adviser or its principal underwriter. Among other things, any individual that has, as of the beginning of the last two fiscal years, had a material business or professional relationship with any of the BDC, its investment adviser or its principal underwriter, is considered to be an "interested person."

explanations would be necessary thus creating more complexity at the expense of improving transparency on the customer's statement.

We recommend a new disclosure requirement based upon the principals of Section 270.19(a) of the 1940 Act ("Section 19(a)"). We feel that this alternative approach will do a better job of increasing investment transparency in a manner that is consistent with an approach taken by other investment securities. Section 19(a) essentially prohibits unlisted BDCs (and other 1940 Act Companies) from paying any dividend from a source other than current (or prior) fiscal year net income or accumulated undistributed net income unless a written statement accompanies such payment and discloses the source(s) of the distribution. As an advisor to an unlisted BDC, we apply Section 19(a) and its associated rules and find it to be an effective mechanism for informing investors about the source(s) of the distribution.

In a similar manner, we recommend that disclosure for other unlisted DPPs and REITs be supplemented by separate written communications to investors detailing the sources of distributions when such distributions are not provided entirely by earnings or cash flows (based on the appropriate accounting metric acceptable to the SEC for each particular asset class.) Accordingly, we would support a requirement under FINRA Rule 2310 that in order for a member to participate in an offering of unlisted DPP or REIT securities, the general partner, sponsor or issuer must agree to provide during the offering period but prior to the initial determination of an estimated share value a notice to investors which quantifies the source of distributions when such distributions come from a source other than earnings.

Fourth, we recommend that Rule 2310 be amended to better encourage alignment of interest in the compensation structure for unlisted DPPs and REITs.

We believe that the current compensation structure for the sale of DPPs and REITs under Rule 2310 should be amended to better align the interests of the general partner or sponsor, the investor, the salesperson, and the member to achieve FINRA's goals of investor protection and increased investment transparency. Unlisted DPPs and REITs are intended to be long-term, illiquid products. As such, investors need continuing account service and information on the performance of their investments. The current structure of unlisted DPPs and REITs under Rule 2310 should be adjusted to permit a fee for shareholder servicing or account maintenance to encourage members and their salespersons to perform such services. In order to encourage such activity and better align party interests, we would propose to amend Rule 2310 to allow members the ability to receive an annual service fee of up to 25 basis points as a non-distribution cost for providing client services or other shareholder servicing activities. We note that creation of a service fee for unlisted DPPs and REITs would also increase regulatory consistency across other investment products[5] as already permitted for investment company securities under NASD Rule 2830.

We further question the purpose of including all items of compensation, paid "from whatever source" in the underwriting compensation calculation under Rule 2310. We believe that payments that are not paid by the investor but contributed to or paid by the sponsor or an affiliate of the issuer to a participating member should not be included in the compensation calculation. We observe that the intended purpose of including this language has not necessarily proven to be an effective means of preventing challenges to competition between larger and smaller member firms through the over-paying of commissions. We recommend that FINRA considers removing the "from whatever source" restriction from Rule 2310 to bring more

[5] Please see 12b-1 of the 1940 Act and FINRA Rule 2830.

regulatory consistency to the rules for other investment products. We believe that market forces should ultimately dictate the outcome on this issue.

Finally, we are concerned that the proposed implementation period provided under the Proposed Amendments does not allow for enough time to accommodate the chronology of events required by the industry for rule implementation in a manner that minimizes a disruption to capital formation.

The current proposal provides for an implementation period of as few as six months between the issuance of the final amendments and the effective date ("Implementation Period"). We anticipate that one impact of implementing the final amended rules will be the redesign and restructuring of unlisted DPP and REIT products. To avoid a freeze in capital formation (and thus a freeze on capital availability to the industries that rely on funding from unlisted DPPs and REITs), we believe an implementation date of December 31, 2015, is necessary to allow for required product changes.

As explained above, necessary changes in the features of existing unlisted DPP and REIT products will require more time than six months to make the appropriate adjustments. We are concerned that if an implementation period of "as few as six months" is adopted, a gap in the market will be created that will inhibit capital formation.

We recommend that consideration be given to the incremental steps and timing required for creation of new unlisted DPP and REIT products when determining the appropriate Implementation Period. We believe that the Proposed Amendments should allow for new products to be designed and structured in light of the certainty of final amended rules. Once the amended rules are finalized, a few months will likely be required for new product structures to be designed. At some point thereafter, nine months to a year will be required for filing of the registration statement, proceeding with applicable regulatory reviews, and having the offering declared effective. Leading up to offering effectiveness, significant time is required to be spent on training and education, product marketing, development of new back-office operations, and transfer agent processing. After offering effectiveness, it will likely take three to six months for broker-dealer due diligence, selling agreement negotiations, and broker-dealer sign-on to launch a best efforts offering. In conclusion, we believe that if the Proposed Amendments do not allow for enough time to accommodate these required events, we believe that the industry will not be granted the proper opportunity to transition under the amended rules and capital formation will be impeded.

We would like to thank you for the opportunity to comment on the Proposed Amendments and extend our appreciation for your consideration of these very important concerns.

Sincerely,

Kirk A. Montgomery

Kirk A. Montgomery
Head of Regulatory Affairs
CNL Financial Group, LLC