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reisa.org

June 26, 2014

VIA email: rule-comments@sec.gov
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Attention: Elizabeth M. Murphy

Re: *File No. SR-FINRA 2014-006*

Dear Ms. Murphy:

The Real Estate Investment Securities Association (“REISA”) is a trade association serving the real estate securities industry including all professionals active in offering, managing and distributing non-traded REITs, real estate partnerships, tenant-in-common interests (TICs), Delaware statutory trust interests (DSTs), real estate income and development funds, oil and gas interests, natural resources and alternative energy investments.

REISA works to maintain the integrity and reputation of the industry by promoting the highest ethical standards to its members and provide education, networking opportunities and resources. REISA connects members directly to key industry experts through intimate forums providing timely trends and education and helping create a diversified portfolio for their clients. The association was founded in 2003 and has over 800 members who are key decision makers that represent over 30,000 professionals throughout the nation including:

- Sponsors and managers of real estate and related offerings
- Broker-dealers
- Securities licensed registered representatives
- Registered investment advisers (RIAs)
- Investment adviser representatives (IARs)
- Accountants
- Attorneys
- Mortgage brokers
- Institutional lenders
- Qualified intermediaries
- Real estate agents
- Real estate brokers

On March 12, 2014, in response to the Financial Industry Regulatory Authority, Inc.’s (“FINRA”) proposed amendments to NASD Rule 2340 – Customer Account Statements to amend the provisions relating to the inclusion of per share estimated values for publicly registered DPP and REIT securities on customer account statements, as well as modify the requirements applicable to FINRA members’ participation in public offerings of DPP and REIT securities under FINRA Rule 2310 (the “**Proposed Amendments**”), REISA submitted a letter setting forth its comments to the Proposed Amendments.

REISA continues to believe in the importance of protecting the investing public while balancing the need for businesses and sponsors of quality real estate investment and other alternative investment products, along with the FINRA members who *sell these products*, to



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be able to efficiently raise capital without an overly burdensome regulatory scheme. REISA understands FINRA's Corporate Financing Department's push for action to ensure enhanced transparency and accountability. However, these investment programs have a unique place in the market for real estate securities and the investors attracted to these products are looking for real estate or other alternative products as an asset class in an illiquid, long-term investment. FINRA's Proposed Amendments seek to fundamentally change the way that this product is understood and treated by member firms and their clients. REISA urges the Commission to disapprove the Proposed Amendments and asks FINRA to reconsider its suggested approach to Rule 2340. In REISA's view, FINRA is seeking to replace an admittedly arbitrary offering price with a value that is derived from an equally arbitrary methodology or from a static independent valuation, each of which is characterized as a more accurate estimated per share "value." In our view, that is hardly a basis for a rule change.

In addition, the Commission requests comments on whether the Proposed Amendments are consistent with the requirements of Rule 15A(b)(6) and 15A(b)(9) of the Securities Exchange Act of 1934, as amended. REISA believes that the Proposed Amendments are not consistent with either Rule 15A(b)(6) or Rule 15A(b)(9) as they do not meet the requirements of preventing fraud or manipulative practices nor are they a necessary or appropriate burden on competition. The Proposed Amendments simply replace admittedly arbitrary prices for other, equally and perhaps even more arbitrary values, and will cause far more confusion than they bring clarity or transparency to investors or FINRA members.

Additionally, REISA reiterates its comments submitted on March 12, 2014 (which are briefly summarized below), including the following:

Net Investment Methodology.

1. Deducting sales commissions as well as organization and offering expenses from the offering price to arrive at an "estimated per share value" merely replaces one arbitrary price with another arbitrary price as it (a) does not accurately reflect the organization and offering expenses actually incurred, (b) does not provide investors with accurate information regarding the organization and offering expenses of the program; (c) takes the entirety of the organization and offering expenses as a deduction upfront; and (d) could cause issuers to underestimate those expenses given their use in calculating the "net investment" amount to be provided on the customer account statement.
2. In deducting organization and offering expenses, including due diligence reimbursements, FINRA may be discouraging the very behavior it encouraged when it lifted the cap on due diligence expense reimbursements.
3. The addition of a deduction for cumulative cash distributions in excess of GAAP net income after adding back depreciation and amortization or depletion expenses to the calculation of net investment amount was included in the FINRA proposal without industry input or discussion. In addition to its potential to add more investor and FINRA member confusion, it treats non-traded REIT and DPP securities differently than any other type of public securities and will not achieve the transparency and clarity that FINRA is seeking for these investments.
4. Without further investigation, the long-term effect of deducting cumulative "over-distributions" is unclear. Investors who invested on day one of the offering and investors who invested in the 18th month of the offering could have very different outcomes based upon the calculation of value under the "net investment" methodology.



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5. The “net investment” amount does not take into account the effects of leverage on the amount of investment a DPP or REIT can make or the “estimated value” of the enterprise. Therefore, the net proceeds available for investment only reflect the proceeds of the offering available for investment but do not account for the leverage used by DPPs or REITs to make actual investments nor does it provide the investor an accurate snapshot of the value of its investment. Cash proceeds available from an investor’s purchase reflect only part of the value presented by an investment program such as a REIT, and potentially over-simplify or even distort the actual value of the program (as opposed to the cash investment component thereof).
6. Another concern with respect to the “net investment” methodology is the ability of those who prey upon DPP and REIT investors by making mini-tender offers. Because their values would be reduced dramatically in the short term as a result of the deductions discussed above, such persons could use these values to their advantage and to the disadvantage of the investors who see the reduced values with little or no understanding as to why. REISA believes there could be significant potential for abuse by those who are in the business of making mini-tender offers at the expense of the very investors FINRA is trying to protect.

Independent Valuation Methodology. While REISA generally believes that an independent valuation methodology provides benefits to investors, the Proposed Amendments should be revised to take into consideration the following concerns.

1. The independent valuation methodology requires that the valuation be conducted at least once every two years in accordance with a methodology that conforms to “standard industry practice” but standard industry practice is not defined in the Proposed Amendments and it is not clear who is defining such “standard industry practice.”
2. Given the independent valuation is only required at least once every two years, how is the estimated per share value included on the customer account statements in the interim periods accurate, especially given the large number of assets typically acquired in a DPP or REIT program in a two-year period. If these estimated per share values are not accurate, must a FINRA member exclude them from the customer account statement as they are unreliable?
3. Is an expert consent required from the independent valuation expert and if so, the investors are bearing an additional cost not only for the expert but also its consent.
4. If a DPP or REIT uses the independent valuation methodology, under what circumstances can it adjust the estimated per share value, either up or down, without having to incur the substantial costs of another independent valuation expert within the two year period?

“Not Priced Option” if a FINRA Member Has Reason to Believe it is Unreliable.

1. During the two year period between independent valuations, a FINRA member could determine that such estimated per share value was unreliable and could exclude any value on the customer account statement, which would immediately cause investor confusion and concern.
2. If a FINRA member believed that the per share estimated value is unreliable and therefore opted to not include a value on the customer account statement, would the FINRA member be required to include a statement as to why it was not providing a value or its basis for determining that the value is unreliable?



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3. In light of two methodologies for calculating the estimated value per share that are deemed presumptively reliance, a non-priced option seems to create more potential confusion for FINRA members.
4. Implementation Period. REISA again believes that a longer transition period is needed for implementing the Proposed Amendments. The proposed effective date of 180 days following the approval of the Proposed Amendments by the Commission is too short a time for those DPP and REIT programs currently in the market and those well along in the process to make the necessary revisions to the structure to enable these Proposed Amendments to be implemented.

Conclusion

REISA remains committed to collectively working to improve the industry from the standpoint of transparency and valuation. REISA believes that while Proposed Amendments continue to have the right goals in mind, there are some issues with the Proposed Amendments that require some adjustments and that the Commission should disapprove them.

Sincerely,

Mark Kosanke
President, Real Estate Investment Securities Association (REISA)