An MEMORANDUM

To: File No. SR-FINRA-2014-006

From: Division of Trading and Markets

Date: April 9, 2014

RE: Meeting with the Investment Program Association ("IPA")

On April 2, 2014, Kevin Hogan, Mark Goldberg, and Keith Allaire, all of the IPA, met with David Blass, Lourdes Gonzalez, Daniel Fisher, and George Makris (from the SEC's Division of Trading and Markets), as well as Duc Dang and Thomas Kluck (from the SEC's Division of Corporation Finance).

The discussion focused on FINRA's proposed rule change relating to per share estimated valuations for unlisted DPP and REIT securities. The IPA representatives discussed the points raised in the IPA's comment letter dated March 12, 2014 (available at http://www.sec.gov/comments/sr-finra-2014-006/finra2014006-15.pdf). They also provided the attached presentation.

Advocating Direct Investments
Through Education

IPA
Investment Program Association

IPA / SEC Meeting
April 2, 2014
Securities and Exchange Office

SEC – IPA Meeting

Agenda, Discussion Topics

&

Industry Information

April 2, 2014

AGENDA

1. Introductions & Meeting Objectives

2. Discussion of Issues of Concern to SEC

3. FINRA's Justifiable Concerns

4. Industry Contextual Background & Responses

5. 14-06: Concepts Embraced by DPP Industry

6. 14-06: Outstanding Issues & Proposed Solutions

Section 1

Introductions
&
Meeting Objectives

Introductions & Meeting Objectives

<u>Investment Program Association Participants:</u>

- Kevin Hogan – President & CEO, IPA
- Mark Goldberg – Chair, IPA Board of Directors
  President, Carey Financial, Inc.
- Keith Allaire – Chair, IPA Financial Standards SubCommittee
  Managing Director, Stanger & Co.

<u>Meeting Objectives</u>

Section 2

Discussion Of
Issues of Concern to SEC
Regarding
DPP & Non-Listed REIT
Account Statement Reporting

Section 3

FINRA’s Justifiable Concerns:

How We Got to Where We Are Now

Genesis of FINRA's Justifiable Concerns

- 2007-8 Real Estate & Financial Collapse Triggers:
  -- Dividend Cuts By Listed and NL REITs
  -- Redemption Program Suspensions by NL REITs
  -- Investor Complaints
- Issues with Apple REIT and David Lerner
  -- Unique Product Distribution vs. Rest of the Industry

Result: FINRA's Focus on Following Weaknesses

- Long Regulatory Horizon Before Valuations Are Required
  -- 18 months After Close Of Offerings
- Concerns Regarding "Search for Yield" Among Investors

Intervening Changes

- Financial & Real Estate Crisis Past
- Goals of FINRA 09-09 Fully Implemented by DPP/NL REIT Industry and Member Firms
- Industry Promulgation of Standards and Educational Initiatives
- Product Evolution Has Improved Structures and Investor Protections
- Strong Investment Performance By “Post-Legacy” NL REITs

<u>Industry Has Addressed Issues Raised During the Crisis</u>

Section 4

DPP & Non-Listed REIT Industry Contextual Background

DPP & Non-Listed REIT Industry Contextual Background

- Capital Formation for U.S. Economic
- Investment Product Life Cycle
- Summary of Industry Investment Performance
- Product Evolution / Free Market Reponses
- Development of Industry Standards
- Selling Agreement Protocols
- Investor & Advisor Education Initiatives

Aggregate Industry Capital Raised

($ in millions)	2000 - Feb 2014	2013
NL REITs	$108,277.8	$19,595.4
Real Estate DPPs	2,129.7	2.5
Oil & Gas	2,219.7	36.9
Equipment Leasing	2,596.8	93.0
BDC	10,654.5	4,844.9
TOTAL	$125,878.5	$24,572.7

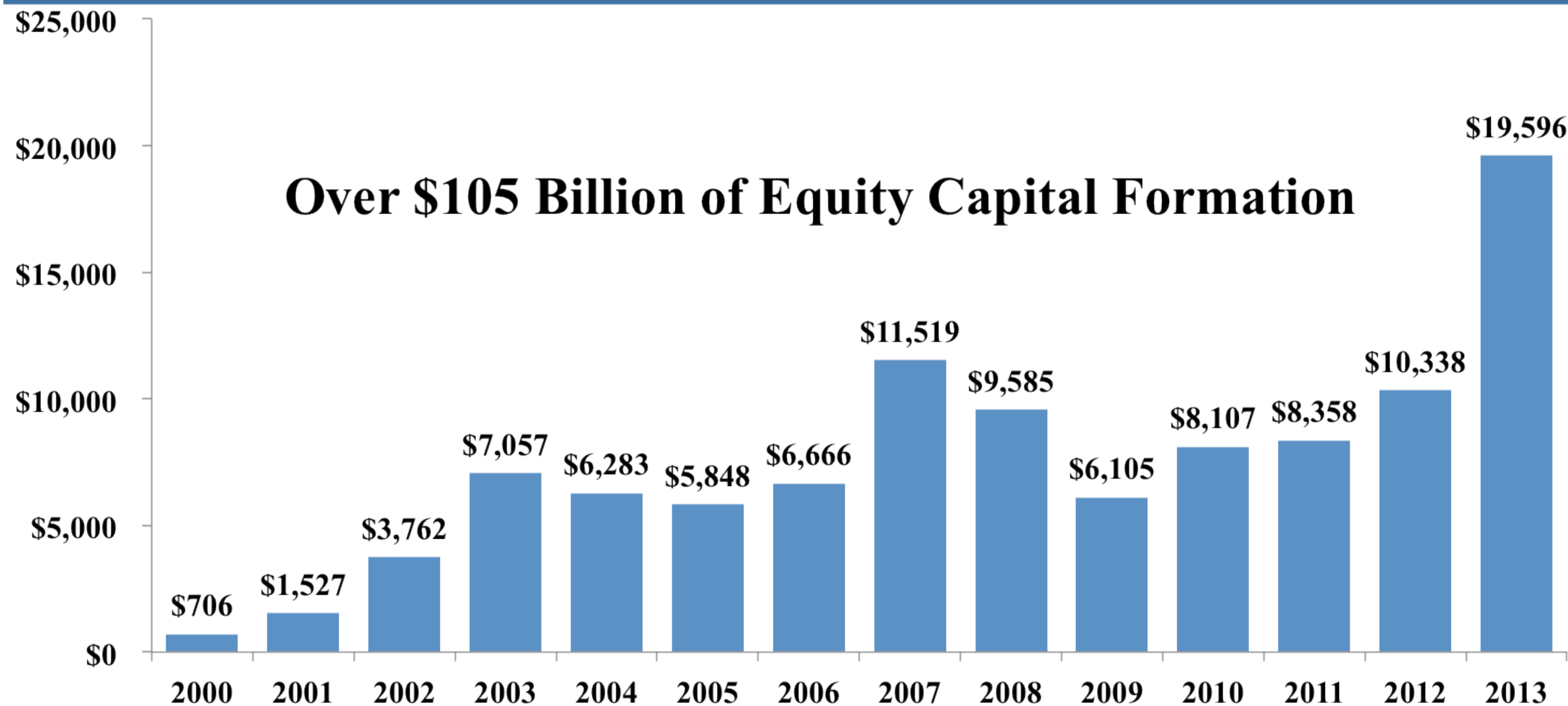
Advocating Direct Investments
Through Education

IPA
Investment Program Association

Public Non-Listed REIT Fundraising

2000 – 2013

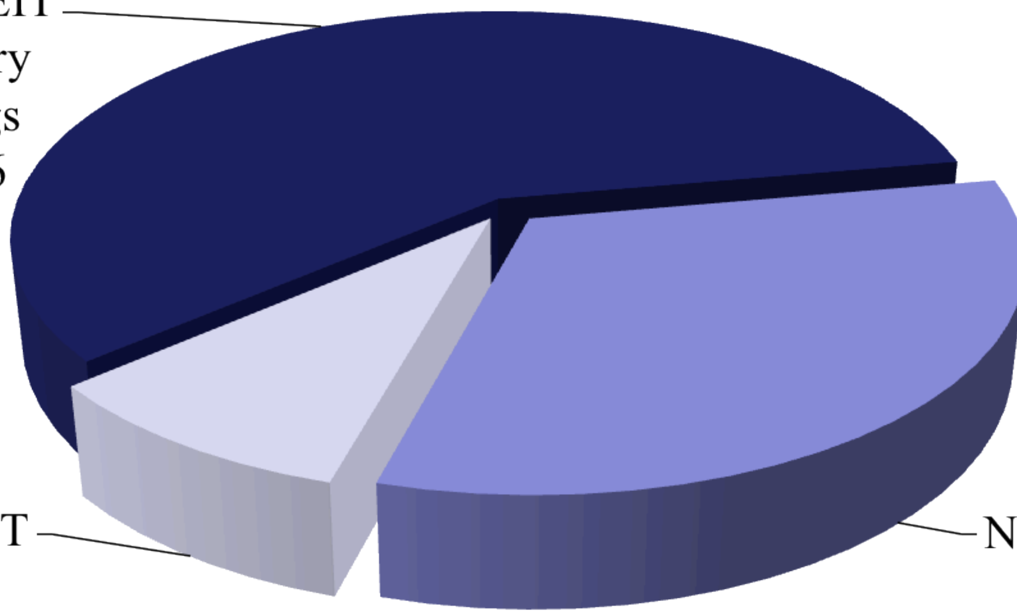
($ millions)



Source: The Stanger Market Pulse

Capital Flows to Public REITs
2013

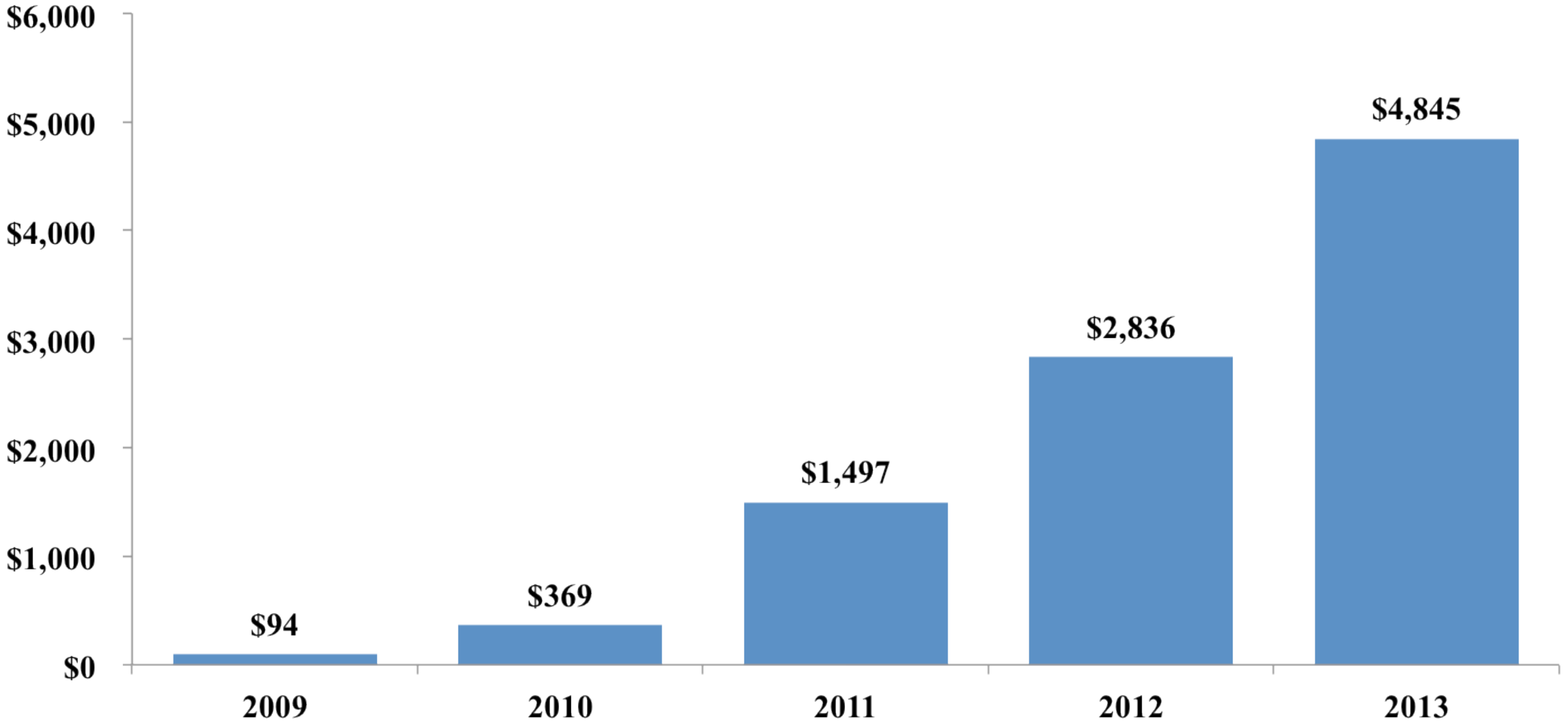
($ millions)



Source: Robert A. Stanger & Co., SEC filings, NAREIT

Public Non-Listed BDC Fundraising 2000 – 2013

($ millions)



Source: The Stanger Market Pulse

Public Market At A Glance
Amount Registered
($'s In Millions)

	No. of Public Offerings[1]	Amount Registered[2] 2014
Total Market	61	$80,580.9
Real Estate	44	$62,650.0
Equity - LPs/LLCs	0	$0.0
- Non-Traded REITs	37	$56,190.0
Mortgage - LPs/LLCs	1	$150.0
- Non-Traded REITs	6	$6,310.0
Oil & Gas	3	$2,525.0
Equipment Leasing	6	$666.0
Business Development Companies	10	$14,739.9

(1) Publicly registered as of March 31, 2014

(2) Does not include securities registered under dividend reinvestment plans.

Promoting Recovery of U.S. Economy

Equity Capital Raised by DPPs & REITs in 2013 Will Contribute to Economic Growth in the Following Sectors:

- Construction & Building Trades
- Consumer Retail Employment & Activity
- Data Services, Internet & Communications
- Energy Independence
- Healthcare
- Emerging & Middle Market Businesses
- Corporate Investment for Growth

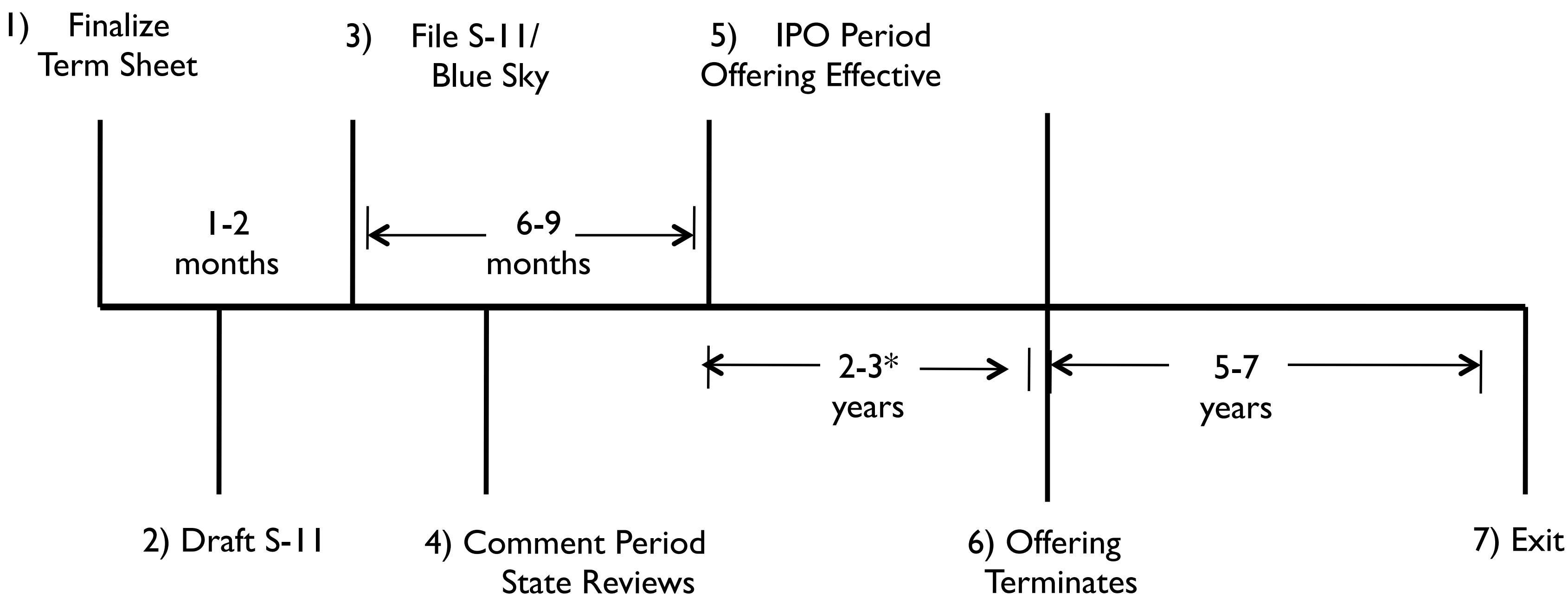
Product Life-Cycle

Start-Up Enterprises

DPPs & NL REITs are Typically Formation Stage Enterprises:

- Capital Must Be Raised Before Business Is Launched
- Incur Extraordinary Start-Up Expenses Designed To Create Value
- Deployment of Capital Takes Time
- Initial Earnings Not Indicative of Earnings When Business Aggregates Assets and Achieves Mature Operating Phase
- GAAP Book Value Rarely Deemed An Appropriate Measure of Value
- Pricing/Equity Contribution Per Share During Formation Stage Typically in Excess of Book Value for Start-Ups

Traditional Non-Listed REIT Lifecycle



*Majority of capital is raised after the 18th month of an offering.

Average Non-Listed REIT Fundraising Ramp-Up

Q1	3.6%	3.6%
Q2	5.5%	9.1%
Q3	7.4%	16.5%
Q4	9.7%	26.2%
Q5	10.0%	36.2%
Q6	16.6%	52.8%
Q7	17.7%	70.5%
Q8	29.5%	100.0%

Note: Based on analysis of fundraising among 41 programs which became effective after January 2009 and which were neither withdrawn or closed within the first 24 months of fundraising.

Summary of Non-Listed REIT Investment Performance

Investment Performance (1)
Monetized Non-Listed REITs
2003 Through February 2014

($ In Millions)

	Individual Programs		
	Range	Average	Aggregate
Capital Invested (2)	$28 million - $5.1 billion	$1.7 billion	$46.2 billion
Total Return	26.0% - 216.8%	135.2%	133.4%
IRR	(neg) - 48.5%	8.4%	9.6%

Value creation over $15 billion

(1) Based on "Mid-Point" investor.
(2) Excludes DRIP proceeds.

Note: Performance is for 28 NL REITs providing liquidity events during January 2003 through February 2014.

NL REIT Liquidity Events Since 2012

$ in millions, except per share		
REIT	Capital [1] Raised	IRR [2] 2/28/2014
American Realty Capital Trust, Inc.	$1,832.1	21.0%
Retail Properties of America, Inc.	4,219.7	-1.1%
Healthcare Trust of America, Inc.	2,307.8	9.1%
Corporate Property Associates 15, Inc.	1,044.3	8.7%
American Realty Capital Trust III, Inc.	1,775.7	48.5%
Apple REIT Six, Inc.	963.0	7.8%
Chambers Street Properties	2,388.8	0.6%
Cole Real Estate Investments, Inc. (Cole III)	4,545.0	14.4%
Spirit Realty Capital, Inc. (Cole II)	197.0	7.8%
Columbia Property Trust, Inc.	5,150.0	1.0%
Catchmark Timber Trust, Inc.	295.1	-11.2%
American Realty Capital Trust IV, Inc.	1,736.6	37.9%
Paladin Realty Income Properties, Inc.	75.3	0.1%
Corporate Property Associates 16 Global, Inc.	1,103.3	7.5%
Total/Average	$27,633.7	10.9%

(1) Excludes DRIP.
(2) Based on mid-point investor through liquidation or February 28,2014.

Product Evolution -
Free Market Responses To Enhance Product, Investor Returns & Protections

- Distribution Costs
- Introduction of Multiple Share Classes
- Improved Liquidity
- Provisions to Enhance Distribution Coverage
- Elimination of Internalization Fees
- Enterprise Size to Maximize Exit Options & Performance

Interim Liquidity Improvements

	Redemption Programs	
	Then	Now
Frequency	Quarterly/Annual	Daily/Quarterly
Volume	Lesser of 5% or DRIP Proceeds	Up to 20%

Focus on Dividend Security / Sustainability

- Regulatory Initiatives
  - NTM 09-09
  - SEC Source of Distribution Disclosure in Filings

- Industry Initiatives
  - Enhanced BD Due Diligence During Offering Period
  - Coverage Requirements to Remain on BD Platforms
  - Developed Standardized Evaluation Metric (MFFO)
  - Adoption of MFFO Reporting by NL REITs
  - Evolving Fee Structures

Fee Structures Evolving To Enhance Performance & Distribution Coverage

Front-End

- Multi-Share Class Offerings
- Trailing Commissions with Low / No Front-End
- Subordinated Capital Contribution By Sponsor

Operational Stage

- Asset Management Fee Reductions
- Asset Management Fee Subordination
- Fees in Form of Shares (Align Interests)
- Fees in Form of Subordinated Shares/Units
- Expense Support Agreements

Development of Industry Standards

Development of Industry Standards

- Non-GAAP Performance (Distribution Coverage) Metric
  - IPA Guideline 2010-01: Modified Funds from Operation
  - Addresses Acknowledged Shortcomings of FFO

- Valuation Transparency
  - IPA Guideline 2013-01Valuation of Non-Listed REITs

- Uniform Investment Performance Measurement Guideline
  - In Process

Industry Initiative to Improve Valuation Transparency

IPA Valuation Guideline

- Defines Uniform Basis of Valuation
- Enhances Independence of Process
- Enhances Quality of Disclosure
- Accelerates Valuations to Earlier in Life-Cycle
- Sets Stage for Annual Industry Performance Tracking

Selling Agreement Protocols

- Intensified Due Diligence Provisions
    - Extensive Use of Independent Law Firms For Ongoing Reviews
    - Increased Reviews of Acquisitions and Dividend Sustainability
- Increased Distribution Coverage Requirements
- More Stringent Valuation Requirements
    - Accelerated Provision of Valuations
    - Enhanced Independence
    - Enhanced Disclosure
    - Direct Access to Third-Party Valuation Experts
- Required Re-Pricing of Follow-On Offerings
- Protocols for Timing of Re-Pricing During Offering Period

IPA Educational Initiatives For Investors and Advisors

- 3 Client Brochures
- 4 E-Learning Courses
- 2 Certification Courses
- 3 White Papers

Section 5

FINRA 14-06 Concepts Embraced By The Industry

Advocating Direct Investments Through Education

IPA Investment Program Association

14-06 Concepts Embraced By The Industry

- Transparency of Distribution Costs
  - Deduction on Account Statement Amounts for Sales Commissions & Dealer Manager Fees ("Point-Of-Sale" Costs)
- Improved Visibility/Enhanced Disclosure of Sources of Distributions
- Accelerated Valuation Timing
  - IPA Recommends Increased Frequency
- Enhanced Independence of Valuations
- Enhanced Disclosure Relating to Valuations

Section 6
FINRA 14-06 Outstanding Issues
&
Proposed Solutions

IPA Has Pursued A Collaborative Approach With Regulators To Improve Transparency and Investor Protections And Resolve Outstanding Issues

IPA Collaboration Timeline

2007-8	Real Estate and Financial Market Crash
2008	Complaints to FINRA Increase
2009	
Feb	FINRA issues NTM:09-09
2010	
March	IPA-FINRA meeting re: industry issues
Nov	IPA Releases MFFO Guideline
2011	
Jan –	IPA-FINRA meeting
Sept	FINRA issues RN: 11-44
Oct	IPA-FINRA telephonic discussions Re: RN: 11-44
Oct	IPA-requested meeting with FINRA to review industry recommendations
Nov	IPA submits RN: 11-44 Comment Letter

……….. *Continued on next page*

IPA Collaboration Timeline

2012

Jan	IPA-FINRA meeting regarding issues
March	FINRA issues RN: 12-14
Mar-April	IPA-FINRA telephonic discussions Re: RN: 12-14
April	IPA submits RN: 12-14 Comment Letter
Dec	IPA-requested meeting w/Colby, Price, Selman Re: recommendations for RN: 12-14

2013

Jan	IPA Summary Letter to Mr. Colby articulating the positions and recommendations
Nov	IPA-FINRA meeting to provide perspective on adverse consequences for investors of proposed revisions to the Rule. FINRA requests IPA provide ideas/solutions to problems.
Dec	IPA conducts extensive industry outreach to gather solutions to the adverse effects of RN: 12-14. Generates consensus recommendations, approved by the Committees and Board of the IPA.

2014

Jan	IPA sends Mr. Colby board approved, industry supported recommendations to address RN:12-14 problems.
Feb	FINRA issues RN: 14-06 with 21 day comment period. IPA recommendations not addressed in RN: 14-06.
March	IPA issues comment letter on SR-FINRA-2014-006 to SEC

Unintended Consequences Adverse to the Best Interests Of Investors

- Investor Confusion from Complex and Arcane Accounting Adjustments to Account Statement Values
- Increased Risk of Achieving the Financial Objectives of the Investment Program
- Retreat from Transparency With Removal of Reliable Value Estimates From Customer Account Statements
- Potential Degradation of Benefits of DRIPs and Share Redemption Programs
- Adverse Impact on Capital Formation

14-06 Outstanding Issues - Proposed Solutions

1. Definition of "Net Investment"
   - Do Not Deduct Offering & Organizational Expenses Since:

     -- Actual Amounts (as % of raise) Are Unknown & Uncertain During the Offering Period

     -- May Discourage Expenditures for Due Diligence
2. Addressing Distributions During Offering Period
   - Enhance Disclosure Regimen Similar to Requirements for 1940 Act Companies (Section 270.19a-1 Notices)
   - Need to Define Appropriate Distribution Coverage Metric For Various Asset Classes/Types of DPPs and Non-Listed REITs.
3. Retreat from Transparency
   - Maintain Current Requirements for Member Firm Participation in Offering of DPPs and Non-Listed REITs

……………continued on next page

14-06 Outstanding Issues - Proposed Solutions (continued)

4. FINRA Member Firm Valuation Reliability Standard
   - Reliable Valuation (e.g. developed per Rule 2310(b)(5)(B)) Is Shown on Statement Unless Member Can Demonstrate Value Is No Longer Accurate as Result of Disclosure in Issuer Reports of Material Change in Underlying Values of Assets.

5. Implementation Period
   - 18 month Implementation Period Between Issuance of Final Rule and Effective Date

6. Economic Impact Analysis
   - Particularly Critical With Implementation Period Less Than 18 Months

Implementation Challenges & Tasks

- Allow Current Offerings Time To Protect Existing Investors From Increased Costs or Premature Cessation and Undercapitalization
- Evaluate Alternative Distribution Networks & Plans
- Evaluate & Implement New Offering Structures & Product Design
- Prepare New Marketing/Offering Materials
- Train Marketing/Sales, Customer Service Personnel
- Educate Customers and Financial Advisors

………… *continued on next page*

Implementation Challenges & Tasks

(continued)

- Create and Implement New Compliance Protocols for Sponsors and Member Firms, Including Procedure Manuals
- Create and Implement Due Diligence Procedures For Share Values Reported On Account Statements
- Re-program Existing Account Statements and IT Systems and Conduct Testing of Changes
- Create Disclosure Text for Account Statements
- Internal Legal and Compliance Reviews of All Changes

Conclusion:

Suggestions For Next Steps

Next Steps:

1. Address (& Reconcile) Issues Raised By IPA Prior to Release of Final Amendments

   (The IPA Is Prepared To Be A Collaborative Partner To Help Fashion Final Amendments)

-OR-

2. Pursue “Incremental Deployment Approach”

Incremental Deployment Concept

- Approve Major & Most Impactful Provisions of Proposed Amendments (Subject to Implementation Period)

- Assess the Impact of These Changes Post Implementation On Market Behavior

- Provide Time to Formulate Most Complex (But Less Impactful) Provisions (Based In Part On Perceived Need Following Implementation of Primary Changes).

- Avoid Potential Unintended Adverse Consequences By Using A More Judicious Incremental Approach to Regulatory Change

Incremental Deployment Approach

- Net Investment -- Deduct “Point-of-Sale” Costs (Sales Commissions & DM Fees) from Account Statement Amounts
- Independent Valuations – Retain Proposed Amendments Relating to Timing, Frequency and Independence of Valuations (Rule 2340 Section (c)(1)(B) and Rule 2310 (b)(5)(B)(i) and (ii).)
- Valuation Disclosure -- Maintain Existing Requirement to Show A “Reliable” Valuation on Customer Account Statements (subject to IPA Recommendation Regarding Member Firm Reliance Provisions)

Assess Market Impact of These Changes & Address Other Provisions As Deemed Necessary After Such Assessment

Benefits of Incremental Deployment Approach

- Imposes Major "Point-of-Sale" Deduction (10% based on current distribution costs)
- Improves Disclosure & Independence of Valuations
- Significantly Accelerates First Valuation
    - Significantly Reduces Potential Cumulative Impact of Any Over-Distribution During Successive Offering Periods
    - Creates Negative Incentive to Over-Distribute
- Provides Time to Formulate Most Complex (But Less Impactful) Provisions (Based In Part On Perceived Need Following Implementation of Primary Changes).
- Avoids Potential Unintended Adverse Consequences By Using A More Judicious Incremental Approach to Regulatory Change

SEC Recommendations For IPA Follow-Up

SEC – IPA Meeting

Supplementary Information

April 2, 2014

Supplementary Information

Issues Relating to Proposed Metric And Adjustment Mechanism For “Over-Distributions”

Issues Relating to FINRA's Proposal To Adjust Account Statement Values For "Over-Distribution"

- Unprecedented Regulatory Requirement Among Public Securities
- Profound Implementation Challenges from a "One Size Fits All" Rule (and Earnings Metric) for the Various Asset Categories and Classes Among DPPs and NL REITs
- Potential Confusion Created Among Investors
- Complex Account Statement Disclosures
- Does NOT Help Investors Identify Sources of Distributions

…….continued on next page

Issues Relating to FINRA's Proposal To Adjust Account Statement Values For "Over-Distribution"

(continued)

- Proposed Methodology Is Flawed and Creates Unintended Biases and Inconsistencies Among Issuers
- Proposed Methodology Does Not Conform To Recognized Valuation Standards & Practices
- Does Not Recognize "Start-Up" Nature of DPPs and NL REITs
- Proposed Acceleration of Valuations Mitigates Need
- IPA Believes the Issue of Over-Distribution Has Been Addressed By the Industry

Examples of "Single Metric" Issues

- Proposed Add-back of Depreciation To Real Estate (Appropriate) and Equipment Leasing (Not Appropriate)
- Straight-line Rent Adjustments
- Joint Ventures & Minority Interests
- Financing/Capital Lease Vs. Operating Lease Categorization
- Transient "Mark-To-Market" Adjustments

Start-Up Enterprises

DPPs & NL REITs are typically formation stage enterprises:

- Capital Must Be Raised Before Business Is Launched
- Incur Extraordinary Start-Up Expenses Designed To Create Value
- Deployment of Capital Takes Time
- Initial Earnings Not Indicative of Earnings When Business Aggregates Assets and Achieves Mature Operating Phase
- GAAP Book Value Rarely Deemed An Appropriate Measure of Value
- Pricing/Equity Contribution Per Share During Formation Stage Typically in Excess of Book Value for Start-Ups

Portfolio Aggregation Process

Example: Start-up Real Estate Company

The process of assembling a portfolio of real properties (as opposed to a mutual fund's purchase of stock on the open market) is a complex and labor intensive process which creates value. Tasks include:

- Site visits
- Engineering and structural reports
- Environment Reports
- Zoning & Code Enforcement Inquiries
- Financial Due Diligence
- Title Searches
- Investigation of Local Market Demographics/Employment
- Local Supply/Demand, Occupancy & Rental Rates
- Negotiation of Purchase
- Obtaining Financing
- Final Documentation & Closing

Acquisition Costs = Business Development

- Process of Portfolio Aggregation Must Be Executed By An Experienced Professional Organization
- Experienced Professionals Employed By The REIT's Advisor Direct, Coordinate, Supervise and Review the Process.
- Acquisition Fees Compensate the Advisor for These Services
- Despite Changes in GAAP Treatment, Most Real Estate Professionals Consider Such Expenses and Fees As Capital Investments That Create Enterprise Value
- Treatment of Acquisition Costs As Expenses With No Corresponding Positive Valuation Impact Implies That The Process of Building A Diversified Portfolio of Properties Does Not Create Incremental Enterprise Value But Rather Decreases Value

Examples of Unintended Negative Impacts

Potential Adverse Impacts on Capital Structures and Liquidity Provisions Beneficial to Investors in NL REITs

- Penalize Early Use of Lines of Credit To Accelerate Portfolio Aggregation and Earnings
- Create Potential Obstacle to Distribution Reinvestment Plans and Reduces Associated Capital Formation
  - -- Less Portfolio Diversification /Lower Quality Assets
  - -- Higher Leverage
  - -- Fewer Enterprise Exit Alternatives
- Impairs Availability of Share Redemption Programs

Issue of Over-Distribution Has Been Addressed By The Industry Following NTM 09-09

- Enhanced Member Firm Due Diligence Relating to Sources, Coverage and Sustainability
- Improved Disclosure of Sources in SEC Filings
- Expanding Requirement of States for Supplemental Notices to Investors of Sources of Distributions In Excess of Earnings/Cash Flows
- Emergence of Improved Product Structures To Enhance Distribution Coverage/Security
- Acceleration of Valuations Per IPA Guideline, FINRA Proposal and Member Firm Selling Agreements