



39 Broadway, Suite 3300, New York, New York 10006-3019

January 13, 2016

Via email only: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**RE: SR-FINRA-2015-054**  
**Proposed Rule Change to Adopt the Capital Acquisition Broker Rules**

Integrated Management Solutions USA LLC (“IMS”) is pleased to comment on SR-FINRA-2015-054, the Proposed Rule Change (the “Proposal”) to Adopt the Capital Acquisition Broker Rules (“CAB”). IMS is one of the largest providers of compliance consulting and financial accounting services to the financial services industry, including to about 100 FINRA members, among others types of financial services firms.<sup>1</sup> We counsel clients daily on the scope of permissible broker-dealer activities under various FINRA, SEC and other rules. In fact, we know that many of our clients are the ones FINRA hopes will register as CABs.

As mandated by law, Part B of the CAB Proposal discusses the “Self-Regulatory Organization’s Statement on Burden on Competition.” In that section, in describing the “Economic Impacts” of the CAB Proposal, FINRA states:

As a baseline and based on staff experience, FINRA preliminarily estimates that the number of member firms that meet this definition [firms engaging in CAB-related business] would range from 650 to 750 firms. [Ftn. omitted.] Thus, it is possible that between 16 and 19 percent of all FINRA member firms may be eligible to operate under this [CAB Proposal]. [Ftn. omitted.]<sup>2</sup> [Emphasis added.]

---

<sup>1</sup> The statements in this comment letter incorporate the views of IMS, not those of our clients.

<sup>2</sup> FINRA cites to <https://www.finra.org/newsroom/statistics> (accessed June 29, 2015). CAB Proposal, ftn. 18.

We question these statistics because we believe that these numbers include private placement firms that market and sell such securities to accredited investors, a business activity explicitly prohibited to CABs.<sup>3</sup>

At any one time, IMS has several New Member Applications, Continuing Membership Applications and Materiality Consultations submitted to FINRA on behalf of clients. We have also been asked by clients to advise them on whether they could operate lawfully under the parameters of the SEC's M&A Brokers No-Action Letter<sup>4</sup> ("M&A No-Action Letter"). IMS has regular, daily experience with FINRA's membership categories and rules, SEC and other rules, and the financial reporting requirements applicable to broker-dealers, and how they are, in fact, implemented by the various regulators. We believe this experience enables us to assess the impact of the CAB Proposal on current and future FINRA members from both a regulatory and business perspective.

We wish to eliminate any doubt about our motivation to oppose most of the CAB Proposal. Complex requirements are very helpful to our firm. They enable us to advise clients how to navigate the regulatory minefield to optimize the best possible business result. In that respect only, we are pleased with the CAB Proposal.

When regulators promote changes that result in unintended adverse consequences, it behooves us to speak out even though the promoted changes would likely benefit us. We are professionals who feel a strong obligation to help others separate right from wrong.

### **Summary of our Objections to the CAB Proposal**

IMS commented negatively on the prior iteration of the CAB Proposal.<sup>5</sup> Regrettably, many of our prior objections, and those of 50 other commenters, were glibly glossed over by FINRA in this CAB Proposal. We recognize that, as a practical matter, FINRA is determined to

---

<sup>3</sup> Discussed further, below, in the section on "Customers."

<sup>4</sup> SEC No-Action Letter, dated Jan. 31, 2014, revised February 4, 2014; available at: <http://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf>. FINRA believes "[i]t is possible that some of these firms [ones that rely on the M&A No-Action Letter] would reconsider their non-registered status if the new rules were in effect." CAB Proposal, p. 81. [Emphasis added.]

<sup>5</sup> Regulatory Notice 14-9: Limited Corporate Finance Brokers (the "LCFB Proposal").

implement the CAB Proposal at all costs. In good conscience, however, we can't get on this bandwagon and believe we would be betraying the broker-dealer community, including many of our clients, if we did not point out the glaring flaws that remain. Worse yet, if the broker-dealer community suffers, so does the general public. Creating or buttressing a restrictive environment thwarts the efforts of our Congress, which has passed such legislation as the JOBS Act in an effort to encourage raising capital. In fact, one our biggest concerns is that FINRA will force existing FINRA members and new applicants who now or will operate as so-called "nickel BDs"<sup>6</sup> to become CABs, if for no other reason than to vindicate FINRA's questionable statistics of eligible firms.<sup>7</sup>

FINRA has provided only negligible incentives for a firm to adopt the CAB business model. CABs can only earn transaction-based compensation from institutional investors. Despite that restriction, FINRA is not persuaded that they can chaperone foreign associated persons under SEC Rule 15a-6, an activity allowed to FINRA-registered nickel BDs<sup>8</sup>. Although CABs may nominally advise an issuer of private funds on its capital raising efforts, FINRA's customer limitations for CABs only allow them to contact institutional investors.<sup>9</sup> Compliance with the Financial Responsibility and Net Capital rules remain the same for both CABs and FINRA-registered BDs. There is no relief from the annual audit requirement, which, in light of auditors having to comply with onerous PCAOB and SEC rules, has become a significant expense to all FINRA member firms regardless of size. For publicly-held broker-dealers, the SEC/PCAOB environment cannot be eliminated. However, for the multitude of small broker-dealers, the vast majority of which never hold customer cash or securities, there is hardly any benefit at all to having annual audited financial statements. In fact, although annual audited financial statements have to be filed with FINRA, the SEC and a tiny handful of states, there is limited customer benefit because such statements are not usually required to be sent to customers or counterparties. For most small broker-dealers, the net capital rule does not protect their

---

<sup>6</sup> \$5,000 in minimum net capital; sometimes also called "private placement brokers."

<sup>7</sup> See, fn. 3, above, and accompanying text. We acknowledge that the CAB Proposal states a firm may "elect" CAB status, but we are not persuaded because, in our experience, there is a multiplicity of ways, direct and indirect, to sway (force) firms to follow FINRA preferences, regardless of whether there is an explicit rule requiring the preferred conduct.

<sup>8</sup> SEC, Frequently Asked Questions Regarding Rule 15a-6 and Foreign Broker-Dealers, Division of Trading and Markets (March 21, 2013; updated April 14, 2014), Questions 11 and 11.1.

<sup>9</sup> See, fn. 15, and accompanying text.

customers. In the CAB proposal, FINRA avers that it is not responsible for the existence of SEC rules and therefore FINRA cannot do anything about them. We respectfully disagree with that assertion. We believe that even if SEC pays little attention to the opinions of broker-dealers that fall under its jurisdiction, it is likely that SEC would pay attention to the observations of FINRA, which despite being newly-called an “Authority” is described in the Securities Exchange Act of 1934 as an “association” (of members whose goals it supports, supposedly).

Licensing and continuing education requirements remain in effect, other than eliminating the need for an annual compliance meeting. At least, FINRA dropped its prior requirement in the LCFB Proposal that Registered Representatives lose their FINRA Series 7 and other licenses. FINRA has determined to require a separate rule book for CAB firms “...tailored to address CABs’ business activities,” which will also remain subject to FINRA By-Laws and “core” FINRA Rules applicable to all FINRA firms, “...unless the context requires otherwise.”<sup>10</sup> We believe this “2-manuals approach” is needlessly complicated, and will prove not only confusing but also lead to interpretive issues.<sup>11</sup> Furthermore, we are reminded that about a decade ago, what was then the National Association of Securities Dealers and New York Stock Exchange Regulation promoted the combination of those entities into FINRA. One *raison d’être* for that combination was to have a single rulebook. Now, we still have many rule books to comply with, including the rules of SEC, the Municipal Securities Rulemaking Board, state regulators, the Commodity Futures Trading Commission and the National Futures Association. Apparently, FINRA has now chosen to acknowledge definitively that, indeed, rules should not be designed as one-size-fits-all and, in fact, through the CAB Rules, has promoted special rules for special broker-dealer business activities. We applaud that effort conceptually, but it should be done in a manner that promotes a less restrictive environment for the good of everyone.

If the CAB Proposal is implemented, broker-dealers seeking to offer certain private placement and advisory services will have three options available for conducting business and

---

<sup>10</sup> CAB Proposal, pp. 4-5. Proposed CAB Rule 015 provides that FINRA Rule 0150(b) applies to the CAB rules. Id.

<sup>11</sup> Another possible interpretation of this requirement is that it is a prelude for spinning off regulatory supervision of CABs into a separate regulator, comparable to the establishment of the Municipal Securities Rulemaking Board (adding yet another layer of regulatory oversight and compliance for firms that engage in municipal business).

earning transaction-based compensation. They can apply for and adopt CAB status, apply, or continue to operate, as a FINRA-registered nickel BD or operate under the M&A No-Action Letter.

For the sake of comparison, this comment letter also discusses the activities permitted as a result of the M&A No-Action Letter. An M&A Broker is permitted to facilitate mergers, acquisitions, business sales, and business combinations in any amount between sellers and buyers of privately-held companies provided the buyer(s) actively operates the company or the business conducted with its assets.<sup>12</sup> The M&A Broker is prohibited from providing financing for any such transaction, directly or indirectly, but may assist purchasers in obtaining financing from unaffiliated third parties.<sup>13</sup> If the M&A transaction involves a group of buyers, the M&A Broker may not assist in the formation of that group.<sup>14</sup>

In this Comment Letter, we have diagrammed these options so that firms can make meaningful business decisions. We believe these will highlight the pitfalls of CAB registration.

## **BUSINESS ACTIVITIES**

### **What CABs Can Do**

The business activities of a “Capital Acquisition Broker” are restricted to any one or more of the following seven options:

- (1) Advise an issuer, concerning its securities offerings or other capital raising activities, including a private fund<sup>15</sup>;
- (2) Advise a company regarding its purchase or sale of a business or assets or a corporate restructuring, including a going-private transaction, divestiture or merger;
- (3) Advise a company regarding its selection of an investment banker;
- (4) Assist in the preparation of offering materials on behalf of an issuer;
- (5) Provide fairness opinions, valuation services, expert testimony, litigation support, and negotiation and structuring services;

---

<sup>12</sup> “A buyer could actively operate the company through the power to elect executive officers and approve the annual budget or by service as an executive or other executive manager, among other things.” M&A No-Action Letter, p.2.

<sup>13</sup> Id.

<sup>14</sup> Id., p. 3.

<sup>15</sup> As a practical matter, since CABs are limited to transactions with institutional investors, it is highly likely that its services will only be available to so-called 3(c)(7) funds and not 3(c)(1) funds because the latter often accept accredited or other individual investors. Discussed further below in the section on “Customers.”

(6) Qualify, identify, solicit, or act as a placement agent or finder for institutional investors only in connection with purchases or sales of unregistered securities; and

(7) Effect securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, as provided in the M&A No-Action Letter. This latter option was added by FINRA as a result of comments received to the LCFB Proposal.<sup>16</sup>

<b><u>ACTIVITY</u></b> <sup>17</sup>	<b><u>CAB</u></b>	<b><u>FINRA</u></b> <b><u>BD</u></b> <sup>18</sup>	<b><u>M&amp;A NO-ACTION</u></b> <b><u>LETTER</u></b>
(1) Capital Raising	YES	YES	NO
(2) Sale of Business or Assets	YES	YES	YES; Privately-held, going concern companies only
(3) Recommend an Investment Banker	YES	YES	Unclear <sup>19</sup>
(4) Prepare Offering Materials	YES	YES	Unclear
(5) Fairness Opinion, Valuations	YES	YES	NO
(6) Act as Placement Agent or Finder for Institutional Investors	YES	YES	YES <sup>20</sup>
(7) M&A Activities	YES	YES	YES; Must result in transfer of control (25% or more) and active management of acquisition
(8) Public Offerings	NO	NO <sup>21</sup>	NO
(9) Municipal Securities	NO	NO <sup>22</sup>	NO
(10) Referral Services <sup>23</sup>	NO	YES	NO
(11) Rule 15a-6 Chaperoning	NO	YES <sup>24</sup>	NO

<sup>16</sup> See, ftn. 5, above, and accompanying text.

<sup>17</sup> Numbers 1-7 correlate to those discussed above for CABs, but numbers 8-12 describe additional activities not available to CABs.

<sup>18</sup> These are mainly “Nickel BDs.”

<sup>19</sup> Not discussed in the M&A No-Action Letter or the CAB Proposal, but not explicitly prohibited.

<sup>20</sup> M&A Broker may not form the buying group. See, ftn. 11, above, and accompanying text.

<sup>21</sup> Activity permitted to FINRA-registered broker-dealer maintaining higher minimum net capital.

<sup>22</sup> Activity permitted to FINRA-registered broker-dealer maintaining higher minimum net capital and separately registered with the Municipal Securities Rulemaking Board.

<sup>23</sup> Referrals occur when a firm introduces investors, broker-dealers, various entities, hedge funds and private funds to unaffiliated broker-dealers, for which it is compensated by referral, finders or similar fees under the following circumstances: (1) projects that the firm is unable to undertake due to time or personnel constraints; or (2) order execution and settlement.

<sup>24</sup> See, SEC Frequently Asked Questions Regarding Rule 15a-6 and Foreign Broker-Dealers, Division of Trading and Markets (March 21, 2013; updated April 14, 2014), Questions 11 and 11.1.

(12) Transactions that result in the formation of shell companies or transfers to passive buyers	YES, probably.	YES	NO <sup>25</sup>
--	----------------	-----	------------------

If a CAB engages in conduct outside the scope of its authority, FINRA can determine to bring an enforcement action.<sup>26</sup>

### **What CABs Can't Do**

There are no surprises in FINRA's determinations concerning trading-related activities prohibited to CABs. Under the CAB Proposal, the current trading business limitations applicable to a nickel BD and those operating under the M&A No-Action Letter will carry over to CABs, which may not:

- (1) Carry or act as an introducing broker with respect to customer accounts;
- (2) Hold or handle customer funds or securities;
- (3) Accept orders from customers to purchase or sell securities either as principal or as agent for the customer (except as permitted by paragraphs (c)(1)(F) and (G) of CAB Rule 016<sup>27</sup>);
- (4) Have investment discretion on behalf of any customer;
- (5) Engage in proprietary trading of securities or market-making activities; or
- (6) Participate in or maintain an online platform in connection with offerings of unregistered securities pursuant to Regulation Crowdfunding or Regulation A under the Securities Act of 1933.

### **CUSTOMERS**

CABs can only provide services to institutional investors, a restriction not applicable to M&A Brokers or nickel BDs. The CAB definition of the term "institutional investor" tracks the definition used in FINRA Rule 2210 (Communications with the Public). In response to the comments received under the LCFB Proposal, FINRA added "qualified purchasers," as that term is defined in Section 2(a)(51) of the Investment Company Act of 1940, to those who qualify as institutional investors under the CAB Rules; we believe these added categories of institutional investors is appropriate and welcome FINRA's receptivity to that suggestion. Accredited

<sup>25</sup> Other than a business combination-related shell company. M&A No-Action Letter, p. 2.

<sup>26</sup> CAB Rule 240.

<sup>27</sup> Unclear reference. CABs may never act as a principal but would be permitted act as agent for institutional investors in a securities transaction for the purchase or sale of unregistered securities, or the transfer of ownership and control, of a privately-held, going concern, as permitted M&A Brokers. CAB Proposal, pp. 12-13.

investors remain off limits to CABs<sup>28</sup>, despite the fact that M&A Brokers and nickel BDs can provide services to such investors. Thus, CABs can engage in transactions only with the following types of institutional investors:

- (1) bank, savings and loan association, insurance company or registered investment company;
- (2) governmental entity or subdivision thereof;
- (3) ERISA-qualified employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, but not any participant of such plans;
- (4) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, with at least 100 participants in the aggregate have, but not any participant of such plans;
- (5) other person (whether a natural person, corporation, partnership, trust, family office or otherwise) with total assets of at least \$50 million; and
- (6) person acting solely on behalf of any such institutional investor.

By broadening the definition of “institutional investor” to include a “qualified purchaser,” CABs can also have the following investors as customers:

- (7) any natural person who owns not less than \$5,000,000 in investments;
- (8) any company that owns not less than \$5,000,000 in investments directly or indirectly by or for two or more related natural persons or their descendants, their estates, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;
- (9) any trust that is not covered by clause [8, above] if not formed for the specific purpose of acquiring the securities offered; or
- (10) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments.

<b><u>CUSTOMER STATUS</u></b>	<b><u>CAB</u></b>	<b><u>FINRA BD</u></b>	<b><u>M&amp;A NO-ACTION LETTER</u></b>
(1) Institutional Investor	YES	YES	YES
(2) Qualified Purchaser	YES	YES	YES
(3) Accredited Investor	NO	YES	YES
(4) Non-Accredited Investor	NO	YES	YES

<sup>28</sup> “FINRA’s regulatory programs have uncovered significant concerns associated with the ways in which firms sell private placements to accredited investors. Accordingly, FINRA does not believe it is appropriate to lower the institutional investor threshold for the CAB rules to the accredited investor standard.” CAB Proposal, p. 26.

## **Know Your Customer and Suitability**

<b><u>ACTIVITY</u></b>	<b><u>CAB</u></b>	<b><u>FINRA BD</u></b>	<b><u>M&amp;A NO-ACTION LETTER</u></b>
(1) Know Your Customer Compliance	YES	YES	NO
(2) Suitability	YES	YES	NO

## **FINANCIAL, RECORD-KEEPING AND REPORTING RULES**

FINRA's failure to change or in any way modify the net capital, record-keeping and reporting requirements applicable to CABs is one of our key objections to the CAB Proposal. Simply, CABs are subject to all the aforementioned compliance requirements of full-service broker-dealers. In a minor concession, FINRA suggests that it might not require certain supplemental FOCUS Reports.<sup>29</sup> FINRA states it defers to the SEC on these issues, which is, in our view, FINRA's flimsy and disingenuous way of saying that not only is it unwilling to take responsibility for any relief from these rules, but also that it will not re-assess whether those rules have continuing validity, operate effectively or truly provide investor protection under the CAB business model. We do not have a scintilla of doubt that if FINRA wanted to implement a viable and effective set of rules for CABs, which would certainly be a crucial marketing point in selling CABs to the industry, it could readily work with the SEC on this issue (as it does on an ongoing basis on so many issues).

We and others have repeatedly commented with regard to FINRA and SEC proposals that, indeed, the entire protocol applicable to private placement broker-dealers is far too onerous. Our pleas and those of others have been ignored in spite of their apparent validity. For example, see, [www.sec.gov/rules/other/265-23/gvniesar091205.pdf](http://www.sec.gov/rules/other/265-23/gvniesar091205.pdf). We are baffled by the fact that rather than the regulators reconciling and developing appropriate rules, they find it more convenient to simply blame each other, thus perpetuating the difficult current state of affairs. After listening to last night's State of the Union message, we believe that most Americans of all political stripes

---

<sup>29</sup> FINRA theoretically has the discretion to limit a particular CAB's filing of supplemental FOCUS reports under FINRA Rule 4524 as FINRA "...may deem necessary or appropriate for the protection of investors or in the public interest." CAB Proposal, p. 50. We would be pleasantly surprised if FINRA ever exercised that discretion on behalf of a CAB.

would agree with President Obama’s remark that “... a thriving private sector is the lifeblood of our economy. [and that] ... there are outdated regulations that need to be changed, there is red tape that needs to be cut”. The CAB Proposal does not meet the standard of cutting red tape; rather it perpetuates and implements more red tape.

### **Audits**

As it did with potential changes to the net capital rules applicable to CABs, FINRA ducked the issue of whether such firms require an annual audit, saying it lacked the authority to reduce or limit this requirement. As a result, FINRA glossed over two intriguing alternatives to requiring audited financial statements suggested by commenters to the LCFB Proposal. One such suggestion was that an AICPA “review” would suffice. The other sought to impose threshold barriers, specifically suggesting excluding CAB firms from the annual audit requirement if they had fewer than 20 employees or less than \$10 million in net revenues.<sup>30</sup> We believe these alternatives merit further consideration, perhaps through a joint committee of the SEC and FINRA. An even better approach would be to eliminate the audit requirement altogether for broker-dealers that never hold securities or cash belonging to others.

### **Fidelity Bonds**

CABs will not be subject to the minimum blanket fidelity bond coverage of at least \$100,000. Commenters to the LCFB Proposal properly noted that since such fidelity bonds protect against the theft of customer funds, they are of no benefit to a firm prohibited from accepting or holding customer funds or engaging in trading activities. We are pleased that FINRA implemented this suggestion.<sup>31</sup> Of course, since the annual cost of a fidelity bond for most nickel BDs is well under \$1,000, this does not provide much savings to a CAB.<sup>32</sup> On the other hand, why not eliminate the fidelity bond requirement for so many other small broker-dealers which similarly do not hold assets of others?

---

<sup>30</sup> CAB Proposal, p. 51.

<sup>31</sup> CAB Proposal, pp. 51-52.

<sup>32</sup> Most M&A Brokers are likely to carry some kind of errors and omission policy, which are also not very costly.

## **FINRA APPLICATION PROCESS**

### **One-Way Street**

To apply for CAB status, the applicant must apply for FINRA membership and state that it intends to operate solely as a CAB. FINRA would determine whether the applicant's proposed activities meet the admission standards of NASD Rule 1014 and the CAB Rules. Sounds simple, but it appears that the CAB application is subject to the same time limits and fees as any other FINRA New Member Application ("NMA").

Existing member firms may apply to change their status to that of a CAB. If their existing approved activities are the same as those of a CAB, and there is no change in the firm's existing ownership, control or business operations, it would not be required to file either an NMA or a Change in Membership Application ("CMA"). Instead, with no fee, it would file a request to amend its current membership agreement to state that its activities would be limited to those of a CAB and it will comply with the CAB Rules. Such a firm could also change its mind during the first year following its conversion to a CAB, again by requesting an amendment to its CAB membership agreement. We're not convinced that this one-year grace period is a sufficient amount of time for a firm to determine if CAB status is appropriate for its business model. A converted firm may not have sufficient data within the first year to evaluate its decision fully; we recommend that this grace period be extended to at least 24 months. Better yet, why have a grace period at all?<sup>33</sup> We don't expect that broker-dealers would wish to go back and forth anyway.

If a CAB decides to terminate or no longer qualifies for that status (e.g., it wants to expand its business and/or customer base to include accredited investors), to become a FINRA member (most likely, a nickel BD), the CAB will have to file a CMA, with all of its more expensive fees and time parameters. Presumably, it cannot engage in the new proposed business while the CMA is pending. An alternative would be to allow interim continued operations as a CAB (provided the firm is in regulatory compliance) while an active CMA is being reviewed by

---

<sup>33</sup> Such a firm has already been vetted by FINRA when it initially became member and FINRA has ongoing reports and audits of that firm. What benefit would filing a CMA add for firms converting back to nickel BD status if there is no change in ownership, control or business operations? To us, the filing of a Materiality Consultation would be a more realistic solution.

FINRA, with the firm remaining subject to all the CAB strictures pending a final decision by FINRA on the CMA.

### **ANTI-MONEY LAUNDERING COMPLIANCE**

As with all FINRA members, CABs must implement an anti-money laundering (“AML”) program. However, CABs are eligible to conduct the independent testing of their AML programs once every two years rather than the annual testing program currently required for most FINRA member firms. This seems like a welcome change though an annual review is not very burdensome anyway for most broker-dealers whose transactional activity is quite limited.

### **REGISTERED REPRESENTATIVES**

CAB Rule 201 subjects CABs to FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), which requires a member to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Depending on the facts, FINRA states that Rule 2010 may apply in situations in which a CAB charged a commission or fee that clearly is unreasonable under the circumstances.<sup>34</sup> Of course, this may create an interpretive issue between the two sets of rules.

CAB firm principals and representatives are subject to the same registration, qualification examination, and continuing education requirements as principals and representatives of other FINRA firms. CABs will also need someone with an Operations Professional registration, yet we note that this registration is essentially available without any examination for most registered persons.<sup>35</sup>

### **Supervision**

FINRA has provided some limited relief for CABs with respect to supervisory controls. However, since CABs have no authority to engage in trading activities, these token concessions have less significance than would appear initially. The CAB Proposal does recognize that the business activities of CABs will not raise the types of supervisory risks or conflicts of interest that affect firms engaging in trading activities. Thus, the CAB Proposal allows the supervisory

---

<sup>34</sup> CAB Proposal, p. 14.

<sup>35</sup> CAB Proposal, p. 10. FINRA Rule 1230(b)(6) (Operations Professional; Series 99 license).

personnel of CABs to supervise their own activities and relieves them from (1) having to report to, or have their compensation or continued employment determined by, a second supervisor; and (2) conduct internal inspections of their business.<sup>36</sup> Since many nickel BDs qualify for a waiver of the 2-Principal requirement, this is a Pyrrhic gesture to attract CAB applications.

CABs must designate a Chief Compliance Officer. FINRA has eliminated the annual CEO certification. Selling away activities by a CAB's Registered Representatives are prohibited.<sup>37</sup> Preparing a Business Continuity Plan ("BCP") is unnecessary for CABs.<sup>38</sup> This suggests to us that a regulatorily-mandated BCP is somewhat unnecessary for many other broker-dealers. Why stop with CABs?

### **Continuing Education Requirements**

The need to hold an annual compliance meeting has been eliminated, not a very burdensome requirement in the first place.<sup>39</sup> If this is an example of what FINRA believes creates a lighter regulatory environment, it, instead, confirms how few incentives FINRA has provided for firms to adopt the CAB business model.

\* \* \* \* \*

On balance, considering the financial, regulatory and financial reporting costs of registering and maintaining a CAB, we still feel this is an ill-advised proposal. Given its restrictions, particularly with respect to prohibiting transactions with accredited investors (both for M&A and fund sales), we believe the industry will not find CABs a viable option except in very limited circumstances. Rather, the proposal should inspire a new beginning of cooperation among the various regulators to adopt a framework of simplicity that will benefit broker-dealers and the investing public.

---

<sup>36</sup> CAB Proposal, p. 16.

<sup>37</sup> CAB Proposal, pp. 17-18.

<sup>38</sup> CAB Proposal, p. 19.

<sup>39</sup> CAB Proposal, p. 15.

We appreciate this opportunity to comment on SR-FINRA-2015-054. Should you have any further questions, please feel free to call Howard Spindel at 212-897-1688 or Cassandra Joseph at 212-897-1687, or contact us by e-mail at [hspindel@intman.com](mailto:hspindel@intman.com) or [cjoseph@intman.com](mailto:cjoseph@intman.com), respectively.

Very truly yours,

A handwritten signature in black ink, appearing to be 'H Spindel', with a stylized, somewhat abstract form.

Howard Spindel  
Senior Managing Director

A handwritten signature in blue ink, appearing to be 'Cassandra E. Joseph', with a cursive and somewhat stylized form.

Cassandra E. Joseph  
Managing Director