Dear Ms. Asquith,

My firm is a FINRA member specializing in raising capital for pooled investments (we do not engage in investment banking) that are both traditional and alternative by nature. Our focus is marketing to institutional investors. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD)—see attached. I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

Given that more work needs to be done, I especially support the need for flexibility in introducing the LCFB program as it relates to cost, time, and the registration process/ re-registration process; I also feel that the understanding/ definition of the term "customer" is critical going forward when it comes to a firm like ours, which has no accounts or customers as regulators refer to such.

I appreciate all the attention that you give to this matter—thank you

John Ahern
President
Compass Securities Corporation
50 Braintree Hill Office Park, Ste. 105
Braintree, MA 02184
Email: john@compasssecurities.com

April 25, 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Comment on LCFB rule set regarding Net Capital Compliance

Ms. Asquith,

Regarding net capital compliance for Limited Corporate Financing Broker (LCFB), we request for FINRA to consider a modification to the Aggregate Indebtedness (AI) Standard ratio requirement. Currently, the AI ratio requirement increases a member firm's minimum net capital requirement (MNCR) as a result of a member firm's aggregate current liabilities (liabilities due within 12 months). Most member firms who will qualify as a LCFB will have a $5,000 MNCR which will increase from time-to-time as a result of the LCFB's aggregate liabilities.

The most common current liability that causes a member firm's MNCR to increase above $5,000 is commissions or concession payable to sales representatives as a result of a receivable from an investment banking transaction that closes, but the receivable has not been collected. In most cases this receivable is collected between 2 to 5 days from the day of closing and the payable to the representative is paid shortly after it has been received. Most member firms that will qualify as a LCFB actually don't have an obligation to pay the commissions or concession payable until the revenue is received because they have written agreements with the sale representatives that waives the sales representative's right to receive payment of the commission or the concession until the member firm has received payment. However, according to GAAP, the commission or concession payable is required to be booked at the same time the commission or concession receivable is booked regardless of the agreement in place. Because of the manner in which the Aggregate Indebtedness Standard (AI) ratio requirement is currently written and applied, this liability increases the member firm's MNCR. Below is an example of how the AI standard affects a member firm's MNCR:

A member firm has executed agreements with all sales representatives that waive their right to receive any payment from the member firm until such time that the member firm receives the payment due from the issuer in cleared funds. The same member firm closes an investment banking transaction on December 31, 2013, which yields a

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commission or concession receivable of $1,000,000 and has an agreement to pay a commission or concession payable to the sales representatives of $900,000.

According to GAAP, the member firm must book the commissions or concession payable to the registered representative at the same time it books the receivable even though the member firm does not have an obligation to pay it until the free and clear funds are received by the member firm. As a result, the AI standard ratio requirement causes the member firm's MNCR to increase to almost $60,000 and its early warning net capital requirement to approx $72,000. This increase is temporary until it receives the cash and pays the commission; however, the member firm must maintain the $72,000+ in order to comply with the moment-to-moment net capital requirement.

Since the proposed LCFB will not be carrying or maintaining customer funds, then the AI standard should be modified to exclude from AI short term commission or concession payable liabilities that obligate the member firm to have a higher MNCR.

Sincerely,

Rick Alvarez, CPA
CFO & Controller

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April 28, 2014

BY E-MAIL (pubcom@finra.org)

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Proposed Rule Set for Limited Corporate Financing Brokers

Dear Ms. Asquith:

We appreciate this opportunity to comment on the proposed rule set for limited corporate finance brokers ("LCFBs") described in Financial Industry Regulatory Authority ("FINRA") Regulatory Notice 14-09 (the "LCFB Rules"). Ernst & Young Capital Advisors, LLC ("EYCA") is a broker-dealer registered with the U.S. Securities and Exchange Commission ("SEC") and has been a member of FINRA since 2010. EYCA is also registered in fifty-three U.S. states and territories. EYCA's primary business activities consist of (1) advising public and private institutional clients regarding mergers and acquisitions, corporate restructuring, and capital raising activities, including securities offerings and debt refinancing, and (2) identifying and soliciting investors in private placements.

We commend FINRA for proposing that broker-dealers like EYCA be subject to a limited rule set in lieu of the full panoply of FINRA rules to which they currently are subject. The LCFB Rules, for instance, include streamlined requirements regarding communications with the public, supervision, and continuing education that are appropriate for broker-dealers that do not handle customer funds or securities or communicate with or execute trades for retail customers. For such broker-dealers, the LCFB Rules provide welcome relief from requirements that are unnecessary and costly. Although EYCA has not yet determined whether it would opt for registration as an LCFB if the LCFB Rules were adopted, we submit this letter to highlight two modifications to, or clarifications of, the LCFB Rules that, if adopted, would enhance the potential utility of the LCFB registration category for EYCA and similarly situated member firms. In particular, we believe FINRA should (1) permit LCFBs to solicit institutional accredited investors when participating in the private placement of securities, and (2) permit LCFBs to maintain licenses that are not referenced in LCFB Rule 123 for representatives and principals.

I. Soliciting Institutional Accredited Investors

Under LCFB Rule 016(h)(1), only broker-dealers that qualify, identify, or solicit "institutional investors" as defined in LCFB Rule 016(g) would be eligible to register as LCFBs. As FINRA acknowledged in Regulatory Notice 14-09, the definition of "institutional investor" in LCFB Rule 016(g) is more restrictive than the definition of "accredited investor" in Regulation D under the

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Securities Act of 1933. For instance, and most significantly from EYCA's perspective, whereas broker-dealers that participate in private placements pursuant to Rule 506 of Regulation D are currently permitted to solicit institutions with total assets in excess of $5,000,000, LCFBs generally would be prohibited under LCFB Rules from soliciting institutions with total assets of less than $50,000,000 (unless they fell into one of only a few categories of entities enumerated in the LCFB Rules, such as banks or registered investment companies). Thus, broker-dealers that otherwise would be eligible to register as LCFBs would be prohibited from doing so if they solicited institutions with total assets of between $5,000,000 and $50,000,000. We urge FINRA to permit broker-dealers that solicit such institutions to register as LCFBs.

FINRA justifies this gap in LCFB eligibility by noting that "[a]pplication of the LCFB Rules to firms that market and sell private placements to accredited investors would require FINRA to expand the applicable conduct rules and other provisions."[1] It is not clear which requirements FINRA has in mind, particularly if the accredited investors in question are institutions.[2] Moreover, the overriding differences between potential LCFBs and broker-dealers ineligible for registration as LCFBs is – and so the key consideration when determining whether existing FINRA rules should apply to LCFBs should be – that potential LCFBs do not handle customer funds or securities and do not interact with retail customers. These differences exist irrespective of whether potential LCFBs solicit institutional accredited investors with total assets of between $5,000,000 and $50,000,000, or institutional accredited investors with total assets of greater than $50,000,000.

In addition, the SEC has determined that accredited investors are "those persons whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the Securities Act's registration process unnecessary."[3] If institutional accredited investors with total assets of between $5,000,000 and $50,000,000 are sufficiently sophisticated that *offerings* to such investors are not subject to additional requirements under the Securities Act relative to offerings to other accredited investors, there is no reason that the *broker-dealers participating in offerings* to institutional accredited investors with total assets of between $5,000,000 and $50,000,000 should be subject to additional requirements under FINRA rules relative to broker-dealers participating in offerings to other accredited investors.

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[1] FINRA Regulatory Notice 14-09, note 3.

[2] For instance, if, as a consequence of permitting LCFBs to solicit accredited investors, FINRA elected to incorporate into the LCFB Rules FINRA Rule 5123 (Private Placements of Securities), which imposes a filing requirement on broker-dealers that sell securities in private placements, doing so would have no effect on LCFBs that solicit *institutional* accredited investors because broker-dealers that solicit such investors are exempt from the requirements of the rule. FINRA Rule 5123(b)(1)(J) exempts offerings sold to accredited investors described in Securities Act Rule 501(a)(1), (2), (3), or (7) – *i.e.*, institutional accredited investors.

[3] SEC Securities Act Release No. 6683 (Jan. 16, 1987) (proposing, among other things, to include corporations and partnerships with total assets in excess of $5,000,000 within the scope of the definition of "accredited investors" for purposes of Regulation D).

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II. Maintaining Registration Licenses Not Referenced in Rule Set

LCFB representatives and principals should be permitted to retain licenses that are not referenced in LCFB Rule 123. As discussed below, the potentially transient nature of the LCFB registration category may cause representatives and principals of an LCFB to become associated with a non-LCFB broker-dealer within a short period of time. Consequently, representatives and principals may hesitate to associate with an LCFB unless they are permitted to retain licenses that are not referenced in LCFB Rule 123.

Several aspects of the LCFB registration category could dissuade representatives and principals from associating with an LCFB unless they are permitted to retain non-required registrations. First, under LCFB Rule 240, FINRA may require an LCFB to register as a non-LCFB broker-dealer if FINRA determines that the LCFB "has engaged in activities that require the firm to register as a broker or dealer under the Exchange Act, and that are inconsistent with the limitations imposed on limited corporate financing brokers under Limited Corporate Financing Rule 016(h)." Second, under LCFB Rule 116(c), an LCFB may become a non-LCFB broker-dealer by filing an application for approval of a material change in business operations and amending its FINRA membership agreement. In each of the above scenarios, an LCFB representative or principal who relinquished a registration in order to associate with the LCFB may find that he or she needs that registration in order to associate with a non-LCFB broker-dealer.

We urge FINRA to permit principals and representatives associated with LCFBs to retain licenses that are not referenced in LCFB Rule 123. Specifically, LCFB Rule 121(c)-(d) should permit LCFBs to maintain a registration for a representative or principal so long as the representative or principal is active in the broker-dealer's "investment banking or securities business" as a representative or principal, respectively. For instance, an LCFB should be permitted to maintain a Series 22 license (Limited Representative—Direct Participation Program) for a representative who actively sells corporate securities on behalf of the LCFB pursuant to the representative's Series 62 license (Limited Representative—Corporate Securities).[4]

We appreciate this opportunity to comment on the proposed LCFB Rules. Please do not hesitate to contact me at 313.628.8690 if you would like to discuss any of the topics addressed in this letter or any other aspect of the proposal.

Sincerely,

James W. Carter
Chief Executive Officer

[4] We note in this regard that FINRA's proposed Rule 1210 would permit FINRA members to maintain a non-required registration for a representative or principal "provided that such person is engaged in a bona fide business purpose of the member." FINRA Regulatory Notice 09-70.

Faith Colish, Carter Ledyard & Milburn LLP
Martin A. Hewitt, Attorney at Law
Eden L. Rohrer, Crowell & Moring LLP
Linda Lerner, Crowell & Moring LLP
Ethan L. Silver, Carter Ledyard & Milburn LLP
Stacy E. Nathanson, Attorney at Law

April 28, 2014

Via email to: pubcom@finra.org

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA's Regulatory Notice 14-09 Request for Comment
Proposed Limited Corporate Financing Broker Rules

Dear Ms. Asquith:

This comment letter is submitted on behalf of the six lawyers who authored the recent request to the SEC with respect to M&A Brokers, which relief was granted by the staff in a No-Action Letter made publicly available on January 31, 2014 and amended February 4, 2014 (the "M&A Brokers Letter"). We submit this comment letter with respect to FINRA's proposed rule set for firms that meet the definition of "limited corporate financing broker" ("LCFB") (the "LCFB Rule Proposal").[1]

As proposed by FINRA, an LCFB is a firm that engages in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and "soliciting" investments from "institutional investors." We applaud FINRA in recognizing the rationale proposed by the ABA Task Force for Private Placement Brokers (the "Task Force") and enunciated in its 2005 report (the "2005 Task Force Report") calling for a broker-dealer limited category of registration. However, we do not believe that the language in the LCFB Rule Proposal is clear enough, nor as proposed, goes far enough to limit the costs and other additional burdens to which these types of limited broker-dealers are currently subject.

FINRA has specifically sought comment as to whether the M&A Brokers Letter impacts the analysis of whether a firm would become an LCFB and whether it is likely that some limited corporate financing firms (a) will not register as a broker consistent with the fact pattern set forth in the M&A Brokers Letter, or (b) will become FINRA members and qualify as an LCFB. There is no reason under the M&A Brokers Letter for persons acting within its parameters to be regulated as an LCFB or register as any other type of broker. The SEC has effectively carved

[1] See Limited Corporate Financing Brokers at FINRA Regulatory Notice 14-09 (February 2014), available at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p449586.pdf

out this category of brokers from all registration requirements, provided they abide by the parameters set forth in the M&A Brokers Letter. Because M&A brokers are not required to register with the SEC, they are ineligible for membership with FINRA and cannot be required to be regulated as LCFBs. Only M&A brokers who wish to conduct activities outside the four corners of the M&A Brokers Letter (*i.e.*, participating in capital raising activities) will be eligible for membership as an LCFB or some other broker category.

We have not addressed each of your requests for comments, but rather wish to point out our key concerns.

First, FINRA's explanation of what an LCFB can and cannot do is ambiguous and needs to be stated more clearly. As described in the proposal and more thoroughly below, an LCFB can solicit institutional investors.[2] Nevertheless, proposed Rule 016(h)(2) states that the term LCFB does not include a broker-dealer that "accepts orders from customers to purchase or sell securities...as agent for the customer...." If by permitting solicitation but not the acceptance of orders FINRA means that an LCFB may engage in effecting transactions but that final acceptance of orders is within the sole control of the issuer, and that the LCFB cannot bind the issuer to a sale, that point should be more clearly stated. In other words, FINRA needs to make explicit that an LCFB can engage in capital raising in private placements, so long as the customer is at least an institutional investor (or as we propose below, qualified purchaser), and that the prohibition against an LCFB from accepting customer orders to purchase or sell securities, even as agent, was not intended by FINRA to limit an LCFB from engaging in capital raising.

We also believe that FINRA should lower the economic threshold of the types of customers an LCFB may **solicit** in order to **effect** these private placements without compromising the goal of investor protection. The "qualified purchaser" standard of the Investment Company Act of 1940[3] is, we believe, a much more appropriate standard. While, an LCFB would be allowed to serve clients such as individuals or entities seeking advice on securities offerings or sales of businesses who do not meet the "institutional investor" definition, an LCFB is more restricted in the category of investors that it can qualify, identify and solicit to invest in a transaction.

The term "institutional investor" would have the same meaning as that term has under FINRA Rule 2210 (Communications with the Public). The term generally includes banks, savings and loan associations, insurance companies, registered investment companies, governmental entities, employee benefit plans, qualified plans, or other persons (including natural persons, corporations, partnerships, trusts, family offices or otherwise) with total assets of at least $50 million or any person acting solely on behalf of any such institutional investor.

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[2] *See* Rule 016(h)(1)(F).

[3] 15 U.S.C. 80a-2(a)(51). A qualified purchaser must meet one of the following criteria: a) Individuals who own $5 million in investments; b) Institutional investors who own $25 million in investments; c) A family owned company that owns $5 million in investments; d) For trusts with less than $25 million, a trust where the trustee and each person who contributes assets to the trust is a Qualified Purchaser; e) A "Qualified Institutional Buyer" under Rule 144A of the 33 Act, except that "dealers" under Rule 144 must meet the $25 million standard of the 1940 Act, rather than the $10 million standard of Rule 144A;
f) A company owned beneficially only by Qualified Purchasers; however, a company will not be deemed to be a qualified purchaser if it was formed for the specific purposes of acquiring the securities offered by a 3(c)(7) fund.

We understand that FINRA does not propose to allow LCFBs to solicit investors based on a more inclusive standard, such as the definition of "accredited investor" in Regulation D under the Securities Act of 1933 and as proposed in the 2005 Task Force Report. FINRA reasons that its regulatory programs have uncovered serious concerns with the manner in which firms market and sell private placements to accredited investors. Application of the LCFB Rules to firms that market and sell private placements to accredited investors would require FINRA to expand the applicable conduct rules and other provisions. Therefore, FINRA argues that lowering the threshold of "institutional investor" would eviscerate the benefits of a streamlined rule set. However, the Qualified Purchaser standard adequately serves the investor protection goals at issue. Qualified Purchasers that are individuals or family owned companies must own invested assets of at least $5 million; Qualified Purchasers that are institutions must own at least $25 million. Such persons and entities are generally far more sophisticated and knowledgeable than an accredited investor, who need only have earned income of $200,000, and Qualified Purchasers are more likely to engage financial advisors, accountants and lawyers to assist them in making such decisions.

We also propose that FINRA collaborate with the North American Securities Administrators Association ("NASAA") and the SEC to further reduce certain administrative burdens for LCFBs while still providing meaningful investor protections. We are mindful of the vital role played by state securities regulators in monitoring activities of securities intermediaries. We urge FINRA to continue to work closely with representatives of NASAA in a joint effort to devise a more appropriate framework for limited business brokers. We also recommend that FINRA work with the SEC to devise a better investor protection mechanism than a $5,000 minimum net capital requirement. This may require a fidelity bond or perhaps a fund, to which LCFBs must contribute and that could be drawn upon in cases of fraud or other loss by an LCFB. It is important to note that individual states may have certain fidelity bond requirements and thus it is critical that they be consulted as well in order to make the final rule set more efficient and cost effective. Additionally, we believe that FINRA should eliminate the requirement for an annual audit by PCAOB accountants. These requirements seem entirely unnecessary and unduly burdensome from a financial point of view given the limited business of LCFBs, the fact that they do not execute securities transactions, maintain customer accounts or hold funds or securities. Should regulators wish to assure themselves that an LCFB or its principal has not received customer funds, the regulator could accomplish that goal far more effectively by reviewing the relevant bank account activity.

For similar reasons, the requirement to file FOCUS Reports on a quarterly basis, and the obligation to have a Financial and Operations Principal (FINOP) who has passed either the Series 27 or the Series 28 exam could be eliminated. It may be more effective to concentrate scarce regulatory resources on escrow requirements, general solicitation issues, offering documentation (in order to be able to affirmatively establish the availability of the exemption), to name a few. Regulators could require a designated principal to complete simplified training that would cover the very limited accounting skills and knowledge required for this type of broker-dealer rather than requiring a FINOP. Without lessening the financial burden of operating a firm, there is little incentive for a firm to become an LCFB rather than a broker-dealer. Likewise, FINRA could institute very focused examination and continuing

educational requirements for LCFB principals and agents with respect to applicable regulatory requirements.

Additionally, FINRA should make it clear that it will permit, pursuant to NASD Rule 2420 or an amended rule, all member firms (including LCFBs) to share compensation with M&A Brokers based on a representation that the M&A Broker satisfies the conditions of the M&A Brokers Letter and the member firm has no reason to believe otherwise. This type of activity would be explicitly included in the language of the successor to Rule 2420, FINRA Rule 2040, that was proposed in 2009 but still has not been adopted.

We also urge FINRA to adopt a more streamlined Membership Process (NMA/CMA) for these basic LCFB applications. The application review period should be no more than 90 days from the time of filing and the fee should be reduced to a maximum of $2,500 (CMA) or $3,750 (NMA). The typical expense and 180-day review period from the time an application is filed, are unnecessary barriers to entry for these types of limited brokers.

Registered representatives of an LCFB should also have the opportunity to maintain registrations that go beyond those required to perform activities for the LCFB so long as they satisfy Continuing Education requirements in the related areas, similar to what has been proposed and discussed for Retained Associates.

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We support FINRA's objective to provide a broker-dealer limited category of registration. However, for the reasons cited above, we believe that the rule proposal falls short of providing an efficient and cost effective limited registration for LCFBs. The six lawyers appreciate the opportunity to comment upon FINRA's rule proposal.

Sincerely,

Faith Colish, Esq., Carter Ledyard & Milburn LLP

Martin A. Hewitt, Esq., Attorney at Law

Eden L. Rohrer, Esq., Crowell & Moring LLP

Linda Lerner, Esq., Crowell & Moring LLP

Ethan L. Silver, Esq., Carter Ledyard & Milburn LLP

Stacy E. Nathanson, Esq., Attorney at Law

Member FINRA / SIPC, MA Registered with the SEC and MSRB

April 28, 2014

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

My firm is a FINRA member specializing in third party marketing services. Tessera offers traditional long-only investment management services as well as alternative investments to institutional investors and financial intermediaries. I am also a member and a part of the Board of Directors for Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

Respectfully yours,

Donna DiMaria

Donna DiMaria
CEO & CCO

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April 28, 2014

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

The Third Party Marketers Association ("3PM") supports FINRA's initiative to issue a separate rule set for limited purpose firms such as third party marketers, placement agents, investment bankers and other financial advisors that advise companies on mergers and acquisitions, advise issuers on raising debt and equity capital in private placements with institutional investors, or provide advisory services on a consulting basis to companies that need assistance analyzing their strategic and financial alternatives (Limited Corporate Financing Broker or "LCFB").

While we applaud the steps that FINRA has taken to move this initiative forward by establishing a working group of industry participants and undertaking a revised rule set, we believe that the proposed rule set requires amendments and changes in order to effectively address the nuances related to the constituency of LCFBs, in order to provide a clear roadmap for regulators, including regulatory examiners in their oversight efforts, and to afford appropriate investor protections.

To that end, this letter we will set forth our comments, suggestions and proposed amendments as applicable in the hope that we can participate in the forward-moving momentum of this initiative.

Rule 016. Definitions

Because the LCFB does not engage individual consumers in the same manner as full service BDs, the term "customer" does not fit in the vernacular of an LCFB. For regulators, regulatory field examiners and industry participants seeking to draft internal working procedures that both conform to regulations and address their business and operating needs, use of the term presents a fundamental obstacle.

In discussion with FINRA staff members we have ascertained that point (f) in the definition of a "LCFB" is intended to bring the institutional investors we work with into the definition of "customers". We feel, however that the way in which point (f) is written is unclear and leaves room for interpretation. Point (f) states that a LCFB is any broker that engages in any one or more of the following activities - qualifying,

identifying or soliciting potential institutional investors. FINRA asserts that this clause should be read to mean that an "institutional investor" is receiving corporate financing services from a LCFB and is thus a "customer". The definition, however, could be interpreted to mean that qualifying, identifying or soliciting potential institutional investors is a service that benefits the manager, fund sponsor or issuer not the "institutional investor". Rather than force the definition into existing terms, we believe a more sound approach involves clear new definitions tailored to the business of an LCFB.

We propose that the term "customer" be eliminated from the LCFB rules. In its place, we recommend the following terms:

- **"Issuer"** – A Manger, Fund Sponsor, GP, Offerer or other similar person or organization that engages the services of a LCFB.

- **"Investor"** – any person, whether a natural person, corporation, partnership trust, family office or otherwise, that commits or is solicited to commit money or capital to the Issuer.

- **"Qualified Investor"** – We propose substituting the term "Qualified Investor" for "Institutional Investor" and utilizing the current definition of "Institutional Investor" as defined in FINRA Rule 2210 with some modifications. One such modification should include allowing Qualified Purchasers, as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 [15 U.S.C. 80a-2 (a)(51)(A)], to be included in the definition of "Qualified Investors". While we recognize FINRA's concerns with lowering the threshold of "Institutional Investor" to "accredit investors", we see Qualified Purchasers as a prudent and reasonable standard for the following reasons:

    - It would provide a standard consistent with the highest requirements of alternative investment funds themselves mandated by the SEC - (3(c)(7) funds versus 3(c)(1) funds – and by extension other private placements and alternative investments; and

    - It would reduce ambiguity and inconsistency with SEC rules both where third party marketers and placement agents conduct business directly with Investors and indirectly through consultants, wealth managers and other investment advisors who serve as Intermediaries for the actual legal and beneficial investors.

- **Intermediary** – a Federally regulated entity that is compensated by an Investor to act on its behalf by engaging in any one of the following activities:

    - Advise the investor regarding its investment policy
    - Determine a target asset allocation

- Provide education on new investment opportunities
- Qualify, identify and select investment managers to handle mandates consistent with the Investors target allocations and risk tolerance

We believe these definitions clearly describe the counterparties involved in LCFB and provide a meaningful foundation and common vernacular for industry participants, regulators, regulatory examiners and investors alike. We believe these definitions effectively remove ambiguity and ensure the consistent application of rules as they are intended. Furthermore, by using terminology that more accurately reflects the business of a LCFB, we would eliminate any inconsistencies or uncertainty that currently exists in the proposed definitions.

Rule 116. Application for Approval of Change in Ownership, Control, or Business Operations

While FINRA has eliminated the need for members changing their status to a LCFB to file a CMA /NMA, firms would still be required to file a request to amend to their membership agreement. We believe that any firm opting into the LCFB category should be permitted to do so without a fee. We further believe that firms should have the ability to change their status back to that of a full broker dealer without the expense of transition or the need to file a CMA for at least the first year of the category's availability. We believe by making the transition period less complex and costly, FINRA will help to facilitate a broader adoption of the new rule set while allowing LCFB's to put these resources towards the revision of their compliance program.

Rule 123. Categories of Registration

3PM proposes that FINRA waive the S99 examination requirement for small firms who have a registered principal assigned to the covered functions outlined in the rule. We believe that the requirements of Rule 1230 should only apply to unregistered individuals handling any of the covered functions outlined.

Rule 125. Continuing Education Requirements

FINRA is waiving the RE requirement for LCFB, but is reserving the right to require firms to take educational courses if mandated. We would not be opposed to the requirement for additional training so long as the training is applicable to the LCFB's business and relevant from an industry perspective. In general, we support the requirement for CE testing to keep licensure active, but propose a two-year frequency which we believe to be more reasonable.

Rule 209. Know Your Customer

We encourage FINRA to consider redrafting the Know Your Customer requirements in the context of our proposed definitions to reinforce clarity and consistency.

3PM believes that regulators including exam personnel and the industry alike will require an understanding of the constituents if the rulemaking is to be effective. As such, 3PM believes that the term "customer" must be removed in order for the sake of relevance. For this reason, consistent with our proposed definitions above, we propose the following general guidelines for Rule 209:

- ***"Knowing you Issuer"*** standard should require the LCFB to conduct a full and thorough risk-based, due diligence review of an entity or person (Issuer) that engages the LCFB, consistent with a reasonable basis suitability review.

- ***"Knowing your Investor or Intermediary"*** " standard should require the LCFB to conduct thorough risk-based, due diligence review of the investor or intermediary that is reviewing the offering, again consistent with the reasonable basis review. This would include ensuring that the intermediary meets all applicable licensing standards, business and experience standards, among other reviews.

Rule 211. Suitability

We believe that Rule 211 is essential to providing meaningful, defining requirements for LCFBs. Because of the unique nature in which LCFBs conduct their business, we believe that Rule 211 must be properly crafted so that regulators, including regulatory examiners, and industry personnel alike will find a common ground, and a far more effective regulatory regime. We believe that the Rule as currently drafted does not adequately capture aspects of the suitability process that are inherent to LCFBs, and, importantly, that it does not adequately provide for investor protections.

We believe the rule as proposed fails in two primary regards:

1) by requiring the suitability analyses to be performed before any recommendation, and
2) by defining suitability in terms applicable to retail investors.

To remedy these issues, we propose that the Rule be redrafted as generally described below:

Regarding the timing of the suitability analysis, we encourage FINRA to recognize that the process of diligence related to offerings ranging from private placements offered to Investors and Qualified Investors, to placements, mergers and acquisitions of businesses of all sizes is ongoing and often does not, and should not, conclude until the deal is closed. We believe incorporation of this process is

essential to Investor protections, and to the success of the rulemaking regime for LCFBs. We encourage FINRA to redraft Rule 211 to require that the suitability analysis be complete by the time the subscription agreement or relevant contract is signed in recognition of the actual ongoing work performed by a LCFB, and, most importantly, to protect Investors in the non-institutional circumstances. With regard to the suitability requirements themselves, we again revert to our proposed definitions, suggesting as follows:

- The LCFB should be required to perform reasonable basis suitability analysis regarding each "**Issuer**" by which it is engaged.
- The LCFB should be required to perform a reasonable basis suitability analysis regarding each "**Intermediary**" with which it does business. The LCFB will perform no look-through to the underlying investor so long as the suitability review of the Intermediary, demonstrates that the Intermediary is qualified to recommend suitable securities to their clients and represents that their clients are Qualified Purchasers and thus "**Qualified Investors**".
- The LCFB should be required to perform Investor-Specific suitability analysis as per FINRA Rule 2111 for every "**Investor**" with which it directly conducts business (not through an Intermediary").
- The LCFB should be required to perform a suitability analysis similar to that required by the institutional investor exemption as per Rule 2111 for every "**Qualified Investor**" for which it directly conducts business (not through an intermediary). The requirement for a "**Qualified Investor**" to provide an affirmative indication of independent judgment should be waived.

Rule 221. Communications with the Public

While the LCFB proposal did remove two of the three communication categories covered by Rule 2210, Retail Communications and Correspondence, these are categories that by definition would not apply to a LCFB who can only work with institutional investors. Accordingly, the changes to the Rule did make the rule more relevant to the members who may decide to register as a LCFB than it was before. LCFBs are still subject to the same provisions of Rule 2210 covering institutional communications as we were before which we believe do not accurately reflect how LCFB firms operate in a real life setting.

3PM proposes that FINRA revise Rule 2210 and specifically the general content standards to meet the realities of representing Issuers. Proposed modifications should include a realistic approach to setting fair and balanced content standards for communications and marketing materials as well as an expansion of the exemptive provisions for our new definition of "**Qualified Investors**", especially those that are professional allocators or use the services of investment consultants.

Rule 240. Engaging in Impermissible Activities

As proposed, FINRA may impose severe penalties on a LCFB if the firm engages in any activities that require the firm to be registered as a broker or dealer under the Exchange Act. To ensure an evenhanded approach, modification would include explicit language outlining a defined remedial period and process for any unintentional activities of an LCFB until the practical application has played out which will likely illuminate these areas of the Rule framework which warrant additional precision. Egregious and intentional disregard of an LCFB would still fall into the enforceable realm of FINRA authority.

Rule 331. Anti-Money Laundering Compliance Program

3PM recognizes that all financial institutions play an important role in the detection and prevention of money laundering. While we believe that extending the independent test requirement from annually to bi-annually is appropriate for LCFBs, we also suggest that FINRA consider amending the Customer ID Program (CIP) requirements to conform to the business of a LCFB. Specifically, 3PM recommends that LCFB's should be required to implement a CIP as follows:

- For all Issuers and Intermediaries with which the LCFB does business
- For all Investors when there is no Intermediary involved.

Rule 411. Capital Compliance

3PM believes that proposed Rule 411 should remove the minimum net capital requirement of $5,000 currently applied to the LCFB members. Furthermore, FINRA should assist the LCFB community in working with the SEC to correct the calculation of net capital for LCFBs so that the nature of our business does not cause us have to improperly report our financial condition to the FINRA. Additionally, we suggest that FINRA overhaul the current Supplemental Statement of Income ("SSOI") content by convening a working committee of LCFBs to help write appropriate questions that accurately reflect our business model. Further details regarding specific components of the proposal are described below.

- ***Net Capital Requirement*** - The current net capital requirement thresholds of $250,000, $100,000, and $50,000 respectively for carrying members and introducing members are rather arbitrary in nature; however, the materiality of these dollar amounts at least substantively supports the spirit of these minimum net capital requirements which is in part to protect the customer should a scenario unfurl which causes damage to an investor. In theory, the broker dealer carrying or clearing that customer account would have minimally sufficient reserves to

apply to a remedial solution for the customer. When applying this ideology to the $5,000 net capital requirement for LCFBs (non-carrying and non-clearing members), it is clear that $5,000 would universally be determined as an insufficient amount to apply to any hypothetical remedial solution involving a customer. One may then deduce that this specific net capital requirement remains in place to ensure that all member firms remain on the grid and adhere to the general net capital requirement apparatus, and that perhaps the intention was that a well thought out resolution would be implemented down the line. This time has now finally come, and we collectively need to implement specific rules which effectively and efficiently regulate the LCFB universe of member firms.

Countless hours and resources have been allocated to this $5,000 minimum net capital requirement by LCFBs and FINRA examiners alike. This is clearly not an effective and efficient use of our collective resources when recognizing that the minimum net capital requirement of $5,000 for LCFBs (non-carrying firm) does not deliver any type of investor protection.

- ***FOCUS Reports and Calculation of Net Capital*** - 3PM believes that the calculation of net capital and FOCUS reporting requirements for LCFB members need to be overhauled as the current set of calculations and data points are not directly applicable to the business conducted by LCFBs. We believe that this approach is simply another attempt by both FINRA and the SEC to standardize reporting regardless of fit rather than make the appropriate changes required for LCFBs to properly assess their financial viability and ability to protect investors.

  A specific issue that illustrates this disconnect is demonstrated through the revenue generation framework relative to private placement activity. When payment is due, a LCFB will book a receivable for the incentive fee owed to the firm. Often a corresponding payable will be established that would pass-through a portion of that fee to the registered representative who gets paid a commission on that fee. Both of these entries are in compliance with the SEC and GAP standards. A disconnect, however occurs in the firm's calculation of net capital. Under SEC rules, the current net capital calculation does not allow the accrued receivable to be offset by the payable that is directly related to it. Instead, the entire net commission payable is required to be recorded as aggregate indebtedness (AI), in effect requiring the LCFB to double count the payable. This methodology does not adhere to GAP standards which would allow for the corresponding offset to the receivable. Furthermore a significant number of PCAOB registered accountants believe that this is the improper way to record revenue or calculate AI. By following the SEC's mandated approach, the LCFB is not accurately reflecting its true capital condition.

- ***Supplemental Statement of Income ("SSOI")*** - In an attempt to gather new information and intelligence, FINRA implemented the SSOI. The SSOI incorporated new questions and data requests regarding the financial condition of member firms. While the goal of this exercise was worthwhile, we believe that the results FINRA receives from these forms are inaccurate due to

the wide array of methods, timelines and fee structures applicable to LCFBs offering private placements

The SSOI was clearly written under the assumption that there is consistency in the method, timeframe and fee structures that applies to both private placements and publicly traded securities. This is simply an inaccurate assumption. When FINRA was made aware of the inaccuracies, the response was that they understood the shortcomings of the reports, and it was suggested that firms use their best efforts to interpret the questions. While 3PM is not against enhanced reporting for the purpose of gleaning new insights in to a firm's financial condition, we do not believe that it acceptable for FINRA to issue reporting requirements that do not apply to a constituency or that may distort the findings because of the interpretation of an unclearly written question.

Rule 414. Audit

3PM believes that the cost of Audits, which are extremely prohibitive to small firms, need to be addressed. Given the new requirement that PCAOB Auditors must now be audited by the Board, the costs of such audits, which will be absorbed by the broker dealer community, is growing exponentially. The rule requiring PCAOB audits was initially intended to cover firms working with public entities, not small, broker dealers like those that are covered by the LCFB rule set. Furthermore, the PCAOB interim inspection program findings simply are not relevant to LCFBs, and would therefore would not be found in the audits of our firms.

We believe that FINRA should work with other Authorities and Government Agencies, in this case the PCAOB, to help carve out small broker dealers, specifically LCFBs from this new oversight requirement. Please see the Appendix for a report entitled PCAOB Audit Oversight and Small, Non-Public Non-Custodial Broker-Dealers; Attributes-Based Analysis of the Broker-Dealer Risk Profile which supports 3PM's perspective.

Rule 436. Fidelity Bonds

3PM feels that Rule 4360 is not applicable to LCFBs and should be omitted from the rule set. Continuing to subject LCFBs to this Rule does not make sense and offers no protection to the LCFB or investors.

The LCFB proposal did not make any changes to Rule 4360 and as such LCFBs are still required to obtain a fidelity bond. A fidelity bond insures a firm against intentional fraudulent and dishonest acts committed by employees and registered representatives under certain specified circumstances. In cases of theft of customer funds, a fidelity bond generally will indemnify a firm for covered losses sustained in the handling of customers' accounts. Since, by definition, an LCFB is not permitted to hold or handle customer funds or securities, this rule is irrelevant to LCFBs. Under the current rules, LCFBs are required

to secure costly insurance policies that would protect us and our customers from bankruptcy. While in theory the idea is sound, in practice if an LCFB was ever sued for wrongdoing, the fidelity bond policy would not cover our firms or provide the bankruptcy protection the Rule was designed to provide. Since this rule does offer any type of protection, LCFBs are wasting capital on premiums that could alternatively be used to support business operations.

Additional Rules Not Covered in the LCFB Rule Set

3PM believes that LCFBs should be exempt from membership in SIPC. Furthermore, while we understand that FINRA was not the authority that mandated compliance with SIPA, we do believe that FINRA is in a position to assist the LCFB community in its mission to seek relief from this irrelevant requirement.

Rule 2266. SIPC Information

The proposed rule set did not make mention about Rule 2266 and whether or not this Rule applied to LCFBs. 3PM would however like to make clear our thoughts on the relevancy of this Rule to LCFB firms.

SIPC was created under the Securities Investor Protection Act as a non-profit membership corporation. SIPC oversees the liquidation of member broker-dealers that close when the broker-dealer is bankrupt or in financial trouble, and customer assets are missing. In a liquidation under the Securities Investor Protection Act, SIPC and the court-appointed Trustee work to return customers' securities and cash as quickly as possible. Within limits, SIPC expedites the return of missing customer property by protecting each customer up to $500,000 for securities and cash (including a $250,000 limit for cash only).

SIPC is an important part of the overall system of investor protection in the United States. While a number of federal and state securities agencies and self-regulatory organizations deal with cases of investment fraud, SIPC's focus is both different and narrow: restoring customer cash and securities left in the hands of bankrupt or otherwise financially troubled brokerage firms.

In SIPC's own words, their mission directly relates to protecting customer assets. LCFB firms by definition ***"do not include any broker or dealer that carries or maintains customer accounts, holds or handles customers' funds or securities, accepts orders from customers to purchase or sell securities as a principal or as an agent for the customer".*** As such, LCFB are continually paying assessments on their revenues in to the SIPC fund to protect investors that will never require coverage from such an event from a LCFB. This rule is not properly aligned with the business of LCFB and creates significant expenses to LCFBs without providing any tangible benefit. In reality LCFBs are paying into a fund that reimburses investors for somebody else's wrongdoing which is an unfair practice.

Questions posed by FINRA

FINRA particularly requested comment concerning the following issues:

- **Does the proposed rule set provide sufficient protections to customers of an LCFB? If not, what additional protections are warranted and why?**

  We believe it is FINRA's intent and consistent with investor protections in general, to offer the greatest level of protection to the individual or entity making the capital commitment or investment. In our language, as proposed above, this is the Investor. We believe that by changing the definitions that apply to LCFBs as we have proposed, FINRA would address the fundamental confusion and inconsistencies that exist in the current rulebook and close any loopholes that are open to interpretation as to who is actually a LCFB's "customer". Further, we believe that the suitability rules must be amended to better reflect the business those firms offering private placements actually engage in. This would ensure that reasonable basis and investor level suitability are considered ongoing requirements timed to the purchase of an investment rather than to the recommendation.

- **Does the proposed rule set appropriately accommodate the scope of LCFB business models? If not, what other accommodations are necessary and how would customers be protected?**

  We do not believe that the current rule set as written is relevant to the LCFB business model for the reasons articulated above is our discussion on the proposed rule set for LCFBs.

- **Is the definition of "limited corporate financing broker" appropriate? Are there any activities in which broker-dealers with limited corporate financing functions typically engage that are not included in the definition? Are there activities that should be added to the list of activities in which an LCFB may not engage?**

  We believe that definition of LCFB is appropriate.

- **Are there firms that would qualify for the proposed rule set but that would choose not to be treated as an LCFB? If so, what are the reasons for this choice?**

  We believe that firms may forego the new registration category until details regarding the NMA/CMA process are better defined. In particular, the cost of switching registration types and potential enforcement may outweigh the benefits gained by changing categories. For this reason, we request that consideration be given to preliminarily offering the LCFB registration as

a category (in lieu of "Other") subjecting the relevant portion of a firm's business to the new rules, as opposed to requiring an all-or-none decision. This would facilitate an orderly transition for firms, lessen the learning curve for examiners, and generally reduce the margin for unintended consequences.

- **What is the likely economic impact to an LCFB, other broker-dealers and their competitors of adoption of the LCFB rules?**

  3PM does not believe that this rule will have a meaningful economic impact on the LCFBs that are eligible to operate under this proposed rule set. We are not convinced that firms will adopt the rules unless and until LCFB registration eliminates costly and, we would argue irrelevant, financial audits and reporting, AML Independent Testing, and SIFMA registration.

- FINRA welcomes estimates of the number of firms that would be eligible for the proposed rule set.

  The below information was excerpted from a report presented to PCAOB in early 2013. While the data may not be as current as we would like, we believe numbers reflect a viable estimate of the firms that would be eligible to register as a LCFB.

  FINRA, defines a small firm is any firm with 150 or fewer licensees, or registered representatives. FINRA is comprised of approximately 4400 firms of which 85% are categorized as small firms. A significant percentage of small broker-dealers that have only 2 or fewer business lines, have less than $1mm in annual revenue, and/or engage in business lines such as private placements, mergers and acquisitions, and other such business lines which would fall under the category of LCFB.

  These types of small broker-dealers are readily identifiable using BrokerCheck, FINRA's public resource for broker-dealer background reviews, or through its central data depository (CRD) with the following acronyms:

  - Other
  - PLA – Private Placement
  - PLA and Other

  Of the 4400 FINRA broker-dealers registered, the statistics reveal the following:

- 191 broker-dealers report that private placement activity is their only business line;
- 174 broker-dealers do not fall into any of the customary FINRA business lines and disclose "Other" as their only line of business. Most of these describe their business as mergers and

acquisitions;

- 541 broker-dealers disclose that they engage solely in private placement agent and "other" activities, again describing the other activity as mergers, acquisitions and placement agent or third party marketing services.

Cumulatively, these 906 firms represent a class of broker-dealer that does not open securities or investment accounts, does not carry or introduce assets or securities, and does not have customers in the retail sense. The business activities of these firms are governed by contract and are not 'transactional.' As such, we would conclude that they would fall under the definition of a LCFB.

It is important to note that the majority of these firms are also very small firms, and many have revenue of less than $1mm/year. Of the 457 firms reporting only one line of business (private placements or "other") all but 13 are small firms (fewer than 50 employees). Of those reporting two business lines private placements and "other", 98% have fewer than 50 employees.

Attributes	# Firms	# with Fewer than 50 RRs	As %
PLA	191	188	98%
Other	174	164	94%
PLA and Other	541	528	98%
Total or Average	**906**	**880**	**97%**

- **Proposed LCFB Rule 123 would limit the principal and representative registration categories that would be available for persons associated with an LCFB. Are there any registration categories that should be added to the rule? Are there any registration categories that are currently included in the proposed rule but that are unnecessary for persons associated with an LCFB?**

3PM does not believe that the Rule 123 should limit the principal and registration categories that would be available for persons associated with a LCFB. We believe that there are other registration categories that could apply to a LCFB that are not included in the proposed rule set. For example,

- LCFB firms that are registered as a broker dealer with the ability to engage in investment advisory services would also need to hold the Series 65 or 66 registrations.
- Some LCFBs may be required under state requirements to hold the Series 63 registration
- LCFB firms that are distributing mutual funds may have associated persons holding the Series 6 and 26 registrations

- LCFB firms may be acting as a solicitor for direct participation programs and may have associated persons holding the Series 22 and 39 registrations
- LCFB firms offering private placements whereby the Issuer is a CTA may be required to have associated person who hold the Series 3, 30, 31 or 32 registrations
- LCFB firms offering private placements whereby the Issuer's strategy involves options may hold the Series 4 and 42
- LCFB firms may have associated persons holding the Series 14 examination

As such we believe that FINRA should not restrict the principal and representative registration categories for persons associated with a LCFB.

- **Should principals and representatives that hold registration categories not included within LCFB Rule 123 be permitted to retain these registrations?**

3PM believes that principals and representatives should be able to continue to retain their registrations so long as they continue to stay current with their CE requirements. We believe that prohibiting a principal or representative from maintaining a registration because it was not within LCFB 123 would be penalizing a professional for choosing to engage in a regulatory scheme that was more relevant to their current business operations. The financial industry has long been categorized by inventive and driven people who often change firms or focus several times throughout their careers. We believe allowing a LCFB to maintain additional registrations would be no different than someone who changed roles in a firm and continued to maintain registrations used in a previous role.

- **Does an LCFB normally make recommendations to customers to purchase or sell securities? Should an LCFB be subject to rules requiring firms to know their customers (LCFB Rule 209) and imposing suitability obligations (LCFB Rule 211) to an LCFB?**

We believe that there are firms that would otherwise qualify as a LCFB that make recommendations to customers. We believe that our recommendations regarding the fundamental definitions of counterparties and their respective roles in suitability address concerns that may exist or arise from recommendations of this type.

- **Does the SEC staff no-action letter issued to Faith Colish, et al., dated January 31, 2014,[9] impact the analysis of whether a firm would become an LCFB? Is it likely that some limited corporate financing firms will not register as a broker consistent with the fact pattern set forth in the no-action letter, or will they register as an LCFB?**

In general, 3PM members conduct a business that is very different than the business conducted by Faith Colish et al. As such we do not believe that this would be a reason for any of our constituents to choose not to register as a LCFB.

3PM does not believe that many FINRA members meeting the definition of this rule will convert their registration to this category. Our reasoning is that there are just not enough meaningful changes to the rule which would make it more conducive to the business of LCFBs. LCFBs are currently spending a great deal of time and resources following rules that are not appropriate or applicable to our businesses. These are resources that can alternatively be applied to making meaningful enhancements to our business and compliance operations.

While we are pleased that FINRA took on this initiative and convened a working industry group to address the issue, the feedback solicited from this group was only related to the definition of an LCFB not the underlying rule set. We believe that FINRA should have taken the initiative at least one step further and worked together with the industry to write a meaningful and relevant rule set rather than the one presented which did little more than remove the sections of rules that already did not apply to us. We only hope that all of the industry feedback received will not dissuade FINRA from revisiting this proposal and this time listening to what the industry has to say. 3PM stands ready to participate in any further initiatives regarding this proposal and looks forward to a day when LCFBs have a rule set that appropriately addresses our business model.

If you have any questions or comments regarding any of the information contained in this letter or would like to discuss any of these comments in further detail, please feel free to contact me directly by phone at (212) 209-3822 or by email at donna.dimaria@tesseracapital.com.

Thank you in advance for your consideration.

Regards,

Donna DiMaria
Chairman of the Board of Directors
3PM Association

Appendix

3PM is an association of independent, outsourced sales and marketing firms that support the investment management industry worldwide.

3PM Members are properly registered and licensed organizations consisting of experienced sales and marketing professionals who come together to establish and encourage best practices, share knowledge and resources, enhance professional standards, build industry awareness and generally support the growth and development of professional outsourced investment management marketing.

Members of 3PM benefit from:

- Regulatory Advocacy
- Best Practices and Compliance
- Industry Recognition and Awareness
- Manager Introductions
- Educational Programs
- Online Presence
- Conferences and Networking
- Service Provider Discounts

3PM began in 1998 with seven member-firms. Today, the Association has more than 35 member organizations, as well as significant number of prominent firms that support 3PMs and participate in the Association as 3PPs, Industry Associates, Member Benefit Providers, Media Partners and Association Partners.

A typical 3PM member-firm consists of two to five highly experienced investment management marketing executives with, on-average, more than 10 years' experience selling financial products in the institutional and/or retail distribution channels. The Association's members run the gamut in products they represent. Members work with traditional separate account managers covering strategies such as domestic and international equity, as well as fixed income. In the alternative arena, members represent fund products such as mutual funds, hedge funds, private equity, fund of funds and real estate. Some firms' business is comprised of both types of product offerings. The majority of 3PM's members are currently registered with FINRA or affiliated with a broker-dealer that is a member of FINRA.

For more information on 3PM or its members, please visit www.3pm.org

PCAOB Audit Oversight and Small, Non-Public Non-Custodial Broker-Dealers

Attributes-Based Analysis of the Broker-Dealer Risk Profile

January 2013

Report Objectives

Since its inception, the PCAOB has exerted diligent efforts to carry out its mission of investor protection. When Dodd Frank expanded the scope of PCAOB authority to include oversight of the audits and auditors of broker-dealers, the broker-dealer community responded with recommendations for exclusions of certain types of broker-dealers. While forging ahead with an interim audit program, Board members have continued to express their interest in identifying and understanding trends related to broker-dealer attributes, facilitating a meaningful dialogue regarding risk, and possibly leading to exclusions.

This brief report will present data and information to support exemption of certain classes of small and limited purpose broker-dealers from the PCAOB audit requirement. It presents an update to data previously shared in March 2011, and asserts that broker-dealers of limited size and/or with limited business purposes present little or no risk relative to the scope of PCAOB responsibilities to protect investors. To best ensure that risk is adequately considered, the report includes an analysis of SIPC distributions through 2012 based on dollar amount and broker-dealer attributes.

Data presented in this report may lead to other useful trend analyses, including the consideration of excluding other types of firms, such as introducing firms, firms with minimum net capital of $5,000, or firms with less than $1mm in annual revenue.

Background

To FINRA, a small firm is any firm with 150 or fewer licensees, or registered representatives. FINRA is comprised of approximately 4400 firms of which approximately 85% are categorized as small firms. But 'small' is relative. To a research analyst, a small cap company is one with $300 million to $2 billion in market capitalization. The JOBS Act, designed to lower the regulatory burdens for small companies intending to go public applies to companies with less than $1billion in revenues. By stark contrast, many of the smallest broker-dealers are scattered along a broad spectrum of characteristics and attributes much smaller than any of these standards.

Low Risk Broker-Dealers Based on FINRA Data

Significant percentages of small broker-dealers have only 2 or fewer business lines, have less than $1mm in annual revenue, and/or engage in business lines that do not inherently indicate high percentages of risk, such as 'application way' mutual funds, variable annuities,

private placements, mergers and acquisitions, and other such business lines. Many of these firms operate under a minimum net capital requirement of $5,000.

Small broker-dealers characterized by business lines are readily identifiable using BrokerCheck, FINRA's public resource for broker-dealer background reviews, or through its central data depository (CRD) with the following acronyms:

- MFR – Mutual Funds Retailer
- MFR and VLA
- Other
- PLA – Private Placement
- PLA and Other
- VLA – Variable life insurance or annuities

Of the 4400 FINRA registered broker-dealers, the statistics reveal the following:

- **191** broker-dealers report that private placement activity is their only business line;
- **174** broker-dealers do not fall into any of the customary FINRA business lines and disclose "Other" as their only line of business. Most of these describe their business as mergers and acquisitions;
- **541** broker-dealers disclose that they engage solely in private placement agent and "other" activity, again describing the other activity as mergers, acquisitions and placement agent or third party marketing services.

Cumulatively, these **806** firms represent a class of broker-dealer that does not open securities or investment accounts, does not carry or introduce assets or securities, and which does not have customers in the retail sense. The business activities of these firms are governed by contract, and are not 'transactional.'

Consider also the following approximate number of firms that only engage in retail sales to customers by application:

- **39** broker-dealers report that their only business line is retail sales of mutual funds. Out of these 39 firms, **all but 3 have fewer than 25 employees**;
- **21** broker-dealers offer only variable annuities. **16 of the 21 report having fewer than 50 employees**;
- **87** broker-dealer firms disclose having only two business lines, mutual funds and variable annuities. **82% of these companies have fewer than 10 employees.**

The **147** broker dealers described above engage solely in 'application-way' business, which means that their business is limited to purchases and sales of funds and/or annuities accomplished through direct paper-based application to the mutual fund or annuity companies. These companies do not have custody of customer funds or securities, and also do not have clearing arrangements (they are not 'introducing'). Rather they operate through selling agreements with mutual fund and annuity companies, which are themselves regulated by the SEC.

It is important to note that the majority of these firms are also very small firms, and many have revenue of less than $1mm/year. (see the chart below). Of the 457 firms reporting only one line of business (private placements, "other", mutual funds, or variable annuities) all but 20 are small firms (fewer than 50 employees). Of those reporting two business lines (Private placements and "other"), 98% have fewer than 50 employees.

Attributes	# Firms	No. with Fewer than 50 RRs	As %
PLA	191	188	98%
Other	174	164	94%
PLA and Other	541	528	98%
MFR	39	37	95%
VLA	21	16	76%
MFR and VLA	87	82*	94%
Total or Average	**1,053**	**1,015**	**96%**

* Nearly 80% of 87 BD firms with combination of only two attributes MFR and VLA have fewer than 10 employees.

Low Risk Broker-Dealers Based on SIPC Data

SIPC weighed in against a statutory exemption for broker-dealers during Congressional deliberations regarding the PCAOB's scope of authority over broker-dealer audits. Later, in response to the request by broker-dealer trade associations and others encouraging PCAOB to carve out introducing broker-dealers from its audit scope, SIPC again wrote to PCAOB in favor of an all-inclusive audit program, citing statistics regarding its payouts related to introducing broker-dealer liquidations in particular.

While SIPC payouts may be used as a measure of risk, even SIPC has never undergone consideration of liquidation coverage for the types of small broker-dealers discussed in this report.

In this context, a review of SIPC distributions for the past 5 years demonstrates that companies with only 1 or 2 business types or attributes in the following combinations present little or no risk of insolvency for investors. In fact, no broker-dealer with 2 or fewer business lines, including those listed below has every been represented on SIPC bankrolls:

- MFR – Mutual Funds Retailer
- MFR and VLA
- Other
- PLA – Private Placement
- PLA and Other
- VLA – Variable life insurance or annuities

Low Risk Broker-Dealers Based on PCAOB Data

PCAOB's interim audit program preliminary results, reported August 2012, reveal certain material weaknesses in BD audit programs. While the findings appear proportionately significant, the results are less worrisome in the context of small broker-dealers as summarized in the table below:

Finding	Description	Application to Small and Limited Purpose Broker-Dealers
Supplemental Report on Material Inadequacies	21 of 23 did not adequately test for controls related to safeguarding securities	Not applicable to non-custodial broker-dealers
Exemption from Provisions of Customer protection Rule	All 14 audits of BDs claiming exemptions to 15c3-3 did not fully comply with conditions of the exemption	Not applicable to non-custodial broker-dealers
Customer Protection Rule	2 of the 9 audits of BDs required to maintain a customer reserve failed to properly verify and disclosure the appropriate restrictive provisions	Not applicable to non-custodial broker-dealers
Net Capital Rule	7 of 23 audits failed to sufficiently test the minimum net capital computation	Not materially significant to broker-dealers with $5,000 minimum net capital
Consideration of Risks of Material Misstatements Due to Fraud	13 of 23 audits did not incorporate adequate assessments of risks of material misstatement	Subject to FINRA reviews, requirements
Related Party Transactions	10 of 23 audits did not adequately test existence and/or sufficiency of procedures related to material third party transactions	Subject to FINRA reviews, requirements
Revenue Recognition	15 of 23 audits did not adequately test occurrence, accuracy and completeness of revenue	Not materially applicable to firms with <$1mm annual revenue
Establishing a Basis for Reliance on Records and Reports	12 of 23 audits did not evidence adequate procedures for reliance on third parties used in the audit process	Not applicable to the accounting firms most likely to perform the audits of small broker-dealers
Fair Value	6 of 9 audits involving valuations did not adequately test valuation	Not applicable to non-custodial

Finding	Description	Application to Small and Limited Purpose Broker-Dealers
measurements	practices	broker-dealers
Evaluation of Control Deficiencies	4 of 23 audits did not evidence sufficient evaluation of identified errors for determination of control weakness	Subject to FINRA reviews, requirements
Financial Statement Disclosures	7 of 23 audits did not evidence adequate tests of accuracy and completeness of financial statement disclosures	Subject to FINRA reviews, requirements
Auditor Independence	2 audits revealed inadequate procedures to test auditor independence	Subject to discussion

This summary data can be interpreted to mean that many of the PCAOB interim inspection program findings simply are not relevant, and therefore would not be found, in the audits of small broker dealers. Of those with a degree of relevance, most would be apparent as a result of the regulatory initiatives carried out by FINRA, which incorporate considerable depth in routine inspections of broker-dealer financial data. FINRA reviews include ongoing assessments of FOCUS filings carried out at both the district and national levels, and FINRA performs routine onsite inspections according to a risk-based cycle. These inspections include reviews of financial data, and cover all registered broker-dealers.

Summary

In its November 2012 Standing Advisory Group (SAG) meeting, the PCAOB SAG members considered important current initiatives, including the auditor's reporting model, PCAOB's standard setting agenda, and consideration of outreach or research regarding the auditor's approach to detecting fraud. In each discussion, in small group settings, audits of broker-dealers were considered and discussed as a specific agenda item. When PCAOB staffers reported summaries from their breakout groups in the large public meeting session, it was apparent that SAG members were receptive to the exclusion of certain types of broker-dealers based on risk. Among other comments, SAG members recommended excluding:

- Wholly owned non-public BDs
- BDs deemed to be low risk based on business model, net capital or ownership structure
- Small, non-public, non-custodial BDs
- BDs that are not issuers

Each of these considerations is consistent with the recommendation of this paper that broker-dealers in any of the following categories should be excluded:

- Non-custodial, non-public BDs with 2 or fewer business lines, including but not limited to the following:
    - MFR
    - VLA
    - PLA
    - 'Other'

Important to the practical implementation of this recommendation, each of the attributes listed above is based on data and information routinely reported to FINRA and/or the SEC. As such, this data is readily available from a reliable regulatory source.

By excluding BDs based on these attributes, the PCAOB will have trimmed its auditor oversight by a measurable degree (approximately 1,400 firms) without compromising its mission.

2013 – 2014 ASSOCIATION YEAR

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May 21, 2014

Via email to: pubcom@finra.org

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 14-09
Request for Comment on Proposed Rules for Limited Corporate Financing Brokers

This comment letter is submitted on behalf of the Committee on Federal Regulation of Securities (the "*Committee*" or "*we*") of the Business Law Section (the "*Section*") of the American Bar Association (the "*ABA*"), in response to the request for comment by the Financial Industry Regulatory Authority, Inc. ("*FINRA*"), in Regulatory Notice 14-09 ("*RN 14-09*" or the "*Proposal*") with respect to a proposed new rule set for "Limited Corporate Financing Brokers" ("*LCFBs*" and "*LCFB Rules*"). As described in the Proposal, an LCFB would fall within a new FINRA member firm category and engage only in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring. The LCFB Rules would not apply to member firms that carry or maintain customer accounts, handle customers' funds or securities, accept customers' trading orders, or engage in proprietary trading or market-making.

This letter was prepared by members of the Committee's Subcommittee on Trading and Markets. While this letter represents the views of those who have prepared and reviewed it, this letter has not been approved by the ABA's House of Delegates or Board of Governors and, accordingly, does not represent the official position of either the ABA or the Section.

We commend FINRA for developing a customized rule set pertinent to the limited activities of members engaged in the subset of activities described in the Proposal. We strongly encourage FINRA to move forward with refining and advancing the Proposal to the formal rulemaking stage after taking into consideration the various comments and recommendations you receive during this initial public comment process. As set forth in detail below, we have responded to FINRA's request for comments on RN 14-09 and also provide our views about the strong public policy rationale underlying the Proposal and other rulemaking in conjunction with FINRA's retrospective rule review.[1]

[1] *See, e.g.*, FINRA Regulatory Notice 14-14, *FINRA Requests Comment on the Effectiveness and Efficiency of its Communications With the Public Rules;* FINRA Regulatory Notice 14-15, *FINRA Requests Comment on the Effectiveness and Efficiency of its Gifts and Gratuities and Non-Cash Compensation Rules.*

General Comments

FINRA requested comment on all aspects of the LCFB Rules, including any impact on institutional customers and issuers, potential costs and burdens that the Proposal could impose on LCFBs, and any cost savings and reduced burdens that the proposal would create for LCFBs. FINRA also requested comment on whether LCFBs should be subject to other requirements in the transitional and consolidated FINRA rulebook (together, the "*FINRA Rules*"). Set forth below are our general comments regarding the Proposal as well as other observations regarding FINRA's rulemaking process, followed by our more specific comments with respect to the proposed LCFB Rules.

As a general matter, we believe FINRA should give careful consideration to the impact of the LCFB Rules, as well as existing rules, on smaller, limited, and non-traditional firms including "finders", merger and acquisition intermediaries, advisers, and business brokers (collectively, "*M&A brokers*"), and private fund placement agents. These types of members would, in our view, be the most likely to benefit from and utilize the relief created by the Proposal. Accordingly, our comments are primarily focused on the LCFB Rules as relevant to these members. We also believe FINRA should take into consideration the potential impact of the Proposal—and, as importantly, the failure to move forward with it—upon the availability of capital-raising and business brokerage services to smaller privately held companies and private funds. These types of customers are most often served by smaller, limited, and non-traditional members.

Particularly in the context of the LCFB Rules and ideally in all of the FINRA Rules, we believe FINRA should more clearly differentiate between capital-raising and M&A brokerage services, which are two very different types of securities-related activities and are accompanied by correspondingly different "investor protection" considerations. We also believe the FINRA Rules need to better accommodate limited brokerage service business models, such as members that place private fund securities with "institutional investors", as we suggest that term be redefined. There are important contextual distinctions between private and public companies, private and public offerings, active versus passive investors, and sophisticated institutional investors staffed by professional managers, yet the FINRA Rules largely combine these securities-related activities together making it challenging for member firms to parse these rules for those requirements applicable to their particular activities.

With these considerations in mind, we believe several of the proposed LCFB simplifications do not go far enough to be meaningful to either smaller FINRA member firms or the smaller business issuers and owners intended to be served by the Proposal. We also believe FINRA should give greater consideration to the overall complexity and largely retail brokerage orientation of the FINRA Rules in general. As reported in its 2012 Year in Review and Annual Financial Report, FINRA has embarked upon a more structured analysis of the costs and benefits of new and existing rules. We commend those efforts, particularly since the economic impact of the FINRA Rules on smaller member firms and the smaller privately owned companies they commonly serve have not, in the view of many industry participants, been given adequate con-

sideration. Smaller firms and the smaller business issuers they serve often do not have the awareness of rulemaking proceedings, the financial or managerial resources to devote, or the regulatory expertise to submit comment letters on FINRA's rulemaking proposals. The Securities and Exchange Commission (the "*SEC*") is by law subject to rigorous economic and competitive analytical requirements in its rulemaking. Since Congress and the SEC have delegated substantial regulatory authority to FINRA (and since FINRA membership is effectively mandated for nearly all SEC-registered broker-dealers[2]), the same standards for economic and competitive analysis should be applied to FINRA's rulemaking and should be evaluated by the SEC as if it were its own when acting on those rulemaking proposals.

This Proposal, together with FINRA's retrospective rule review, are critically important to the securities industry, institutional investors and, as importantly, other stakeholders, including (1) privately held companies seeking to raise capital to start, grow, acquire, or sell businesses; (2) owners of privately held companies seeking to sell, and prospective buyers seeking to buy, smaller businesses; and ultimately (3) employees who depend on those privately owned businesses for their livelihoods. Similarly, venture capital and private equity funds, business development companies, and similar privately-raised pools of capital are critically important financial resources for privately held companies at various stages of their development. These types of professionally-staffed institutional investors are well-equipped to do their own due diligence, economic and financial analysis, and evaluation of privately owned businesses and thereby to more effectively provide corporate financing or acquire a controlling interest in a portfolio company. Participation in these transactions by well-managed pooled investment vehicles reduce some of the risks associated with small business enterprises for the benefit of their own investors through diversification of their portfolios of corporate financings and acquisitions, and so as a matter of public policy should be strongly encouraged.

FINRA's regulation of securities-related services has a direct and substantial impact on each of these stakeholders whose interests are often not well articulated in the context of broker-dealer regulation or rulemaking. Addressing several areas of particular concern will require FINRA's coordination with the SEC and a joint evaluation of how their respective rules impact the securities-related services available to smaller private business issuers and owners. These stakeholders depend on and benefit from the professional services provided by intermediaries that are, or by law should be, registered and regulated as broker-dealers under Section 15 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and related rules. The statutory definition of "broker" and related interpretations and guidance issued by the SEC and its staff[3] encompass a broad range of securities-related activities subsumed within the traditional

[2] *See* Section 15(b)(8) under the Securities Exchange Act of 1934, as amended, which provides: "It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member." FINRA is the only registered securities association at present.

[3] *See* Exchange Act Section 3(a)(4). *See also* SEC Staff *Guide to Broker-Dealer Registration*, available at: http://www.sec.gov/divisions/marketreg/bdguide.htm; SEC staff no-action letters cited in the American Bar As-

bundles of services characterized as an "investment banking or securities business" as that phrase is used throughout FINRA's By-Laws and the FINRA Rules.[4] Yet these stakeholders do not necessarily want, nor can they afford, the services offered by traditional full-service broker-dealers.

Understandably, FINRA's By-Laws and the FINRA Rules have been written and have evolved largely based on the paradigm of a member being engaged in investment banking or securities business because, historically, the majority of FINRA members were engaged in either or both of these types of activities. When FINRA was first organized, its membership was voluntary and was likely far more homogeneous than the demographics of its membership today. The resulting "one-size fits all" system of regulation with its related complexity of compliance requirements and associated costs may inhibit—or even preclude—providing more limited and more affordable securities-related services needed by smaller privately held companies and their owners. As a result, those services may be either provided unlawfully by unregistered persons or not provided at all.

For example, smaller privately held companies may seek capital from a small number of investors and only seek initial introductions to those prospects. Similarly, some larger privately held companies may seek institutional corporate financing through a negotiated transaction that involves its issuance of custom-tailored securities to a single professional investor, such as a private fund or insurance company. Commonly in these instances, the broker does not handle, even momentarily, the issuer's securities or the investor's cash and so no custody-related investor protection, SIPC, or anti-money laundering considerations appear to be implicated. Typically, in these transactions the broker has not undertaken any financial obligation to the issuer or investor and yet a panoply of net capital and operational rules still apply, including those requiring GAAP accounting, quarterly financial reporting, audited financial statements, employment of a financial and operations principal, and anti-money laundering procedures. Each of these requirements imposes a substantial on-going compliance cost, but without any apparent investor protection benefit given this limited service context.

Similarly, the owners of smaller private companies eventually need assistance in preparing for sale, finding buyers, and transitioning ownership. Small business sales are commonly structured as cash-for-assets transactions and do not involve securities or related regulation; however, for various reasons, in some transactions the parties may choose to convey ownership through the transfer of the company's securities—a stock sale or exchange through a merger or other business combination. The same economic objective of the parties—conveying ownership of the business—can have vastly different regulatory consequences to the M&A broker de-

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sociation, Business Law Section, *Report and Recommendations of the Private Placement Broker-Dealer Task Force* (2005), available on the SEC's web site at http://sec.gov/info/smallbus/2009gbforum/abareport062005.pdf ("*ABA PPB Report*").

[4] FINRA By-Laws, Article I, paragraph (u) defines the phrase "investment banking or securities business" as "the business, carried on by a broker, dealer, or municipal securities dealer (other than a bank or department or division of a bank), or government securities broker or dealer, of *underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others*" (emphasis added).

pending on the parties' choice of transaction structure. Even if a member's securities-related activities are limited to making introductions of investors to issuers or brokering the sale of business, under existing rules the member must maintain substantially all of the compliance infrastructure required of a member firm offering the full range of brokerage services.[5]

The organization and sheer complexity of the FINRA Rules is a concern. For example, "investment banking" is a term used in FINRA's By-Laws and the FINRA Rules, but it is not defined as a stand-alone activity for purposes of general applicability in the FINRA rulebook.[6] Most references to this term in the FINRA rulebook occur where the phrase "investment banking or securities business" is used conjunctively, thus underscoring the particular provision's application to both sets of activities. Other provisions are simply silent, and so presumed to apply to both sets of activities, yet do not necessarily appear to be relevant to both activities as noted below. In only a few of those instances does the term "investment banking" stand on its own in application to a subset of regulated activities.[7] As a consequence, every member regardless of size, scope of activities, or resources must fully comprehend, monitor for changes, and apply FINRA's By-Laws and virtually all of the FINRA Rules to their "investment banking or securities business".

Analyzing how the FINRA Rules do and do not apply in a limited, non-traditional context is sometimes difficult, even for experienced securities counsel. Existing rules, perhaps for historical reasons that are no longer applicable, do not appear to distinguish between capital-raising where protecting passive investors is a paramount consideration, and M&A transactions where sellers and buyers of privately owned companies control and actively run those businesses and where buyers perform substantial self-directed pre-purchase due diligence because they will control and run the business after closing. FINRA's "know your customer" and "suitability" rules as applied to "customers" who are passive investors make little sense when applied to business sales and M&A transactions.[8] How does a member demonstrate the customer-specific suitability of an M&A transaction to a prospective business seller or buyer?[9] Many small business

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5 This assumes that the intermediary is, in fact, SEC-registered and not relying on SEC staff no-action letters to avoid broker-dealer registration. The limitations and impact of these no-action letters is discussed later in this letter.

6 The term "investment banking services" is defined is FINRA Rule 2711, *Research Analysts and Research Reports*, but only for purposes of that specific rule. FINRA Rule 2711(a)(3) provides "[i]nvestment banking services" include, without limitation, acting as an underwriter or participating in a selling group in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, private investment, public equity transactions (PIPEs) or similar investments; or serving as placement agent for the issuer."

7 *See, e.g.,* NASD Rule 1032(i)(defining the registration and qualifications category of "Limited Representative—Investment Banking"); FINRA Rule 2711, *Research Analysts and Research Reports*; and FINRA Rule 5110, *Corporate Financing Rule—Underwriting Terms and Arrangements.*

8 *See* FINRA Rule 2090, *Know Your Customer*, and FINRA Rule 2111, *Suitability*; *see also* subsection (b)(4) of FINRA Rule 0160, *Definitions* and SEC Rule 15c1-1, *Definitions.*

9 *See, e.g.,* Regulatory Notice 10-22, *Obligation of Broker-Dealers to Conduct Reasonable Investigations in Regulation D Offerings.*

buyers do not meet FINRA's definition of an "institutional account".[10] Does that terminology and definition truly make sense in an M&A context? Does a member really have an "account" relationship with a business seller, buyer, or prospect? Is a business seller or buyer's investment objectives or tax status relevant to an M&A transaction? Customary contractual obligations owed by a broker-dealer to its client in an M&A engagement may be inconsistent with the regulatory notion that the counterparty to the transaction is also a "customer" of the broker-dealer.[11] Must a member deliver a "confirmation" to a business buyer prior to the closing of an M&A transaction?[12] The FINRA Rules, including the proposed LCFB Rules, should be reviewed and reconsidered in light of current day realities, technological advances and expansion of securities-related markets and participants in order to more clearly state their particular scope and application (or not) to various types of securities transactions and activities.

The complexity and compliance costs associated with obtaining and maintaining registered status for limited purpose members are prohibitive for small firms with limited purpose business models. Increasing regulatory complexity and higher compliance-related costs are among the reasons frequently cited by members in closing their doors. The tangible impact of this trend is evidenced by the dramatic decrease in FINRA's membership over the last decade, further increasing the proportionate share of regulatory infrastructure costs borne by the remaining member firms, and likely contributing to FINRA's annual operating deficits.[13] As a result, the adverse economic impact on small members and the smaller companies and business owners they serve has grown progressively worse over the years.

For example, the burdens and costs of initial broker-dealer registration and on-going compliance with current SEC and FINRA requirements are quite substantial. In our experience, initial legal, accounting, and compliance-related costs for even the most basic broker-dealers often exceed $150,000 and on-going compliance-related costs can easily be in the range of $75,000 to $100,000 per year. Applying for and obtaining FINRA membership takes a minimum of six months (without taking into consideration the time necessary to ready the initial application for submission) and is frequently longer for non-traditional applicants despite the limited or narrow focus of their proposed activities. The application process is confusing to applicants where the proposed activities do not fit the traditional "investment banking or securities business" paradigms. Commonly during the application process, FINRA requires new applicants to have written supervisory procedures to address a variety of securities-related activities they do not intend to perform under their submitted business plan. Form BD nowhere identifies "investment banking", M&A, business brokerage, or similar concepts as a type of regulated "stand-

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[10] Subsection (c) of FINRA Rule 4512, *Customer Account Information.*

[11] Consider, for example, that many state real estate licensing laws do not contemplate a dual agency relationship and may, in fact, prohibit a real estate broker from representing both the seller and the buyer in a contemplated sale of property. Commonly both securities and real estate licensing apply to the broker in an M&A transaction.

[12] *See* SEC Rule 10b-10 and FINRA Rule 2232, *Customer Confirmations.*

[13] See FINRA's "year in review and annual financial reports", available at: http://www.finra.org/AboutFINRA/AnnualReports.

alone" activity in the laundry list of Item 12 activities or the Form's instructions. Accrual-based GAAP accounting, quarterly financial reporting, annual audits, a financial and operations principal, anti-money laundering programs,[14] periodic independent third-party AML testing, and SIPC-related compliance and fee assessments are required for all members—even those who never have custody or possession of "customer funds or securities" and thus no apparent investor protection objective is served. We recognize that these particular requirements are largely driven by SEC rules and we strongly encourage FINRA to cooperatively work with the SEC to refine these requirements in the context of this Proposal and other rulemaking efforts that may follow.

Because of these requirements, smaller member firms cannot profitably or cost-effectively provide a limited subset of securities-related services to smaller privately held companies. Their resources are necessarily economically structured to serve larger companies in larger transactions. Smaller companies and their owners cannot afford these professional services, particularly in view of the relatively small size of their desired capital-raise, business sale, or M&A transaction. The net result is that the aforementioned stakeholders are unable to obtain limited, more affordable securities-related services. Without access to cost-effective services, smaller privately owned businesses are unable to start, grow, and thereby preserve or create jobs that are critical to our national economy.

Helpfully, the LCFB Rules would allow for some simplification and customization of the requirements, but there are still a number of areas in which the proposed rules could be further streamlined and relaxed in order to enhance the regime's utility without sacrificing important investor protections. Accordingly, we strongly encourage FINRA to re-examine the proposed LCFB Rules and all of its existing rules with these considerations in mind.

We also encourage FINRA to work closely with the SEC to review and streamline the financial and operational rules applicable to limited-service broker-dealers, such as LCFBs, and with the North American Securities Administrators Association and state securities regulators, to discuss the rationale underlying the LCFB Rules and to coordinate regulatory reform efforts, so as to reduce regulatory inconsistencies and enhance uniformity at the federal and state levels.

Specific Comments

FINRA requested comment concerning certain specific issues. For convenience of reference, each of those issues is repeated below followed by our comments.

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[14] Title 31, Part 1023, *Rules for Brokers or Dealers in Securities*, under the Bank Secrecy Act, defines the operative terms "customer" and "account" for purposes of the Customer Identification Program required under Section 1023.220. Section 1023.100(d) provides, in relevant part, that a "customer" is "a person that opens a new account". Subparagraph (a)(1) provides that an "account" is "a formal relationship with a broker-dealer established to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral." Many, if not most, LCFBs would not have an "account" relationship with customers as so defined.

- *Does the proposed rule set provide sufficient protections to customers of an LCFB? If not, what additional protections are warranted and why?*

We believe the LCFB Rules provide sufficient protections to customers of LCFBs because the rules are tailored to the business model, risks and constituencies of these firms, as well as to the nature of the relationship and interaction between the LCFB and such customers (or, perhaps more precisely, "counterparties"). Relaxed regulatory requirements in the LCFB context are mitigated by the sophistication and active involvement of the parties to these types of transactions, who are assisted by their own internal and external financial advisers and legal counsel throughout the process.

Institutional corporate financing and M&A transactions, to the best of our knowledge, have not historically been the subject of frauds or abuses. Based on the notable absence of reported disciplinary actions, we believe FINRA has not observed significant regulatory concerns with members operating in these limited contexts. Commonly, participants in these types of transactions are represented by counsel and rely on their negotiated civil remedies if post closing disputes arise.

We have not identified material gaps to investor protection that would be created by the Proposal. Public and investor (including sellers and buyers of businesses) understanding could be modestly enhanced by requiring delivery of a simple form of disclosure describing the limited scope of securities-related services permitted under the LCFB classification.

With respect to the LCFB Rule 200 Series, *Duties and Conflicts*, we support the more streamlined approach that keys the duties to the actual conflicts and risks of LCFBs. With respect to the LCFB Rule 300 Series, *Supervision and Responsibilities Related to Associated Persons*, we support giving member firms flexibility to tailor their supervisory systems to their business models. This is consistent with the FINRA Rules, as well as the Exchange Act.

With respect to the LCFB Rule 400 Series, *Financial and Operational Rules*, we believe FINRA should work closely with the SEC to modify these existing rules. For example, LCFBs are not permitted to have custody or possession of the parties' funds or securities. The parties typically close these transactions themselves and the purchase price is typically wired between the parties' commercial banks, which are already subject to AML rules and requirements. Typically, LCFBs do not have material financial obligations to their issuer/seller or investor/buyer clients. Accordingly, we see little or no investor protection benefit to require accrual-based accounting under GAAP, periodic financial reporting, audited financial statements, a financial and operations principal qualified under the Series 27 or 28 exams, anti-money laundering programs with periodic third-party testing, or SIPC requirements. These are inherently expensive on-going compliance requirements for which no apparent investor protection benefit is obtained in this context.

With respect to LCFB Rules 1000, et seq., *Arbitration and Mediation*, we simply observe that it is unusual for members to include mandatory binding arbitration agreements in their M&A engagements.

With respect to M&A transactions, we note that the SEC staff's issuance of the "M&A Broker" no-action letter dated January 31, 2014 (the "*M&A Broker Letter*"),[15] implicitly acknowledges that, all things considered, the imposition of SEC broker-dealer registration, FINRA membership, and the associated regulation are unwarranted in the context of qualifying M&A transactions involving privately held companies. However, as discussed below, members may choose not to rely on the M&A Broker Letter for various reasons, so the FINRA Rules as applied in this context could be further relaxed, thereby leveling the playing field and associated regulatory costs among members and their unregistered competitors.

- *Does the proposed rule set appropriately accommodate the scope of LCFB business models? If not, what other accommodations are necessary; and how would customers be protected?*

As explained in our general comments, we believe the FINRA Rules, and particularly the proposed LCFB Rules, should take into greater consideration the comparatively heavier burdens and adverse competitive impacts on smaller member firms handling transactions for smaller privately held companies and owners, as well as other limited non-traditional firms such as those assisting private funds with fund-specific capital-raising activities. These are materially different contexts than SEC-registered offerings involving public companies with retail investors. The elimination or modified application of certain investor protection-based requirements in institutional corporate financing and M&A transactions is typically balanced by, among other things, the sophistication of the parties and their active participation in the negotiation of specific terms, conditions, and contractual remedies; direct access to the issuer's management team and corporate information; and competent internal staffing and third-party advisors to perform their own thorough self-directed due diligence on the issuer/seller.

Moreover, we strongly believe that, to be useful to capital-raising by smaller privately held businesses, placement agents to private funds and others, an investor threshold lower than FINRA's "institutional account" definition must be used. In view of the typical capital needs of smaller private issuers, and private funds relying on the "3(c)(7)" exemption from registration under the Investment Company Act of 1940, as amended (the "*1940 Act*"), we recommend using a "qualified purchaser" standard as defined in Section 2(a)(51)(A) of the 1940 Act,[16]

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[15] 2014 SEC No-Act. LEXIS 92 (2014).

[16] As defined in Section 2(a)(51)(A), a "qualified purchaser" means "(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 3(c)(7) with that person's qualified purchaser spouse) who owns not less than $5,000,000 in investments, as defined by the Commission; (ii) any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such per-

together with the other categories of investors listed in Rule 5123(b)(1) for purposes of the exemption from the filing requirements imposed under that rule. We believe these types of investors are generally capable of evaluating the relevant risks associated with the types of transactions covered by the LCFB Rules, and so we see no reason why FINRA should adopt a stricter standard for purposes of the LCFB regime than was deemed sufficient by it to achieve the investor protection goals of FINRA Rule 5123 (which was adopted following SEC approval in 2012).

We encourage FINRA to develop examination modules, document requests, and examiner training geared to the LCFB Rules (assuming the proposed regime's eventual adoption). By using a more customized approach, we believe the examination process could be more effective and efficient for examiners and members. FINRA has developed excellent instructional materials for members and delivers that content through a variety of convenient mediums. New instructional materials tailored to the LCFB audience should be developed.

- *Is the definition of "limited corporate financing broker" appropriate? Are there any activities in which broker-dealers with limited corporate financing functions typically engage that are not included in the definition? Are there activities that should be added to the list of activities in which an LCFB may not engage?*

We believe the proposed functional definition is too narrow because there are related activities commonly performed that should also be permissible and, without which, the public policy rationale behind the Proposal would not be achieved. Notably, the presently listed permissible activities appear to allow only communications with the issuer or business seller, or at most "offers" but no involvement with negotiations or "sales" of securities to qualifying investors/buyers. As proposed in RN 14-09 (emphasis added):

> The term "limited corporate financing broker" would include any broker that *solely* engages in one or more of the following activities:
>
> - *advising* an issuer, including a private fund, concerning its securities offerings or other capital raising activities;
>
> - *advising* a company regarding its purchase or sale of a business or assets or regarding its corporate restructuring, including a going-private transaction, divestiture or merger;
>
> - *advising* a company regarding its selection of an investment banker;

sons; (iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or (iv) 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." *See also* related SEC Rules 2a51-1, 2a51-2, and 2a51-3.

- *assisting* in the preparation of offering materials on behalf of an issuer;
- *providing* fairness opinions; and
- *qualifying, identifying or soliciting* potential institutional investors.

We note that all of the listed activities except the last envision limiting the LCFB's communications to those with the issuer or business seller, with the last apparently being limited to solicitations. In our view, these limitations are unworkable in the context of (i) institutional corporate financing; (ii) M&A transactions; and (iii) limited purpose members such as private fund placement agents.

With respect to both institutional corporate financing and private fund placement agents, the LCFB classification would be virtually useless unless the member is also permitted to communicate with prospective investors in a manner that is not confined to "solicitation" activity. In particular, in the institutional corporate financing context, the framework would have very little utility if LCFBs are unable to be actively involved in the discussions, negotiations, and structuring of the contemplated corporate financing transaction. For private fund placement agents, we believe that the LCFB definition should encompass communications with qualified investors and the full range of related activities, including the secondary placement of private fund interests pursuant to Rule 144A under the Securities Act of 1933, as amended.

Similarly, in the M&A context, we believe that LCFBs must be permitted to communicate with and become involved in all aspects of these transactions.[17] Commonly, M&A transactions involve the resale or exchange of outstanding securities, so LCFBs must also be able to communicate with a company's shareholders. A prospective investor or a business buyer may engage an M&A broker to find, screen, evaluate, and approach prospective companies/issuers/sellers. So-called "buy-side" engagements do not appear to come within the scope of permitted activities, but are quite common in the M&A context.

We encourage FINRA to incorporate into the LCFB definition activity-related concepts used in the definition of "M&A broker" in the M&A Broker Letter. In addition, the definition needs to be refined to state clearly that the "institutional investor" requirement does not apply to M&A-related activities, as explained in endnote 3 to RN 14-09. We concur that there is no need to apply any "institutional investor" qualification to M&A transactions where both the seller and buyer are or will control and be actively involved in running the business. Moreover, to do otherwise would, in effect, preclude smaller business sellers and buyers who are not "institutional investors", as presently defined by FINRA, from obtaining these professional services. For example, in a management buy-out and in the formation of an employee stock ownership plan ("ESOP"), the business buyers are typically not "institutional investors". This approach is also consistent with the M&A Broker Letter, which imposes no such conditions.

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[17] *See, e.g.,* the scope and description of M&A broker activities provided to the SEC staff in the incoming submission that resulted in the issuance of the M&A Broker Letter.

- *Are there firms that would qualify for the proposed rule set but that would choose not to be treated as an LCFB? If so, what are the reasons for this choice?*

As presently proposed, we believe the permissible scope of activities is too narrow, and the institutional investor threshold too high, for any member to find the LCFB regime to be a commercially or economically attractive alternative. As noted above, additional reforms in the financial and operational rules (which would require coordination with the SEC staff) could result in substantially greater cost savings without diminishing investor protections in the context covered by the LCFB Rules. Current members have already obtained full membership and created the compliance infrastructure necessary to maintain it, so would have relatively little incentive to substantially narrow the scope of their presently permitted activities in exchange for its limited benefits.

We believe many prospective members will still find the new membership application process to be daunting, frustrating, costly, and time-consuming. As a way to measure and address these concerns now and over time, we encourage FINRA to periodically conduct anonymous surveys of new members who have recently completed the process, including questions identifying the types of approved member activities.

- *What is the likely economic impact to an LCFB, other broker-dealers and their competitors of adoption of the LCFB rules?*

Unless the additional reforms we have described are adopted, the likely economic impact to an LCFB of the adoption of the Proposal would be negligible. As described elsewhere, there are a number of opportunities for meaningful cost savings that are not presently part of the Proposal. We believe these cost savings are very important. The present impact of FINRA's "one-size-fits-all" approach on competition among broker-dealers disproportionately burdens smaller members far more than the larger firms that have the economic resources, business volume, and average transaction size over which to spread their largely fixed compliance costs. These considerations have not been adequately addressed in FINRA's historical cost/benefit and competitive analyses, which we believe need to be as robust as those required of the SEC in a rulemaking context, because of FINRA's delegated authority and legally mandated membership.

On the other hand, the M&A Broker Letter may have a far greater and immediate competitive impact by allowing unregistered firms and individuals to engage in qualifying M&A activities without any of the substantial costs and burdens of SEC registration and FINRA membership. If the LCFB Rules are adopted with the adjustments we are recommending, we believe smaller privately held businesses and their owners could be greatly benefited by the opportunity to receive these limited but more cost-effective services from members. We believe the adoption of the LCFB Rules (to the extent modified along the lines suggested herein) would help to level the competitive playing field with unregistered service providers.

Similar considerations of competitive equity are relevant to private fund placement agents. Many private fund managers are calling on the SEC staff to expand the relief provided in SEC Rule 3a4-1, *Associated Persons of an Issuer Deemed Not to Be Brokers*, from SEC broker-dealer registration (and FINRA membership). This relief would only apply to issuers, creating a serious competitive disadvantage for those members only acting as private placement agents. Placement agents that are not affiliated with any private fund perform virtually the same functions as a private fund manager's employees, but they will remain subject to the FINRA Rules, even while issuers have less need for placement agent services by instead using rapidly evolving general solicitation techniques. If adopted with the recommended modifications, the LCFB Rules would allow these members to more cost-effectively provide unaffiliated placement services.

- *FINRA welcomes estimates of the number of firms that would be eligible for the proposed rule set.*

While we have no statistical data upon which to base a numerical estimate, in view of the frequency of questions we receive pertaining to broker-dealer registration with respect to these limited subsets of securities-related activities, we believe there is a significant number of presently unregistered intermediaries engaged in limited capital-raising and business brokerage activities who, if presented with a straightforward, economically viable alternative, may register with the SEC and become limited FINRA members in order to have greater regulatory certainty with respect to their activities.

- *Proposed LCFB Rule 123 would limit the principal and representative registration categories that would be available for persons associated with an LCFB. Are there any registration categories that should be added to the rule? Are there any registration categories that are currently included in the proposed rule but that are unnecessary for persons associated with an LCFB?*

We strongly encourage FINRA to re-examine how its limited registration categories are aligned for purposes of both the FINRA Rules and the Proposal. Current classifications artificially distinguish between, and require separate examinations for, the sale of corporate stock (Series 62 and 82) and limited liability companies ("*LLCs*") and general partnerships (Series 22). Securities-related activities covered by the Series 22 classification are expressly excluded from the Series 62 and 82 classifications. This distinction was created in a day when "direct participation programs" ("*DPPs*") were a unique type of securities product because of their tax treatment and how they were marketed to retail investors. Today, LLCs are commonly used in all business contexts and are by no means limited to DPPs. Many businesses choose the LLC business structure because of its flexibility in corporate governance, as well as its optional pass-through tax treatment. The net effect of this artificial alignment of classifications is to require individuals to take and pass more examinations than we believe should be required to engage in essentially the same securities-related activities involving corporations, LLCs, or general partnerships. The Series 22 classification could be redrawn by focusing on other characteristics of a DPP "program"

that are, in substance, different than a general business operated as an LLC or general partnership.

FINRA's realignment also should address the Series 82 classification's scope. Read literally, the Series 82 only covers sales "as part of a primary offering of securities", and hence does not appear to cover resales of outstanding securities as would occur in a typical M&A transaction. The Series 82 is cited by FINRA's FAQs[18] as an alternative to the Series 79, but without adjusting the scope of the Series 82 to include LLCs and general partnerships, as well as resales of outstanding securities, that alternative compliance approach would not work.

We also encourage FINRA to reassess the scope and application of its Series 79 classification. When developed and even when announced in Regulatory Notice 09-49, *Investment Banking Representative*, this classification was widely expected to serve as the single FINRA classification and examination necessary to engage in all aspects of investment banking activities. To the surprise of many, FINRA's FAQs limited its scope to advisory-only activities and included no selling-related activities. When coupled with the misalignment of the Series 62/82 and exclusion of the Series 22 classifications, noted above, FINRA's FAQs substantially added to the compliance burden placed on smaller firms and their associated persons with respect to M&A transactions for smaller companies. Parts of the Series 79 are relevant to M&A brokers, but the exam presently includes a significant component of public offering-related content that is not relevant in this context. An alternative approach could consider the adaptation of an LCFB examination from existing outlines and content.

We also believe that the Series 24 classification's exam includes a significant component of content that has little or no relevance to the operation of a limited purpose broker-dealer or the activities that would be covered by the LCFB. Instead, we believe that either of FINRA's existing Series 62 or 82 exams (modified to include LLCs and general partnership engaged in a general business and resales), together with the states' Series 63 exam, are adequate to cover the principal and representative activities contemplated by the LCFB classification in so far as they do not involve public offerings. For many reasons few, if any, smaller members or LCFBs would ever consider becoming engaged in a public offering. In contrast, we believe few, if any, larger members who regularly handle public offerings would ever consider becoming an LCFB. Public offerings generally require the commitment of substantial firm resources and are designed for the broadest universe of prospective investors; in contrast, the LCFB Rules are designed for smaller private offerings involving a limited subset of sophisticated investors and privately owned businesses.

Finally, we believe there is no investor protection purpose served by applying the Series 99, *Operations Professional*, qualification or related examination to LCFBs. While relevant in a retail brokerage context, the limited business models of LCFBs would not have the transaction volume or operational components to justify the use of this examination.

[18] Posted on FINRA's website at http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/Qualifications/FAQ/P124190.

- *Should principals and representatives that hold registration categories not included within LCFB Rule 123 be permitted to retain these registrations?*

We believe it serves no investor protection principle to prevent securities industry professionals from retaining validly held qualifications permitting broader activities while they remain engaged in a subset of those activities. Associated persons do not lose their past training, knowledge and, as importantly, experience and, if they rejoin a fully-registered member, will resume the continuing education training pertaining to the broader activities.

- *Does an LCFB normally make recommendations to customers to purchase or sell securities? Should an LCFB be subject to rules requiring firms to know their customers (LCFB Rule 209) and imposing suitability obligations (LCFB Rule 211) to an LCFB?*

The term "recommendation" is not expressly defined by FINRA; instead, general guidance as to what may constitute a recommendation is provided in a number of largely unrelated interpretations, as well as court opinions (usually addressing fraudulent conduct), creating no bright lines and making the legal analysis of the particular facts and circumstances challenging.[19] Often, out of an abundance of caution there is a tendency to treat every discussion regarding a securities transaction with a potential counterparty that is not itself a broker or dealer as a "recommendation" to a "customer". As discussed above, the LCFB classification would have little to no utility if it did not include the ability to communicate with prospective investors/buyers, and for buy-side M&A engagements, to communicate with prospective sellers. Such communications with a prospective investor/buyer/seller specific to a capital-raising offering or M&A transaction could be construed, perhaps over-broadly, as a "recommendation".

For this and the reasons noted in our general comments, we strongly encourage FINRA to more clearly define a "recommendation" and reconsider its definition of "customer" in the LCFB context, as reflected in LCFB Rule 209. Given the limited scope of LCFB activities, there is no traditional customer relationship and no "account" to service and, accordingly, we do not believe that communications by LCFBs with these types of investors and in the context of the limited transactions covered by the LCFB regime should constitute a "recommendation".

With respect to LCFB Rule 211, reference to or the use of a "customer profile" or an "investment strategy" would not be relevant. The prescribed content of such a "customer profile" is incongruent with the predicate for the LCFB Rules, particularly with respect to M&A transactions. Similarly, the prescribed customer information required by LCFB Rule 451(b) should be modified to reflect the types of parties who would be served by LCFBs. We believe the same would be true for other limited purpose, non-traditional members such as private fund placement agents.

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[19] *See* FINRA Rule 2111; *see also* FINRA's "Frequently Asked Questions: FINRA Rule 2111 (Suitability)" and FINRA Regulatory Notices 12-55, 12-25 and 11-25.

Similarly, the "know your customer" and customer suitability obligations are of far less relevance in the context of institutional corporate financing activities and private fund placement activities, and wholly irrelevant to M&A transactions. Potential investors in "3(c)(7)" funds are, by virtue of the exemption's conditions,[20] limited to qualified purchasers. Subscription agreements and purchaser questionnaires typically include, among other things, representations and warranties attesting to the conditions defining a qualified purchaser.

Institutional corporate financing and M&A transactions are commonly heavily negotiated. Unlike a small retail investor, institutional investors and high net worth individuals have sufficient economic bargaining power to exert substantial influence over, if not dictate, the terms and conditions they will either offer to or accept from the issuer. In this context, there is no doubt that the investor/buyer is exercising independent judgment and fully self-evaluating investment risks. Accordingly, in the LCFB context there is little investor protection purpose served by these rules. Further, in the M&A context, the prospective business buyer will do its own self-directed pre-purchase due diligence, will assess whether the target business comes within its strategic, financial, or business objectives, strategies, and plans, will determine the price and terms it is willing to offer, and will control the business after the transaction's closing.

We recommend that LCFB Rule 221 recognize that in the LCFB context an introductory communication, summary in nature, is typically produced, which is initially distributed to prospective institutional investors or business buyers and used to determine if they have any interest in a potential transaction. As written, LCFB Rule 221 says "no" communication may "omit any material fact or qualification". Inherently, by design, these summary documents do not contain all material facts and circumstances that may pertain to the issuer/seller. Prospective institutional investors and business buyers want a condensed summary to determine, as an initial matter, whether they wish to devote any additional time or resources to considering whether a potential transaction is of any interest. Typically, these summary documents are expressly qualified in their entirety by the extensive information and documentation that will be directly accessible, subject to a confidentiality agreement, by each prospective institutional investor/buyer as an integral part of its self-directed pre-purchase due diligence. Direct access is provided to the issuer/seller's management team and commonly electronic access to material documents as identified by the issuer/seller and its counsel.

In the M&A context, it is also common for the seller's written materials to include forward-looking information about such matters as projected sales growth, including opening new markets and developing new products. This type of forward-looking information is self-evaluated by the prospective business buyer as part of its due diligence process. LCFB Rule 221 should not prohibit this type of information from being provided where the prospective institutional investor or business buyer is capable of self-evaluating this type of forward-looking information.

[20] *See* Sections 2(a)(51)(A) and 3(c)(7) of the 1940 Act, and SEC Rules 2a51-1, 2a51-2, and 2a51-3.

- *Does the SEC staff no-action letter issued to Faith Colish, et al., dated January 31, 2014, impact the analysis of whether a firm would become an LCFB? Is it likely that some limited corporate financing firms will not register as a broker consistent with the fact pattern set forth in the no-action letter, or will they register as an LCFB?*

We believe it is likely that some, but not all, LCFB-eligible persons will choose not to become SEC-registered broker-dealers and, consequently, FINRA members. The M&A Broker Letter and similar prior SEC staff no-action letters provide the Staff's view as to the circumstances in which broker-dealer registration should not be required.[21] However, these no-action letters have significant limitations, both as a legal and practical matter.[22] Importantly, the M&A Broker Letter does not allow for general capital-raising activities where no change of control occurs. Hence some members are certain to remain registered (and new applicants may apply for FINRA membership) in order to engage in both types of securities-related activities. The FINRA Rules should recognize and give appropriate effect to the reality that members' M&A-related services within the scope of the no-action relief compete with large numbers of unregistered M&A brokers who rely on the SEC staff no-action letters. Adopting the LCFB Rules, with our proposed modifications, would help to balance the competitive circumstances as between registered and unregistered M&A brokers.

We also believe that some members could choose to bifurcate their business model by moving those activities falling within the scope of the M&A Broker Letter into an unregistered affiliate. Most firms will have dually employed associated persons and so NASD Rule 3040, as currently in effect, will likely require the registered member to supervise the private securities transactions conducted through the unregistered affiliate.[23] The unregistered affiliate could pay its affiliated member for the cost associated with its supervision, but the transaction-related revenue is not required to be paid to the member under this rule. Accordingly, members

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[21] *See, e.g., M&A Broker Letter*; *Country Business, Inc.*, 2006 SEC No-Act LEXIS 669 (2006); *Victoria Bancroft*, 1987 SEC No-Act LEXIS 2517 (1987); and *International Business Exchange Corp.*, 1986 SEC No-Act LEXIS 3065 (1986).

[22] The SEC's general rules, specifically Rule 202.1(d), state that a no-action letter only expresses the SEC staff's view on the question presented—in this case the need for an M&A broker to register with the SEC. It is merely an interpretation that can be later modified or withdrawn. *See* the SEC's description of no-action letters on its website at http://www.sec.gov/answers/noaction.htm. Courts may give the SEC's no-action letter some deference but the staff's position is not legally binding on anyone, not even the Commission. *See New York City Employees Retirement System v. SEC*, 45 F.3d 7 (2d. Cir. 1995).

[23] As a general matter, and particularly in the context of the LCFB Rules, we strongly encourage FINRA to reconsider and repropose NASD Rule 3040 to better acknowledge and align the rule with present day realities in which particular employees may be dually employed by individual affiliates within a multi-service organization, many of which affiliates are separately regulated under different regulatory regimes and subject to different regulatory requirements. Requiring a FINRA member to "supervise" the employee's participation in securities-related activities performed in the context of their employment with a separately regulated (or exempt) affiliate as if the activity were performed on behalf of the member, and to "record" resulting securities-related transactions on the FINRA member's books and records, is not practical or appropriate and indeed may be inconsistent with the affiliate's applicable regulatory requirements.

are likely to find a significant cost-savings from bifurcating their M&A business with respect to privately held company transactions.

We note that an important unresolved question about the M&A Broker Letter is whether a FINRA member could pay a referral fee to an unregistered M&A broker for transactions coming within the scope of that no-action letter. In 2009, FINRA proposed to replace NASD Rule 2420 with a new FINRA Rule 2040 that would, in essence, allow payments or sharing of compensation with unregistered persons when, based on SEC rule or guidance, broker-dealer registration would not be required. The modernization of NASD Rule 2420 is long overdue. NASD Rule 2420 was first written and adopted for entirely different purposes and a literal reading of the rule today barely hints at its current application, creating a compliance trap for the unwary. While the proposed FINRA Rule 2040 could itself be written far more clearly, its reproposal is strongly encouraged.

Conclusion

We greatly appreciate the opportunity to share our thoughts and comments on the Proposal. FINRA has taken an important step forward in modernizing its rules in light of the dramatic shift in the demographics of its members and in recognition of the pending revolution in issuer-direct capital raising activities facilitated by The Jumpstart Our Business Startups Act of 2012 ("JOBS Act"). The 2013 SEC report, *Capital Raising in the U.S.: An Analysis of Unregistered Offerings Using the Regulation D Exemption, 2009-2012,*[24] documents the leading edge of these impending changes. Notably, the report's Summary of Main Findings highlights, among other points, that: "Only 13% of Regulation D offerings since 2009 report using a financial intermediary (broker-dealer or finder)". Neither this statistic nor the JOBS Act's innovations in general solicitation and crowdfunding bode well for the future revenues of FINRA's members, particularly smaller members who are still willing to undertake Regulation D private offerings. We are concerned that these developments may result in the further decline in FINRA small firm membership.

We believe that the Proposal is the first step in the right direction. We hope these comments will be helpful, both in consideration of the Proposal and in FINRA's retrospective rule review process. We are available to meet and discuss these matters with FINRA and to respond to any questions you may have. We greatly appreciate your consideration and look forward to future opportunities to provide further input.

[24] Available on the SEC's website at http://www.sec.gov/divisions/riskfin/whitepapers/dera-unregistered-offerings-reg-d.pdf

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Very truly yours,

/s/ Catherine T. Dixon
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April 25, 2014

Ms. Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
pbcom@finra.org

Re: Re: **GENRAL COMMENTS ON PROPOSED RULE SET FOR LIMITED CORPORATE FINANCING BROKERS**

Dear Ms. Asquith:

I commend FINRA for proposing a separate rule set that would apply exclusively to firms that meet the definition of limited corporate financing broker ("LCFB"). This new rule set potentially could streamline regulation specifically for an LCFB's business activities. However, I think that more consideration and work are needed in order to implement such a rule set. Many of the concerns have already been addressed by others. I will merely highlight a few that are of particular concern.

The proposed rule set seems overly restrictive without much by way of benefits to the LCFB.

I must assume that the scope of advising a company regarding the purchase or sale of a business or assets, corporate restructuring, and/or divestiture or merger, would include a valuation analysis and the analysis of strategic alternatives under the proposed rule set. More typically, such advice is to assist companies in developing strategies for transferring ownership within the family, sale to shareholders/partners, sale to employees, sale of business or merger, liquidation, and recapitalization.

Such advice may also include "show-me" type valuations that would not be for purposes of a transaction. Among these are valuations for estate and gift tax purposes, employee benefit plans, disputes, wealth transfer strategies for the closely-held business owner, and so forth.

A particular area of concern with the proposed rule set for the LCFB falls under the basic definition of an LCFB, which seems to restrict activities to advising an issuer or company and/or its board of directors. Any qualifying, identifying or soliciting of investors would be limited to institutional investors as defined under LCFB Rule 016(g)(1). The $50 million minimum asset requirement for persons (entities) other than institutions is problematic.

I highlight the following Request for Comment: *Does an LCFB normally make recommendations to customers to purchase or sell securities? Should an LCFB be subject to rules requiring firms to know their customers (LCFB Rule 209) and imposing suitability obligations (LCFB Rule 211) to an LCFB?*

The advisor generally does not make specific recommendations to the issuer, company, or board. The advisor instead assists the customer in making his, her, or its own decisions. For instance, a fairness opinion specifically states that "this fairness opinion is not a recommendation to buy or sell."

Accordingly, under the proposed rule set, an LCFB would be able to advise an issuer, a company or its board, but would not be able to qualify prospective investors unless the investors met the institutional investor qualification. This would limit the scope of an LCFB's services and it would be hard to justify a success fee upon the closing of a transaction, unless the prospective investor qualified as an institutional investor.

Before choosing to be treated as an LCFB, I would like to see a better balance between activity restrictions and benefits to the Member. This could be accomplished by either reworking the rule set by loosening the restrictions on an LCFB's business activity or significantly reducing the FINRA imposed costs of doing business – membership fees, SIPC and fidelity insurance requirements, and the need for an annual audit.

I hope my comments on the proposed rule set are helpful.

Richard B. Dole, ASA, CFA
Chief Executive Officer
Dole Capital, LLC

Dear Ms. Asquith,

My firm is a FINRA member specializing in placement agent services dedicated to the singular goal of capital raising for investment managers so they could focus on creating returns and not on the fundraising. We raise institutional capital across highly differentiated funds, including private equity, real estate, real assets and hedge funds.

I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD) which are attached. I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

With kind regards,

Leanne

LEANNE ERICKSON
Chief Compliance Officer

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Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

My firm is a FINRA member specializing in placement agent services to institutional investors. I do not carry or maintain customer accounts, hold or handle customer funds or securities. I do not accept orders from customers to purchase or sell securities as a principal or as an agent for any customer. My customers are actually Investment Managers, Fund Sponsors or GP's not retail investors. I believe that FINRA, MSRB, and the SEC all wish to make their own lives easy be closing their eyes to the relevance of rules for distinct sub-sections of their member universes. A one size fits all mentality at FINRA requires a standardization of actions/reports to please Congress regardless of their relevance, expense to their members or protection to investors.

I was hoping to see regulations that more reflected my business model in your proposed regulation changes for Limited Corporate Finance Brokers. As things stand your proposed changes entirely miss the mark and there is no reason for any placement agent to consider a change in registration.

I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support. (see attached)

Best wishes,
Brian X. Fitzgibbon

Fitzgibbon Toigo Associates, LLC (FINRA/SIPC/MSRB member)
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Ours is a small firm that already limits itself to advisory services for direct private placements and if the LCFB were changed as follows would certainly opt to change the firms status

- Add Accredited Investors as part of the customers the LCFB can serve. The current customer definition is too narrow
- Because the LCFB would not carry customer accounts or deposits, as is the case for our firm today, eliminate the costly PCAOB Annual Audit, the SPIC insurance and Fidelity Bond requirements
- End the Net Capital requirement since the firm is not engaged in any business operation that would require the protection by its capital base.
- And finally, allow LCFB's whose registered representatives and principals are series 7 and 24 respectively when they become LCFB's to return to full broker status, without having to reapply for membership, should their business model require them to do so

Thank you for providing the opportunity to comment on the proposed rules,

Weldon G. Fleming, Jr.
Principal
LIATI Capital, LLC

April 23, 2014

To: Maria E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006

Re: Proposed Rule Set for Limited Corporate Financing Brokers (Regulatory Notice 14-09)

General Observations

I am encouraged by FINRA's proposed activities for Limited Corporate Financing Brokers ("LCFB"). I believe LCFB may meaningfully increase the alternatives for competent representation available to small businesses seeking to sell themselves or raise capital. However, limiting investors and acquirors to "institutional investors" undermines what FINRA's proposed rules are seeking to accomplish for the following reasons:

1) LCFB and their clients cannot reasonably know upfront without potentially negative consequences if certain potential buyers/investors meet the institutional investor qualification before or even after they are solicited. While it is common in the private placement context to pre-qualify accredited investors by asking that such investors complete a questionnaire to certify their "accredited investor" status prior to providing offering materials, a buyer or investor may be unwilling to certify to the much higher institutional investor status prior to receiving any information on the transaction. The buyer of a small company in many cases may be a comparable size company or a competitor. The seller will likely never know the financial position of the buyer in an all cash for stock transaction. The seller is primarily concerned with the buyer's ability to pay the purchase price and the terms of the transaction. If the deal is structured as a cash and stock deal or an all stock deal, the seller would in fact have reasonable access to the buyer's financials and could determine if the buyer has $50 million in assets, however, the timing of determining this could be a month or more after the LCFB has been engaged by its client. Further, the institutional investor status of the investor is only relevant to the LCFB and no other party to the transaction. There is no "investor protection" rationale in the proposed rule for requiring institutional investor status rather than accreditor investor status. Under U.S. securities laws, accredited investors are assumed to be both informed and sophisticated enough not to need the protections afforded to other investors under the federal securities laws.

2) I believe that the proposed rules as currently written would prohibit a LCFB from representing small companies unless the LCFB agreed upfront with the prospective client as to what purchasers/investors would be solicited and that list would be limited to institutional investors. This does not seem practical given that a prospective buyer/investor list is usually not compiled until well into any engagement and often concurrent with or after the LCFB representatives having done a substantial portion of their financial and business due diligence including thoroughly assessing the competitive landscape, which in many cases will undoubtedly identify potential buyers/investors. For a small company seller, limiting the landscape of buyers (for the sole purpose of allowing the LCFB to be engaged and participate in the transaction for compensation) is a disadvantage to the selling client with no offsetting benefit. The smaller the pool, the less likely the company will be sold which could negatively impact job growth, and future investment in the economy.

If I am the prospective client and the LCFB "honestly" explained to me this limitation as to who can be solicited, and the lack of any offsetting benefit, I would not hire the LCFB. The client could always turn to a traditional broker-dealer to seek representation, use a M&A Broker under the recent SEC no-action letter, assume no advisory representation, use legal counsel only, or circumvent or disregard the rules entirely.

Putting aside the larger broker-dealers which generally would have limited interest in representing companies with an enterprise value of less than $25 million, many of the regional broker-dealers currently have minimum fee requirements that are still cost prohibitive to a small company. Even if these broker-dealers accept the assignment, it is possible the company and the engagement will not get the senior level attention that is warranted and the client expects and is paying for.

3) Even assuming that a seller and its advisor can determine that all the potential buyers to be solicited are institutional investors, what happens if and when the company receives an unsolicited offer from a non-institutional investor? What is the LCFB responsibility in this scenario? Would the LCFB still be paid even if the company sells to the unsolicited party? This is problematic.

Summary and Suggestions

While I appreciate the term "accredited" has been diluted somewhat by the overall growth in the economy and inflation, it is the standard long established for registered broker-dealers with respect to selling private placements. Accredited investors are presumed under U.S. securities laws to be sophisticated enough to not need the protections afforded other investors under U.S. securities laws. It is the role of the U.S. Congress and the SEC to determine what the appropriate thresholds should be for the accredited investor standard to balance the goals of investor

protection, the public interest and the economy. Section 413(a) of the Dodd-Frank Act, requires the SEC undertake a review of the definition of accredited investor as it applies to individuals every four years and make adjustments as the SEC deems appropriate for protection of investors, in the public interest and in light of the economy. From the proposed rules, FINRA is proposing to dictate what level is appropriate for investor protection, rather than Congress and the SEC. It is hard for me to understand why a sole practitioner like myself with twenty-five years of investment banking experience with three bulge-bracket firms is being asked to submit to a higher standard. Is not a large part of your concern addressed with the registration requirements (Series 24,79, etc.) that LCFB principals and employees must adhere to? Registration and continuing education are the salient factors FINRA uses to determine minimum competency with respect to all registered broker- dealers. I believe that all advisors, whether associated with a bulge-bracket firm or sole practitioner like myself should be held to the same standard, no less or no more, in the pursuit to offer their clients only world-class advice.

While it is not my intent to pursue non-institutional accredited investors, there are many very sophisticated and wealthy investors that I believe should not be excluded in executing an M&A transaction or private placement. You may consider establishing a new definition for "non-institutional accredited investor" with a minimum net worth above accredited but below institutional.

You will be able to weed out many of the "bad actors" through your proposed registration of LCFB. Unfortunately, there will always be those individuals that have no respect for the law.

Furthermore, the SEC no-action letter dated January 31, 2014, is more favorable to brokers than the proposed FINRA rules. I believe, with respect to the sale of a company, many M&A brokers may take comfort in the SEC no-action letter and selectively disregard any new FINRA rules given they are, as written, more restrictive.

Inadvertently, the FINRA rules as proposed may actually discourage companies from hiring a LCFB given the inconsistencies between the two sets of rules for certain of the same activities. It is reasonable to assume that counsel to a seller will advise their client not to hire the LCFB given the inconsistencies. These inconsistencies increase risk, and increased risk has a cost. Does a seller need to be concerned with remedies that may accrue to a buyer if the advisor on the transaction relies on one set of rules and not the other? If you are an owner of a small company that has been in the family for generations and have made the important decision to sell, would you risk hiring a broker that is potentially restricted in his ability to maximize shareholder value and that may be subject to litigation/enforcement from FINRA and the SEC. Is it conceivable the LCFB would advise his client to not solicit a certain party in the best interest of the client because he realizes the party is not an institutional investor? The rules would dictate that the LCFB not act in the best interest of his client. This creates an illogical result.

I hope my comments will encourage FINRA to modify the definition of institutional investor if it is unwilling to establish parity among all providers of financial advice.

I would be happy to discuss my comments and suggestions with you.

Sincerely,

Saverio Flemma
SF Advisors, LLC
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To whom it may concern,

As the owner of a small limited BD that would likely qualify as a limited corporate financing broker, I would greatly appreciate if you would consider lowering the financial burden on such entities.

For example, since these entities (like mine) don't carry customer accounts, the fidelity bond should no longer be required, the net capital requirement should be eliminated (or substantially lowered), and the annual financial/AML (anti money laundering) audits should no longer be required (as the firm poses no financial or systemic risk on anyone else nor does it deal with cash deposits/customer accounts). In fact, the biggest regulatory cost for small BDs, such as mine, is the annual financial/AML audit, especially with the new PCAOB regulations that are coming into effect later this year.

I believe that these changes won't prevent companies like mine from still being compliant with FINRA rules, but will certainly help out by eliminating unnecessary cost burdens.

Thanks in advance for your consideration.

Regards,
Eli

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VIA Email (pubcom@finra.org)

April 28, 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Limited Corporate Financing Brokers (NTM 14-09)

Dear Ms. Asquith,

HighBank Securities, LLC (CRD 153796) welcomes the opportunity to comment about the proposed rule set for Limited Corporate Financing Brokers. Our business consists mainly of investment banking advisory services, namely mergers & acquisition advisory services as well as assisting clients in raising capital, mainly from parties that qualify as institutional investors. It is our view that our firm would fit within the proposed definition of an LCFB.

Through the creation of the Series 79 (Limited Representative – Investment Banking) in 2009 and now this proposed rule, it appears that FINRA is seeking to tailor its regulatory requirements to fit the activities performed by firms like ours. We welcome this movement. That said, we believe that the proposed rules do not go far enough and still result in a level of regulation and oversight that remains onerous and contains specific requirements that are unnecessarily burdensome to our business. Furthermore, the recent SEC Staff no-action letter issued to Faith Colish, et al., threatens to undermine FINRA's efforts to encourage registration by firms that conduct corporate finance business.

While the proposed LCFB rules eliminate a few of the regulatory burdens imposed upon firms like ours, it is our view that the rules do not go far enough. Specifically:

- LCFB's would still be required to participate as members of SIPC, whose specific mission is to protect clients assets held by broker-dealers. LCFB's are not permitted to hold client funds or securities and, accordingly, maintaining the requirement of SIPC participation makes little sense.[1]

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[1] Indeed, it is senseless that the SIPC applies to our firm presently as our firm holds no customer funds or securities and, accordingly, there is no scenario in which customers of our firm – the contingent that SIPC is chartered to protect – would benefit from SIPC's existence. Compulsory membership in SIPC results in a tariff on our firm's revenues that is patently unfair. This unfairness would be continued under the proposed LCFB framework.

- The requirement of an annual audit by an independent accountant and bi-annual AML independent reviews are of negligible value but material cost. Firms like ours expend considerable time, effort and expense to comply with the requirements of these annual reviews. These audits provide the investing public with no identifiable benefit.
- The rules would continue to require LCFB's to maintain a fidelity bond with coverage of at least $100,000, again at significant annual cost to the firm. For the reasons mentioned above – we hold no customer funds – the fidelity bond requirement makes little sense and we would request a reconsideration of its need.

For these reasons and others, the LCFB proposed rules do not represent a meaningful reduction in our regulatory burden and, accordingly, it is doubtful whether we would elect into the LCFB category, especially as the LCFB precludes raising capital from accredited investors. While the vast majority of our targeted investors qualify as institutional investors, we sometimes reach out to a network of high-net worth accredited investors, an action that would be prohibited by the LCFB proposal.

FINRA requested comments on certain specific issues. Our view on the most relevant issues for us is below:

- *Does the proposed rule set provide sufficient protections to customers of an LCFB? If not, what additional protections are warranted and why?*

  Our view is that the proposed rule set continues to provide sufficient protections for customers of an LCFB. In fact, there are many rules and regulations that would unnecessarily apply to an LCFB that provide no meaningful protection to LCFB's customers (SIPC, fidelity bond, annual audit).

- *Does the proposed rule set appropriately accommodate the scope of LCFB business models? If not, what other accommodations are necessary and how would customers be protected?*

  The proposed rule set allows LCFBs to solicit institutional investors but not investors that meet the definition of accredited investors. This is a distinction that should be reconsidered, as accredited investors are deemed to have a level of sophistication that allows them to sufficiently analyze the risks associated with investing.

- *Are there firms that would qualify for the proposed rule set but that would choose not to be treated as an LCFB? If so, what are the reasons for this choice?*

  Yes! One of our great frustrations is that our firm has elected to formally register as a broker-dealer, at significant cost and burden, while other firms with whom we directly compete have not properly registered as broker-dealers (with no negative consequences). It is our opinion that these firms will continue to operate without proper registration despite the LCFB proposed rule set.

- *What is the likely economic impact to an LCFB, other broker-dealers and their competitors of adoption of the LCFB rules?*

  We don't see any significant economic impact to an LCFB. The costs associated with being an LCFB are marginally lower than the costs of being a broker-dealer today, but, as mentioned, the proposed on-going costs are still significant.

- *Should principals and representatives that hold registration categories not included within LCFB 123 be permitted to retain these registrations?*

  Yes. We believe that representatives of an existing broker dealer that elects LCFB status should be allowed to continue to hold all of the registrations categories that they held prior to the election. This protection seems justified in that future rule changes could occur or the firm could decide the election was not worthwhile and desire to convert back to a full broker-dealer without the "penalty" of having to re-certify.

- *Does an LCFB normally make recommendations to customers to purchase or sell securities? Should an LCFB be subject to rules requiring firms to know their customers (LCFB Rule 209) and imposing suitability obligations (LCFB Rule 211) to an LCFB?*

  Aside from advice provided to our buy-side and sell-side merger and acquisition clients, our firm does not make recommendations to clients or customers to purchase or sell securities and, in fact, that activity (aside from in the merger and acquisition context) does not in our opinion seem appropriate for an LCFB.

- *Does the SEC staff no-action letter issued to Faith Colish, et al., dated January 31, 2014, impact the analysis of whether a firm would become an LCFB? Is it likely that some limited corporate financing firms will not register as a broker consistent with the fact pattern set forth in the no-action letter, or will they register as an LCFB?*

  The no-action letter represents a shift in regulation that is significantly more meaningful than the incremental changes made in the LCFB proposed rule set. Our firm derives the majority of its revenue from activities consistent with those set forth in the no-action letter. We are currently analyzing the no-action letter in detail, but our preliminary conclusion is that the majority of our business would no longer be subject to FINRA regulation as a result of the no-action letter. Although this would represent welcome financial relief, we believe this is a significant step backward in ensuring the quality of advice and protection provided by existing regulations and as such encourage FINRA and our membership to work hard to have the ruling reversed.

  Some might argue that unlicensed "M&A brokers" cause no harm and therefore they should not be subject to regulation. We disagree and provide two real examples.

First, assume a John owns a business worth $10 million and the vast majority of his net worth and life's earnings are tied up in the business. John, despite his significant net worth, is unsophisticated with all matters financial. John hires an unlicensed M&A broker who due to poor advice and shoddy execution proceeds to sell his business for half of what it is truly worth. John has lost $5mm and is by our way of thinking significantly "harmed."

Second, under the same fact pattern John's consideration for the sale of his business is stock in the acquirer and not cash. The stock is subject to a lock-up and other liquidity limitations that require John to hold the stock for 24 months post-closing. The M&A broker advises John that there is no real risk to holding the stock and is not able to even quote appropriate studies and current market data regarding the liquidity discount John should assume if he decides to take the stock as consideration. During the 24 month period the acquirers stock drops 50%. John is certainly harmed by having hired the unlicensed, unregulated M&A broker.

It is our opinion that the proposed rule set will not encourage firms like ours to register as an LCFB. In fact, the proposed rule set, coupled with the no-action letter, makes it even more likely that many firms will continue to "roll-the-dice" and perform their services illicitly outside voluntary FINRA and SEC oversight, risking the livelihoods of countless, financially unsophisticated business owners.

Thank you for allowing us to provide our comments. Please don't hesitate to contact us if you have questions concerning our response.

Very truly yours,

Stephen A. Gaines
Managing Director/CEO

Dennis W. O'Neill
Managing Director/CCO

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

At Havener Capital Partners, my sales colleagues and I are registered reps with FINRA member firm Compass Securities Corporation. Havener provides outsourced sales and marketing services to investment managers targeting institutional investors. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

Thank you for your consideration.
Stacy Havener

****

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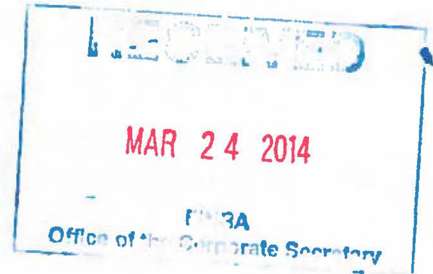
March 21, 2014



Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

RE: Regulatory Notice 14-09; Limited Corporate Financing Broker

Ms. Asquith:

Thank you for the opportunity to comment on the proposed Rule Set for Limited Corporate Financing Brokers.

Colorado Financial Service Corporation is a full service general securities firm that includes an investment banking division. We have been involved in investment banking transactions since 2008 and conduct approximately 50 transactions per year. We operate on the independent contractor model that has proved to be beneficial to both our Firm and our registered representatives and very attractive to investment banking professionals. For the most part, our clients are private corporations seeking both mergers and acquisitions services as well as capital in the form of both debt and equity.

In reviewing this proposal, we could not help but look back at the rollout of the Series 79 Investment Banking registration[1] and the unintended consequences it placed on firms. FINRA did not provide clear cut definitions that allowed firms to make reasonable interpretations of the rule and reasonably expect to have a FINRA examiner make a similar interpretation. From our own experience, FINRA staff, including the general counsel's office could not provide a definition of the term "facilitate" as used in the rule. I see similar confusion in the proposed rule set that will lead to very differing interpretations of the rule when it comes to application. Though not FINRA's responsibility, the US Securities and Exchange Commission's letter to exempt most mergers and acquisitions brokers from any registration adds to the confusion and creates an atmosphere of "no direction" when viewing the regulatory scheme surrounding securities registration. We see confusion in the proposed rule set that will lead to very

[1] 1 **1032(I) Limited Representative—Investment Banking** (1) Each person associated with a member who is included within the definition of a representative as defined in NASD Rule 1031 shall be required to register with FINRA as a Limited Representative—Investment Banking and pass a qualification examination as specified by the Board of Governors if such person's activities involve: (A) advising on or facilitating debt or equity securities offerings through a private placement or a public offering, including but not limited to origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings, or (B) advising on or facilitating mergers and acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions, including but not limited to rendering a fairness, solvency or similar opinion.

differing interpretations of the rule when it comes to application. We believe FINRA's mission is being compromised to retain firm and representative registrations.

As an example, the proposed Rule 016(h)(1)(F) and footnote 3 of Regulatory Notice 14-09 indicates that qualifying, identifying or soliciting securities to potential institutional investors by LCFB will be permissible. This creates confusion. Because, it appears that, pursuant to 016(h) (F) and the footnote, LCFB will be allowed to engage in traditional broker-dealer's activities to institutional investors. Allowing solicitation of institutional investors creates confusion and further blurs the line between a normal broker-dealer and an LCFB.

By way of response, I have repeated your specific requests:

1. ***Does the proposed rule set provide sufficient protections to customers of an LCFB? If not, what additional protections are warranted and why?***

   a. **The term "customer", pursuant to the proposed rule LCFB 016(d), means any natural person and any entity receiving *corporate financing services* from a limited corporate financing broker. "*Corporate Financing services*" is a broadly used term, and typically includes capital raising activities which should be outside the scope of an LCFB.**

      However, FINRA did not clearly indicate whether capital raising activities would be allowed by LCFB in the proposed rule. We propose, to make reasonable interpretations of the rule, either: (i) to clarify the term "Customer" by stating "any natural person and any entity receiving or having an engagement with LCFB for the services listed, identified or defined in LCFB Rule 016(h); or (ii) to provide FINRA's view or expectation on capital raising activities by LCFB; a bright-line of demarcation.

   b. **According to the proposed rules, registered associated persons of LCFB will be subject to FINRA Rule 3270. However, the proposed rule is silent on the activities which are currently subject to NASD Rule 3040, private securities transactions.**

      We request; (i) FINRA's view on securities transactions of which associated persons of LCFB participated in; and (ii) to provide FINRA's interpretation of the following circumstances.

      - **Whether such activities will be viewed as the business activity outside the scope of the relationship with the LCFB firm, therefore will be subject to FINRA Rule 3270;**
      - **When/if an associated person of LCFB is also registered with an affiliated full service broker-dealer for the purpose of conducting traditional brokerage activities;**
      - **When/if an associated person of LCFB is also registered with an unaffiliated full service broker-dealer for the purpose of conducting traditional brokerage activities; and**
      - **When/if an associated person of LCFB refers a customer (either institutional or non-institutional customers) to a broker-dealer (either affiliated or unaffiliated) for capital raise of an issuer of which the LCFB firm engaged in one of the activities of 016(h) (1).**

   c. **The proposed rule 221 appears to disregard the existing rules concerning communications with the public:**

      - **The one-year filing requirement appears to be waived.**
      - **There appears to be no required supervision of communications**

The rules appear to be vague and contradict their intent. The rule proposal allows capital raise transactions to institutional clients and yet the rules appear to match retail clients. An LCFB should be limited to services only and NO transactions, institutional or otherwise.

There is no reason to exempt an LCFB from the annual requirement for the AML independent examination. The existing exemption applies to Firm's that do not have *any* transactions. FINRA propose to allow transactions, though institutional which we believe are contrary to AML rules.

2. *Does the proposed rule set appropriately accommodate the scope of LCFB business models? If not, what other accommodations are necessary and how would customers be protected?*

   a. **The proposed rules appear to have removed or limited LCFB's and its associated persons' direct contact with general public customers (aka retail customers). However, LCFB's and/or its associated persons' certain conduct may still impact general public customers.**

      As an example, LCFB can possess non-public information that may impact, either positively or negatively, an issuer's stock price, when/if the issuer is a publicly traded company. Therefore, LCFB's and its associated persons' securities transactions need to be scrutinized and supervised by a qualified principal.

      Accordingly, we propose to require LCFB's and their associated persons' compliance with NASD Rule 3050(C) and (d). In addition, due to the fact that the investment bankers do often receive stocks or equity shares as compensation from the issuer, we suggest to modify personal securities related rules similar to 204(A)-1 of the Investment Advisers Act of 1940.

   b. **There should be a bright-line of distinction between an LCFB and any other broker-dealer firm registration category. I would repeat response to Item 1 above. As an example, LCFB Rule 209; LCFB Rule 211; LCFB Rule 451 (b); LCFB Rule 512; LCFB Rule 900 (d); we believe, contradict the spirit and intent of the rule; especially as they may relate to individual customers rather than entities which are the norm in corporate finance.**

3. *Is the definition of "limited corporate financing broker" appropriate? Are there any activities in which broker-dealers with limited corporate financing functions typically engage that are not included in the definition? Are there activities that should be added to the list of activities in which an LCFB may not engage?*

   a. **NASD Rule 1032(I) requires an individual who provides investment banking services to register as a Limited Representative-Investment Banking. The rule also defines what activities are to be provided by such individual. We are asking FINRA to clarify whether registered representatives of LCFB will also be deemed a Limited Representative-Investment Banking or not. If yes, why does FINRA use two different terms, Investment Banking and Limited Corporate Financing. The description looks very similar to a Series 82 registration. If not, what's the difference?**

   b. **The proposed LCFB 016(h) (1) (A) currently states that "advising an issuer, including a private fund, concerning its securities offerings or other capital raising activities." Will the valuing of securities of or for an issuer be permitted by LCFB? If yes, we propose to add as such in the proposed LCFB 016(h) (1) (A). If no, also state as such.**

c. **LCFB should be also prohibited from raising capital from any source what-so-ever; debt or equity. To do anything less would compromise the whole intent of the rule set.**

4. *Are there firms that would qualify for the proposed rule set but that would choose not to be treated as an LCFB? If so, what are the reasons for this choice?*

Adopting an LCFB format should be strictly for an investment banking firm that limits itself to mergers and acquisitions transactions, no capital raise whatsoever and other usual and normal fee-based investment banking consulting or drop the idea all together.

5. *What is the likely economic impact to an LCFB, other broker-dealers and their competitors of adoption of the LCFB rules?*

Carving out the LCFB would create an un-level playing field for existing broker-dealers who conduct corporate finance activities in addition to their other lines of business.

6. *FINRA welcomes estimates of the number of firms that would be eligible for the proposed rule set.*

An M & A firm would more than likely use the SEC's exemption and not register.

7. *Proposed LCFB Rule 123 would limit the principal and representative registration categories that would be available for persons associated with an LCFB. Are there any registration categories that should be added to the rule? Are there any registration categories that are currently included in the proposed rule but that are unnecessary for persons associated with an LCFB?*

The IB (Series 79, either completed or grandfathered by waiver on May 3, 2010) should be a required registered representative registration that cannot default to a Series 7, 62, or 82 registration. Allowing the use of the Series 7, 62, or 82 contradicts the intent of the rule and creates additional confusion. An LCFB by being "limited" forfeits it rights to other business lines that are allowed for full service broker-dealers that also conduct investment banking activities.

8. *Should principals and representatives that hold registration categories not included within LCFB Rule 123 be permitted to retain these registrations?*

No. As is the rule now, if a firm is not licensed for a particular line of business, the broker-dealer cannot "park" the license. To repeat, an LCFB by being limited forfeits it rights to other business lines that are allowed for full service broker-dealers that also conduct investment banking activities.

9. *Does an LCFB normally make recommendations to customers to purchase or sell securities? Should an LCFB be subject to rules requiring firms to know their customers (LCFB Rule 209) and imposing suitability obligations (LCFB Rule 211) to an LCFB?*

   a. **Typically, an LCFB does not engage in recommending any securities (either of the issuers with investment banking engagement or of those with no investment banking engagement or relationship) to any customers. When/if an LCFB firm does engage in such activities, it would be in the form of a capital raise. Accordingly, by removing or prohibiting LCFB from directly or indirectly engaging in capital raise for or on behalf of any issuers will eliminate the suitability obligations. Furthermore, allowing an LCFB firm to make recommendations to customers to purchase or sell securities defeats the purpose of the rule (accepts orders to**

purchase or sell securities). Such a recommendation indicates business other than what is intended under this rule.

b. An LCFB should be subject to LCFB Rule 209, "Know Your Customer."

10. *Does the SEC staff no-action letter issued to Faith Colish, et al., dated January 31, 2014, impact the analysis of whether a firm would become an LCFB? Is it likely that some limited corporate financing firms will not register as a broker consistent with the fact pattern set forth in the no-action letter, or will they register as an LCFB?*

The SEC letter issued on January 31, 2014 has opened the floodgates for anybody to hang out a shingle and be an "Investment Banker". Public Protection has been disregarded in this letter in favor of a very small vocal minority of individuals who do not want to be registered. FINRA and the membership should make every effort to have the Colish letter rescinded.

The creation of the LCFB is contrary to FINRA's mission of market integrity and investor protection. The mergers and acquisitions market has been populated by numerous unsavory characters. The prevailing attitude since creation of the Series 79 license in the legal community had become one of "if the banker is not registered, don't use them". The creation of the LCFB and the SEC's no-action letter referenced earlier, I believe, will result in the unsavory characters returning to the market place and taking advantage of, what could be, very vulnerable small business owners and market integrity being compromised. Perhaps, FINRA and the industry would be better served by expanding existing rules rather than creating a whole new category to accommodate business that is already being conducted in an orderly fashion.

Respectfully submitted,

Chester Hebert
CEO

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April 25, 2014

Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington DC 20006-1500

Re: Regulatory Notice 14-09

Dear Ms. Asquith:

We appreciate the opportunity to comment on Regulatory Notice 14-09, in which the Financial Industry Regulatory Authority ("FINRA") proposes a new set of rules for firms that meet the definition of a limited corporate financing broker ("LCFB"). Ernst & Young Corporate Finance (Canada) Inc. ("EYCF(C)") is a broker-dealer registered with the SEC and is a member of FINRA. Among other things, EYCF(C) primarily provides advisory services to its clients with respect to equity and debt financing, corporate restructuring and divestitures and mergers and acquisitions. All of EYCF(C)'s clients are institutional in nature and EYCF(C) does not carry or maintain customer accounts, handle customers' funds or securities, accept customers' trading orders, or engage in proprietary trading or market-making.

Since much of EYCF(C)'s business appears to be encompassed by FINRA's proposed LCFB registration category, EYCF(C) is interested in fully understanding the proposed parameters of the registration category so that it can determine whether it should change its broker-dealer registration to that of an LCFB, if such registration category is adopted. EYCF(C) is greatly appreciative that FINRA has recognized through its LCFB proposal that firms providing advisory services such as EYCF(C), do not engage in many of the activities typically associated with traditional broker-dealers. Therefore, such firms should not be required to comply with those FINRA rules that are not actually relevant to their business.

While EYCF(C) is excited by the concept of a new limited registration category, EYCF(C) would like to confirm its understanding of certain aspects of the proposal, as well as suggest possible modifications to ensure that EYCF(C) and similarly situated broker-dealers will be able to rely on the LCFB registration category if the proposal is adopted.

1. Non-Registerable Activity.

EYCF(C) seeks to confirm that if a registered representative of an LCFB engages in activities that do not require broker-dealer registration, such activity will not be required to take place under the LCFB. This issue arises in the context of the SEC's recent series of no-action letters involving broker-dealer registration relief for merger and acquisition advisory firms. EYCF(C) is interested in understanding how this no-action relief impacts the LCFB registration category.

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Most recently, on January 31, 2014 the SEC staff issued a no-action letter that provides limited broker-dealer registration relief for firms that engage in merger and acquisition advisory activities (the "January 31 No-Action Letter").[1] Specifically, the January 31 No-Action Letter provides that M&A Brokers,[2] subject to certain conditions, may effect transactions in connection with the transfer of ownership of privately-held companies[3] without being subject to the broker-dealer registration requirements under Section 15(a) of the Exchange Act. The conditions on which the no-action position is based, include, among other things, the M&A Broker not having the ability to bind a party to a transaction or to provide financing for a transaction. The M&A Broker must also not have custody, control or possession of funds or securities in connection with the transaction and the transaction cannot involve a public offering. In addition, the issued securities in the transaction must be "restricted securities" under the Securities Act of 1933 (the "Securities Act").

EYCF(C) assumes that activities that do not require broker-dealer registration, either because such activities fit within the parameters of an SEC staff no-action position, or some other exemptive relief, will not be required to be conducted through an LCFB. However, EYCF(C) seeks confirmation that if a registered representative of an LCFB engages in non-registerable activities, such as those contemplated in the January 31 No-Action Letter, the registered representative will not be required to engage in these activities under the LCFB. Rather, these activities will be treated as "outside business activities" pursuant to proposed Rule 327 and will not need to be recorded on the books and records of the LCFB or be subject to FINRA rules governing the LCFB.

2. Rule 15a-6 under the Exchange Act.

In addition, a core part of EYCF(C)'s advisory functions involves EYCF(C) acting as a "chaperone" for non-U.S. brokers dealers from the Ernst & Young network. EYCF(C) typically chaperones the non-U.S. broker-dealers in cross-border merger and acquisition transactions, that in the absence of an exemption, would require the non-U.S. broker-dealers to register with the SEC as broker-dealers under Section 15(a)(1) of the Exchange Act. As this concept is not addressed in FINRA's proposal, EYCF(C) would like to confirm that chaperoning activities pursuant to Rule 15a-6(a)(3) under the Exchange Act (and related no-action letters) would be permissible for LCFBs in cases in which the foreign broker-dealers' activities are limited to those that could be effected by an LCFB, including activities otherwise permitted under the M&A No-Action Letters. Under the Rule 15a-6 chaperoning arrangements, EYCF(C) is responsible for, among other things, participating in communications, obtaining consents to service of process, and maintaining required books and records. EYCF(C) does not know of any reason why an

[1] *See Faith Colish, Esq., Carter Ledyard & Milburn LLP, et al.*, SEC No-Action Letter (Jan. 31, 2014). *See also Roland Berger Strategy Consultants*, SEC No-Action Letter (May 28, 2013) and *Ernst & Young Corporate Finance (Canada) Inc.*, SEC No-Action Letter (July 12, 2012). Together, these three SEC No-Action Letters, and any subsequent No-Action Letters addressing this subject matter, shall be referred to as the "M&A No-Action Letters."
[2] An "M&A Broker" is defined in the January 31 No-Action Letter as an entity whose business of effecting securities transactions is "solely in connection with the transfer of ownership and control of a privately-held company…to a buyer that will actively operate the company or the business conducted with the assets of the company."
[3] A "privately-held company" is defined as an operating company that is not a reporting company under the Securities Exchange Act of 1934 (the "Exchange Act").

LCFB would not be permitted to chaperone a foreign broker-dealer in the same manner that traditional broker-dealers can, however, EYCF(C) would like confirmation of this. EYCF(C) would also like to confirm with FINRA that there will be no additional restrictions or limitations placed on chaperoning LCFBs that are not currently in place on traditional chaperoning broker-dealers.

3. Public Company Transactions.

EYCF(C) notes that there is no restriction on LCFBs engaging in public company transactions in connection with their advisory work. EYCF(C) believes that this is particularly important in light of the limitation on the scope of the January 31 No-Action Letter to private company transactions. EYCF(C) occasionally provides public company M&A advisory services. EYCF(C) wishes to confirm that these services will be able to be conducted by LCFBs. This will encourage firms to utilize this new registration category in lieu of reliance on the M&A No-Action Letters.

4. Required Documentation for Institutional Investor Status.

As currently proposed, Rule 016(g) defines an "institutional investor" to include among other entities, a person (whether a natural person, corporation, partnership, trust, family office or otherwise) with total assets of at least $50 million. EYCF(C) seeks to understand whether LCFBs will be required to obtain any particular documentation to substantiate the value of an investor's total assets. EYCF(C) believes that LCFBs should be able to make their own determinations as to whether an investor meets the "institutional investor" threshold based on the receipt of documentation that the LCFB considers to be reasonably appropriate. Currently, EYCF(C) will qualify an investor by information provided by the investor, including representations or by publicly available information concerning the investor. The status of the investor is also the subject of representations and warranties in the engagement materials. Personnel of the firm are alert to circumstances arising during their research prior to a mandate arising or learned during the course of their mandate suggesting that the information obtained to date is inaccurate. EYCF(C) believes that its current practices have served as an effective means for determining an investor's status and should be sufficient to determine "institutional investor" status in connection with LCFB requirements as well.

5. State Registration Issues.

One of the potential benefits of LCFB registration is that it will afford an exemption from certain state business broker registration requirements that are available for federally registered broker-dealers, as well as state broker-dealer registration requirements in cases in which the institutional buyer exemption is predicated on federal broker-dealer registration. For example, the Illinois Business Brokers Act of 1995 requires that any person domiciled in Illinois, receiving compensation from another person to procure a business or assist in the procurement of a business, must be registered as a business broker with the Illinois Secretary of State Securities Department, unless, among other exemptions, he or she is registered as a dealer in the state of Illinois or he or she is exempt from registration as a dealer in Illinois but registered pursuant to federal securities laws. Those firms that choose to rely on the M&A Letters, rather than registering as a broker-dealer, may be in the position of being required to register as a business broker or broker-dealer with state securities commissions notwithstanding that they are not

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required to register with the SEC or become members of FINRA. We urge FINRA to ensure that this new category is fully recognized by the states as a basis for the exemptions noted above notwithstanding the more limited requirements applicable to the LCFB category.

Thank you for providing us with the opportunity to provide comments on FINRA's proposed rules for LCFBs. We would be pleased to discuss any comments herein, or provide FINRA with any additional assistance as it proceeds with the proposal. Please do not hesitate to contact me at 416-943-3476 if you have any questions.

Very truly yours,

Tony Ianni
President, Ernst & Young Corporate Finance (Canada) Inc

STONEHAVEN

April 28, 2014

Attention: Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

RE: Regulatory Notice 14-09 Proposed Rule Set for Limited Corporate Finance Brokers

Dear Ms. Asquith:

This comment letter is being submitted to the Financial Industry Regulatory Authority ("FINRA") on behalf of Stonehaven, LLC, a FINRA member firm and its associated persons (collectively "Stonehaven") with respect to Regulatory Notice 14-09 and the Proposed Rule Set for Limited Corporate Finance Brokers ("LCFB"). Stonehaven is also a member of the Third Party Marketers Association ("3PM"), and has had the opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 or LCFBs. Stonehaven urges FINRA's Board to carefully consider 3PM's thoughtful and informed commentary which has earned Stonehaven's strong support.

Although Stonehaven understands the prescribed format which must be followed regarding the informational exchange executed in these comment periods, it should be noted that this particular topic covers a broad range of material and nuances which we believe warrants an oral discussion to truly understand the details and drivers of the proposed reform on this topic in addition to the conventional comment period and responses which shall be in written format. Stonehaven suggests that a round table discussion be held following FINRA's review of the collective response letters from members to achieve this goal.

Stonehaven is a global alternative asset capital raising firm which was founded with the mission of representing "best of breed" investment managers in connection with raising capital for their alternative investment vehicles. Stonehaven has cultivated relationships on a global basis with professional allocators and sophisticated investors since its inception in 2001. Stonehaven's business model, along with other dedicated capital raising firms which are serving the U.S. alternative asset management industry, is materially distinct and different from traditional broker dealers' business models which are carrying and clearing members.

This comment letter has been formatted to directly convey our "Suggestions" and the correlating "Reasons to support this suggestion".

Suggestion #1:

The proposed rule set for LCFB members should remove the net capital requirement applied to the LCFB members which currently has the threshold set at $5,000.

<u>Reasons supporting this suggestion:</u>

The current net capital requirement thresholds of $250,000, $100,000, and $50,000 respectively for carrying members and introducing members are rather arbitrary in nature, however the materiality of these dollar amounts substantively supports the spirit of the net capital requirements which is in part to protect the investor should a scenario unfurl which causes damage to an investor, and in theory the broker dealer carrying or clearing that customer account would have minimally sufficient reserves to apply to a remedial solution. When applying this methodology to the $5,000 net capital requirement for non-carrying and non-clearing members, it is clear that $5,000 would universally be determined as an insufficient amount to apply to any hypothetical remedial solution involving a customer. One may then deduce that this specific net capital requirement is in only place to ensure that all member firms remain on the grid and adhere to the general net capital requirement apparatus, and that perhaps the intention was that a well thought out resolution would be implemented down the line. This time has now finally come, and we collectively need to implement specific rules which effectively and efficiently regulate the LCFB universe of member firms.

Stonehaven submits that the FOCUS reporting requirements for LCFB members would need to be overhauled as the current set of calculations and data points are not directly applicable to LCFB members and more specifically, placement agents. For example, a specific issue that illustrates this disconnect is demonstrated through the revenue generation framework relating private placement activity. The accrual requirements set forth by the PCAOB accounting regime directly conflict with a placement agent firm's ability to accurately reflect its true capital condition because of the Aggregate Indebtedness variable and its function relating to allowable and non-allowable assets. A placement agent may accrue a substantial receivable in the form of an incentive allocation referral fee which has been accrued on its books with a correlating net pass through payable to registered representatives, but the current net capital calculation methodology does not allow the accrued net retained earnings amount to impact the net capital, and therefore can negatively impact the excess capital as well. This makes no sense to member firms in this situation, nor does it make sense to our PCAOB registered accounting firms which are auditing us. The reason is directly related to the net capital rules which were written to apply to trading firms who carry accounts, and not to placement agent firms which do not carry accounts or trade securities. Countless hours and resources have been allocated to this $5,000 minimum net capital requirement by member firms and FINRA examiners alike. This is clearly not an effective and efficient use of our collective resources when recognizing that the de minimis threshold amount does not translate to investor protection, but rather to FINRA maintaining a rule requirement to get every non-carrying and non-clearing member firm to ensure similar forensic accounting scrutiny applied to member firms which carry, custody and clear investor accounts.

More importantly, the compliance exposure which is forcibly imposed onto non-carrying member firms that results from this disconnected framework must be corrected, and this can be achieved by removing the $5,000 minimum net capital requirement and revising the FOCUS reporting requirements so that the data points are streamlined and meaningful for non-carrying member firms.

Suggestion #2:

Remove or overhaul the current Supplemental Statement of Income ("SSOI") content and filing requirement for LCFB.

Reasons supporting this suggestion:

The questions and data requests outlined in the SSOI in theory have been implemented to assist FINRA in intelligence gathering of member firms engaged in private placement activity among other items, but in practice this has not been achieved in a satisfactory manner. This recently implemented layer of recurring and required informational exchange does not provide accurate information to FINRA or the SEC because of the wide array of methods, timelines and fee structures which apply to the private placement framework and the placement agents which operate within this framework. The SSOI is clearly written inferring that a uniform application of method, timeline and fee structures applies to the private placement framework similar to the uniform process which applies to framework for trading public securities. This is simply inaccurate, and when Stonehaven specifically identified this issue to FINRA, we were told that FINRA understands this disconnect, but we should just make best efforts to interpret the questions and attempt to provide punctual and accurate data anyway. This reflects another disconnected channel of required informational exchange where non-carrying and non-clearing member firms are allocating resources to the FOCUS reports, and now SSOI filings as well, which does not promote effective and efficient regulation or accurate informational exchange, and this collectively results in valuable resources being wasted. One obvious example of this would be relating to the questions posed in the SSOI which request information regarding the revenue generated from the sales made in the reference period. Generally, private placements closed in any particular quarter will not generate commissions in the same quarter which would require the member firm filing the SSOI to reflect a "0" in the answer to the aforementioned question. This is just one example of the poorly written questions in the SSOI which confuse regulatory liaisons and examiners alike, precipitate unnecessary scrutiny relating to perceived hotspots by the regulators, and indirectly increases exposure for private placement agents due to the disconnected framework.

Suggestion #3:

Exempt LCFB members from or revise the specific rules that apply to carrying members and clearing members, and cause material expenses in the form of premiums for non-carrying members which arguably have no tangible insurance payoff in the equation. Specifically, Rule 4360 regarding the Fidelity Bond.

Reasons supporting this suggestion:

Rule 4360 and the maintenance of a $100,000 fidelity bond applies to non-carrying member firms. The spirit of this requirement dovetails with the general spirit of the net capital requirements which is to secure a minimum reserve amount of capital that may be applied to remedial solutions involving investors. A fidelity bond insures a firm against intentional fraudulent and dishonest acts committed by employees and registered representatives under

certain specified circumstances. In cases of theft of customer funds, a fidelity bond generally will indemnify a firm for covered losses sustained in the handling of customers' accounts. Clearly, this does not apply to non-carrying member firms and therefore LCFB members should be exempted from Rule 4360, or the Rule should be revised accordingly.

Suggestion #4:

Exempt LCFB members from the Securities Investor Protection Corporation required payments relating to the SIPC-6 and SIPC-7 filings which impose assessment payments based on a member firm's gross revenues.

Reasons for supporting this suggestion:

Non-carrying member firms do not carry investor accounts, but must pay these ever increasing amounts which are effectively premium payments funding the SIPC Fund. These rules are not aligned properly and disproportionately create significant expenses for LCFB without providing any tangible benefit to the non-carrying member firm. This is clear through reading the SIPC Mission Statement below (with most relevant language underlined for emphasis):

SIPC was created under the Securities Investor Protection Act as a non-profit membership corporation. SIPC oversees the liquidation of member broker-dealers that close when the broker-dealer is bankrupt or in financial trouble, and customer assets are missing. In a liquidation under the Securities Investor Protection Act, SIPC and the court-appointed Trustee work to return customers' securities and cash as quickly as possible. Within limits, SIPC expedites the return of missing customer property by protecting each customer up to $500,000 for securities and cash (including a $250,000 limit for cash only).

SIPC is an important part of the overall system of investor protection in the United States. While a number of federal and state securities agencies and self-regulatory organizations deal with cases of investment fraud, SIPC's focus is both different and narrow: restoring customer cash and securities left in the hands of bankrupt or otherwise financially troubled brokerage firms.

In SIPC's own words, their mission directly relates to protecting customer assets. It is unfair and unjust to be collecting premium payments from all member firms, when non-carrying member firms do not carry accounts and therefore have nothing for SIPC to protect.

In closing, Stonehaven submits that it is critical to understand the motive of the proposed rule set for LCFB members, which is effectively to draw a line of intelligent distinction regarding the applicable core rules which have been thematic and consistent in application for all member firms since the passage of the 1933 Act and 1934 Act, and to create a subset of the member universe to effectively differentiate a carrying and clearing member firm, such as Morgan Stanley, from a non-carrying and non-clearing member firm, such as Stonehaven. This much is common sense. It is imperative to understand the large universe of the distinct differences and nuances which apply to universe of non-carrying and non-clearing member firms, and subsequently apply that understanding in a streamlined application of rules to effectively and efficiently regulate this bifurcated universe of member firms.

Stonehaven appreciates the opportunity to offer comments on the proposed rule set for LCFB and would be pleased to discuss any of the points made in this letter in more detail. Should you have any questions, please contact Steven Jafarzadeh at (212) 616-7678.

Sincerely,

/s/ Steven Jafarzadeh, CAIA, CRCP
Managing Director, CCO & Partner
Stonehaven, LLC

BUTLER CAPITAL PARTNERS

April 28, 2014

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

Our firm, Butler Capital Partners (CRD #114242), is a FINRA member specializing in placement agent services for unregistered private placements, per our Form BD. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

Butler Capital Partners has fourteen employees and specializes in capital raising for hedge fund managers.

Sincerely,

Antoine C. Kemper, Jr.
Chief Operating Officer

cc: R. Alan Butler, Jr., Managing Member

/kf

As a small b/d who has worked hard at great cost of time and capital to be a member of FINRA, I am concerned that there is legislation that is being considered to exempt M&A "brokers" from FINRA membership.

We compete with these M&A brokers. By allowing them to conduct securities transactions (sale of the stock of a private business) what advantage does the FINRA licensed b/d have?

Should we give up our FINRA licenses and get real estate licenses like they have?

Please advise on what our firm should do.

Tom Korzenecki
Principal Managing Director
Grand Avenue Capital Partners LLC
Investment Bankers Member FINRA/SIPC **(crd 135073)**
180 S. Lake Avenue, Suite 205
Pasadena, California 91101 USA
626-676-1880: direct
626-405-1500: office
626-441-2794: fax
tom.korzenecki1: skype
trk@gacpllc.com
www.gacpllc.com

Dear Ms. Asquith,

We appreciate the opportunity to comment on the proposed rule set change for Limited Corporate Broker Dealers as outlined in Regulatory Notice 14-09. As a placement agent for high quality private equity and venture capital funds, CSP Securities, LP would definitely fit the definition of a firm that would benefit from relief from a number of the rules and regulations required of a registered Broker-Dealer. There are a number of requirements that CSP Securities, and other firms such as ours, are currently subjected to through the standard FINRA rule book that neither provide customer protection nor serve to enhance FINRA's ability to supervise our activities. The move towards establishing a distinct rule set for Limited Corporate Financing Brokers is to be commended; however, we feel that the modifications proposed fall short of providing significant relief in the areas that we feel are misaligned with the nature of our business. A few examples of requirements currently imposed on firms of our size and scope that are misaligned include:

- SIPC Membership – CSP Securities does not carry customer accounts nor do we engage a clearing firm to clear customer accounts. At no point do we handle customer funds or are we in a position to potentially result in a loss of customer funds, so to require SIPC membership and the related annual assessment is an expense that ultimately carries no value to our Firm.
- Anti-Money Laundering Audit requirement – CSP Securities does not handle customer funds nor do we facilitate the handling of customer funds by a third party. Customer funds utilized to purchase product sold by CSP Securities is handled directly by CSP Securities' client and ultimately, by counsel representing CSP Securities' client. CSP Securities is not directly involved in the transaction dynamics and thus, it is difficult for us to verify source of funds and/or monitor suspicious activities. CSP Securities exercises diligence in reviewing OFAC and FinCEN to insure that there are no issues relative to our target customer base, but beyond that the majority of the elements subject to third-party audit do not apply to our firm. The scope of our AML exposure could easily be encompassed as part of the annual certification of compliance and supervisory processes (3130 / 3012).
- Fidelity Bonds – Similar to our concerns related to SIPC membership, the requirement for CSP Securities to purchase / renew annually a Fidelity Bond with minimum coverage amounts in order to protect customers against loss is in essence requiring our firm to incur an expense for a product that is irrelevant to the type of business conducted by CSP Securities. At no time does CSP Securities handle client funds or securities and thus the potential for loss is nil.
- Suitability Requirements – CSP Securities serves as an introducing agent to General Partners raising capital and is generally not a party to the transaction process; and in all cases is not in a control position such as to require disclosure of profile details such as other investments, financial needs, tax status, investment objectives, etc. The majority of investors covered by CSP Securities can be verified via a third-party public data search, however, this is not always the case. These investors are required to complete comprehensive Subscription documents in which they must disclose acceptance of terms as outlined in the Limited Partnership Agreement and attest to the qualifications necessary of Fund investors. The documentation process is facilitated by fund counsel, a process to which CSP Securities is generally not privy.

Given that the modified structure provides little relief from the primary burdens imposed on truly Limited Corporate Securities firms, we would not be inclined to modify our registration category.

Thank you for your consideration of these comments. It is our hope that FINRA will continue to investigate the needs for a revised rule set for firms, such as CSP Securities, that conduct businesses that fall largely outside that of a traditional broker / dealer.

Very truly yours,

Tiffany Lauterbach
Principal / FinOP
CSP Securities, LP
One Galleria Tower, 13355 Noel Road, Suite 1050 | Dallas, Texas 75240
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2002 Timberloch Drive, Suite 200 ◇ The Woodlands, Texas 77380

April 28, 2014

Via E-Mail To: pubcom@finra.org

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K. Street, NW
Washington, DC 20006-1500

RE: FINRA Regulatory Notice 14-09, Limited Corporate Financing Brokers

Dear Ms. Asquith:

In February 2014, the Financial Industry Regulatory Authority (FINRA) published Regulatory Notice 14-09 (Regulatory Notice) seeking comments on a proposed rule set (Proposed Rule Set") for member firms that meet the definition of "limited corporate financing broker" (LCFB). It is a positive sign that FINRA acknowledges that LCFB firms do not in fact expose investors and the markets to the same risk as firms who do carry or maintain customer accounts, handle customers' funds or securities, accept customers' trading orders, engage in proprietary trading or market-making or actually market securities products to investors. However, based upon both communications with our clients and our experience in this area, a number of concerns have been identified that are discussed below.

1. As has been noted in prior Comment Letters, the most significant compliance costs for LCFBs include an annual PCOAB Financial Audit, maintenance of a fidelity bond, payment of SIPC Assessments, FINRA Assessments, the annual AML Independent Testing, and the annual internal control review and certification. Of those issues, FINRA has provided some relief with respect to the AML Independent Testing and the annual internal review and certification, but it would appear that FINRA should consider reducing the FINRA General Assessment, as the cost to FINRA to supervise LCFB firms would be significantly reduced. Of greater value to the membership would be in FINRA's addressing the issues that aren't under its direct control. It would appear appropriate and a true benefit for the future LCFB membership for FINRA, in its capacity as an SRO, to work with the SEC, SIPC and the PCOAB to reduce or minimize the financial audit and reporting obligations, fidelity bond requirements and the elimination of the SIPC assessment as the securities are not covered by SIPC.

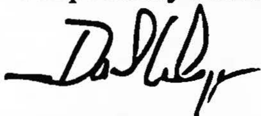
2. FINRA issued a Frequently Asked Questions (FAQ) on Investment Banking that addressed among other issues, the qualifications necessary to engage in investment banking activities. The clarification in part stated that "the Investment Banking Representative registration category (Series 79) is meant to include investment bankers advising on a marketing plan prepared by a sales team or developing and/or contributing information for marketing materials. However, it

would not include persons who actively market the offering and interact with investors or potential investors, such as a person who is engaging in road show activities. Such a person would also need to be registered as a General Securities Representative (Series 7), Corporate Securities Representative (Series 62) or Private Securities Offerings Representative (Series 82) depending on the type of offering being made". We believe that FINRA should confirm that the Series 79 qualification will be adequate to both structure and "market" the companies of LCFB clients. Additionally, as FINRA required its membership to obtain the Series 7 or Series 62 for essentially the same activities that a LCFB would engage in, FINRA should allow those individuals to maintain those licenses.

3. The majority of the investment banking clients we represent (and who would qualify as an LCFB), were required to note on their Form BD, and in their membership application, that they were in fact engaged in "private placements" of securities (to wit, they participated in a negotiated transaction of a security that was being privately placed). As a result, it would appear appropriate that to the extent the term "private placement" is no longer utilized by FINRA to describe investment banking activities, FINRA further clarify the term "private placements" so that an LCFB does not inadvertently engage in an activity that would be deemed violate the Proposed Rule Set or to work with the SEC to add the activity of investment banking as an identified activity on the Form BD.

In summary, we believe that goals set forth in the Regulatory Notice regarding the Proposed Rule Set is an important step in moving away from a one size fits all regulatory framework for broker-dealers who are engaged in investment banking activities. Thank you for your consideration of our comments. Should you have any questions, please contact the undersigned at 281-367-2454.

Respectfully submitted,



Daniel E. LeGaye
The LeGaye Law Firm, P.C.

The proposed provisions are still too broad for many of these groups, who debatedly may no longer be required to be registered by virtue of the SEC no-action letter recently issued. We would like to see no audit requirement unless the firm has 20 or more employees or $10 million in net revenues. We also believe that the registration requirements could be limited to just those as an associated person and not necessarily be a need for specific licensing. All SIPC membership requirements / fees should be eliminated since there are no customer accounts. FINRA revenue assessment fees should also be eliminated or reduced given the limited level of FINRA supervision oversight. I am sure there are many other areas where the requirements are to borad.

Sincerely,

Greg LeNeave

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Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

My firm is a FINRA member registered under Tessera Capital Partners, LLC. GOAL Consulting LLC specializes in placement agent services to registered investment advisors, trust companies and family office service providers on behalf of asset managers. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

Sincerely,
Joseph M. Lydon

Joseph M. Lydon
GOAL Consulting LLC
(610) 731-3605
JLydon@GOALConsultingGroup.com
www.GOALConsultingGroup.com

Marcia E. Asquith
Office of the Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Dear Ms. Asquith,

I'd like to thank FINRA for its effort to update its rules for small firms like ours that do not have the need, nor are we permitted, to handle client funds or securities. That said, the SEC no-action letter recently issued to Faith Colish *et al* so changes the landscape as to make the very limited benefits of applying for LCFB status less than appealing to firms like ours that only provide advisory services for mergers and acquisitions.

Precisely because our Membership Agreement with FINRA does not permit the carrying of customer accounts, the holding of customer funds or the safekeeping of securities, applying for LCFB status would be more logical and beneficial if FINRA were to eliminate the following expensive and arguably redundant activities:

- The need for the PCAOB annual audit
- The $100,000 fidelity Bond
- Membership of SIPC
- SSOI and Focus Reports

Finally, I would suggest that the word *Limited* in the proposed nomenclature of "Limited Corporate Financing Broker" is a potential problem in that it may detrimentally confuse our clients by suggesting we have reduced our service offerings when in fact they will remain unchanged.

Sincerely,

Keith McCracken

CEO and Managing Partner
McCracken Advisory Partners
T: +1 952-922-8140 | C: +1 612-203-6003 | F: +1 612-395-5254

BRIDGE 1 ADVISORS

April 23, 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Regarding: Rules for Limited Corporate Financing Brokers

Attention: Ms. Martha E. Asquith

Bridge 1 Advisors is a member of FINRA and a Placement Agent. As outlined in the proposed FINRA rule, Bridge would qualify to seek registration as a Limited Corporate Financing Broker.

I applaud FINRA management for recognizing that firms like ours have been regulated in the same manner as firms trading and holding securities with retail and institutional customers. Clearly there is a significant difference in business operations from what they do and what we do in our business. We see this FINRA proposal as an opportunity to focus the appropriate regulation on specific business models versus one size fits all.

A Placement Agent is not a securities dealer but a marketing firm. We do not trade or hold securities but work with clients under contract in the alternative investment space (Private Equity and Hedge Funds). We become for a limited time their marketing arm, generally to assist in increasing assets under management (AUM). Our target market is the institutional investor (Pension Funds, Endowments, Foundations, their Advisors and Consultants) and other qualified investors. Unlike a securities transaction, there are layers of assessment and approvals from internal staff, advisors, consultants, attorneys and investment committees before an investment takes place. This is a process that can take months before an investment and Limited Partnership Agreement is signed by our client and the investor.

As a marketing firm we work with our clients to position and brand their strategy offering a differentiation from the thousands of competitors seeking AUM. Our clients need our expertise and market knowledge to help guide them through the marketing of their strategy.

Member of FINRA; CT Registered Investment Advisor
6 Landmark Square, Suite 400 Stamford, CT 06901
203 359-5652

BRIDGE 1 ADVISORS

We assist our clients in the review and preparation of their collateral materials including the Offering Memorandum (prior to attorney review), web site, due diligence and other related information. All of this is to show a consistent message and explanation of the investment strategy and track record to the potential investor.

Overall, this FINRA proposal is a step toward setting realistic guidelines for Placement Agents. We are overregulated which results in higher costs of doing business with increased time spent dealing with regulations rather than marketing. The question to FINRA - do the current rules reflect our business model and effectively regulate our firm. The answer is NO!

Some examples of this oversight are overwhelming in regard to our business profile.

SIPIC insurance: WHY? – we do not deal with the public nor transact or have custody of securities.

PCAOB: Why? – we are not a public company but yet are required to hire an additional accounting firm to produce this filing.

Fidelity Bond: Why? – the bond includes the coverage of securities, counterfeit currency, credit card forgery and a list of issues that have nothing to do with our business.

SSOI and Focus Reports: Why? Both are documents relating to securities and that related business. Relative to the questions needing response we answer fewer than a dozen entries.

There are more examples like monthly financial reports, net capital requirements and week long FINRA examinations. The one common aspect is that FINRA and the SEC unrelated rules take time and money to comply with these regulations. Rules and Regulations are acceptable if the relate to a business operation, but these and others do not.

Member of FINRA; CT Registered Investment Advisor
6 Landmark Square, Suite 400 Stamford, CT 06901
203 359-5652

BRIDGE 1 ADVISORS

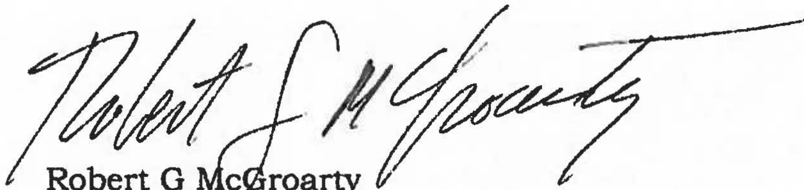
I understand all these rules and regulations are not issued by FINRA alone so I ask our governing body to work with the SEC to review and relieve marketing firms like ours from the burdens of unnecessary regulation from both entities.

As for the SEC no-action letter issued to Faith Colish, dated January 31, 2014 it offers a perspective for firms like ours. This SEC letter makes it possible to be in a related business like ours without the regulation which is appealing to a small firm. On the other hand, our clients like the comfort of dealing with a broker dealer. It does however bring up the question – at what cost is it reasonable to be a member of FINRA.

Finally, the proposed Rule for Limited Corporate Financing Brokers is a great initial step. I urge FINRA to recognize that more work is necessary to relieve firms like ours from rules and regulations that are unrelated to our business model.

Thank you for the opportunity to comment on this proposed rule.

Respectively,



Robert G McGroarty
Managing Partner

FINRA representative –

As requested in FINRA Regulatory Notice 14-09, below are the comments of Achates Capital Advisors LLC on the subject rule set.

Summary

The Limited Corporate Financing Broker ("LCFB") rules proposed by Regulatory Notice 14-09 are, in their present form, of no interest to our firm; no benefits of consequence are offered by the rule set, and its restrictions are unacceptable. It is difficult to imagine that most LCFB-eligible firms would not feel the same way.

Preclusion of the Offering of Private Placements to Accredited Investors

Although our small firm meets the criteria for conversion to an LCFB – i.e., it conducts only the types of businesses allowed by proposed LCFB Rule 016(h)(1) – the inability to offer private placements to "accredited investors," rather than only to much narrower "institutional investors," precludes conversion. The other abatements of the broader FINRA rules, which themselves are disappointingly minimal, do not offset this unreasonable stricture.

FINRA states that it has "uncovered serious concerns with the manner in which firms market and sell private placements to accredited investors." Reg. Notice 14-09 n.3. Accordingly, FINRA states that if it were to permit LCFBs to "market and sell private placements to accredited investors," it would have "to expand the applicable conduct rules and other provisions" in the LCFB rules. *Id.* FINRA, however, gives no examples of the "serious concerns" or describes the putative necessary expansion.

Whatever "serious concerns" FINRA has uncovered, they presumably were violations of the applicable suitability, know-your-customer, communications, etc., rules committed by firms of all sizes. Yet FINRA does not contend that these violations were committed disproportionately by LCFB candidates, so as to justify barring them from a segment of the private placement market that larger firms can reach. This puts LCFBs at a serious, and unacceptable, commercial disadvantage.

In any case, there is no indication that such violations would more likely be committed under the proposed LCFB rules. Would these "serious concerns" not also be violations under them as well?

The clear implication of the restriction is that would-be LCFBs cannot be expected to offer private placements to accredited investors without indulging in some sort of wrongdoing that the new rules do not address. The answer is not to bar LCFBs from the accredited-investor marketplace altogether, but to incorporate in the new rules provisions that address the "serious concerns," and to enforce compliance with them through FINRA's existing range of disciplinary measures. (It seems unlikely that such provisions would "eviscerate the benefits" of the rules, since they scarcely have any benefits of consequence now.)

A final comment on the limitation: SEC Rule 506(c) under Regulation D, recently adopted pursuant to the JOBS Act, now permits the broad marketing of private placements, provided they are sold exclusively to accredited investors. Under the proposed rules, LCFBs would not be able to use Rule 506(c), in an illogical narrowing of access to the very marketplace that Congress sought to expand.

Annual Audit

In addition to permitting the offering of private placements to accredited investors, the proposed LCFB rules should eliminate the requirement for an annual audit.

An LCFB cannot carry customer accounts or handle customers' funds or securities; it cannot accept customer orders to purchase or sell securities nor engage in proprietary trading or market-making. Proposed LCFB Rule 016(h)(2). Thus no one who deals with an LCFB can have any financial risk related to its securities positions, purchases or sales, or money handling, because they are not permitted. There is therefore no justification for an expensive annual audit to ensure an LCFB's financial responsibility to and protection of customers (in the sense of investors), since no customer assets are at risk. (But see below for confusion on the definition of "customer.") In view of this, an appropriate outside annual examination of an LCFB's financial statements would be the professional, but more limited and less expensive, "review" under the standards of the AICPA. (*See* AR Sec. 90, http://www.aicpa.org/Research/Standards/CompilationReview/DownloadableDocuments/AR-00090.pdf.)

Definition of Customer

The proposed rules define a "customer" as "any natural person and any entity receiving corporate financing services from a limited corporate financing broker." Proposed LCFB Rule 016(d). They also prohibit, *inter alia*, an LCFB from "accept[ing] orders from customers to purchase or sell securities, either as principal or as agent for the customer." Proposed LCFB Rule 016(h)(2). Thus, on their face, the rules prohibit an LCFB from accepting and executing private placement engagements.

This is obviously not the intent of the rules, inasmuch as LCFBs may "solicit[] potential institutional investors," *id.* (h)(1)(F). However obliquely stated, this must include effecting private placements as agent, or else the LCFB rules can have no utility whatsoever. Moreover, the term "customer" is used elsewhere in the proposed rules in the sense of "investor." *See, e.g.*, Proposed LCFB Rule 211.

A solution to this confusion is not to use the term "customer" to apply to those receiving corporate financing services, but instead to define them as "clients." The distinction between "customers" – investors who buy and sell securities from, to, and through a broker-dealer firm – and "clients" – those who use the firm's corporate financing services – has been employed in Wall Street for decades. The term "customer" (in the sense of an investor) should be defined separately, and the rules entirely rewritten using both definitions.

Return to Non-LCFB Status

Conversion to LCFB status by a currently LCFB-eligible firm may be made simply by requesting an amendment to the firm's FINRA membership agreement. Proposed LCFB Rule 116(b). On the other hand, if such a firm later wishes to return to non-LCFB status for whatever reason, even with no change in its business lines, it must file a continuing membership application and seek an amendment of its membership agreement. Proposed LCFB Rule 116(c). Apart from the administrative time and effort entailed in such a procedure, the firm will effectively have to "buy back" its original status for $5,000, the minimum "material change" continuing membership application fee (absent a waiver). *See* Schedule A to FINRA Bylaws, Section 4(i)(1). This, too, is a substantial disincentive to converting to LCFB status.

Answers to Specific FINRA Questions Raised in Regulatory Notice 14-09

The following responses to the specific questions raised by FINRA should be viewed in the context of the comments above. The questions are repeated in abbreviated form.

1. Do the Rules provide sufficient protection for LCFB customers? Yes, an LCFB customer (in the sense of "investor") would enjoy all the protections for a customer of a non-LFCB; the rules do not compromise any aspect of the existing suitability or "know-your-customer" requirements.

2. Do the Rules appropriately accommodate the scope of the LCFB business model? No.

   (a) An LCFB should be permitted to market and sell private placements as agent to "accredited investors," not just to "institutional investors."
   (b) Proposed Rule 016(h)(1)(F) should explicitly state that an LCFB may act as agent in the sale of private placements, not simply that it may "solicit" investors.
   (c) An LCFB should be permitted to engage in the private placement of Direct Participation Programs.
   (d) An LCFB should be required to undergo only an annual outside review of its financial statements, rather than an audit.

3. Is the definition of LCFB appropriate? No, as noted in the "Definition of Customer" comment above.

4. Are there firms that would qualify for LCFB status but choose not to elect it? Yes, virtually all broker-dealers that engage exclusively in merger and acquisition advisory and private placement work would qualify, but virtually none, we believe, will choose it under the proposed rules. There are serious limitations on an LCFB's ability to offer private placements, with no meaningful benefits to LCFB status. Indeed, the very word "limited" carries a connotation of an LCFB's inadequacy to would-be clients – quite rightly, given its restricted market access.

5. What is the likely economic impact of the adoption of the LCFB Rules? Because we do not foresee any meaningful number of broker-dealers opting for LCFB status under the proposed rules, we do not believe that their adoption will have any meaningful impact.

6. Estimate the number of firms eligible for the new rule set. Our firm has no estimate, but in a December 20, 2012, e-mail to small FINRA members, FINRA small- firm governors Norensberg, Carreno, and Keenan stated that the forthcoming LCFB proposal was "expected to affect nearly 700 broker-dealers."

7. Are there any registration categories that should be added or eliminated from the Rule? Yes. The allowable activities should include DPP (direct participation program) securities (Series 22 examination), the sales of which are almost always effected as private placements.

8. Should principals and representatives be allowed to retain registrations not required by the Rules? Yes; there is no reason to remove such registrations. FINRA's doing so would be yet another reason not to convert to an LCFB.

9. Does an LCFB make recommendations to customers? And should an LCFB be subject to K-Y-C and suitability rules? An LFCB would not make recommendations to buy or sell securities, other than the buy "recommendation" implicit in offering a private placement to an investor, or the "buy" or "sell" recommendations implicit in a merger and acquisition advisory engagement. And, of course, an LCFB should observe the suitability and K-Y-C rules in selling a private placement as agent.

10. Does the SEC staff no-action letter to Faith Colish impact the analysis of whether a firm would become an LCFB? In view of the no-action letter, it is possible that firms that (a) offer only merger and acquisition advisory services and (b) otherwise meet the conditions of the no-action letter might decide to abandon their status as broker-dealers and FINRA

GENESIS
MARKETING GROUP

April 28, 2014

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

My firm is a FINRA member specializing in placement agent services to institutional money managers. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

All the best,

Ron Oldenkamp
President, Genesis Marketing Group

19 North Grant Street, Hinsdale, IL 60521 PHONE: 630.887.1414 FAX: 630.887.1415

March 20, 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Request for Comment – Limited Corporate Financing Brokers
Regulatory Notice 14-09

Dear Ms. Asquith:

Signal Hill Capital Group LLC ("Signal Hill") appreciates the opportunity to submit this comment letter on the proposed rule set for firms that meet the definition of limited corporate financing broker ("LCFB"). Signal Hill employs approximately 70 persons in six locations throughout the United States. Our practice is limited to rendering investment banking advisory services only, and, as such, we anticipate we would meet the definition of an LCFB.

Signal Hill commends FINRA for its efforts to adapt its rules to more closely align with firms such as ours. Historically, it has been our experience that FINRA staff and examiners have struggled to apply to us, and others like us, rules and standards designed for firms engaging in retail brokerage business, with unsatisfactory and sometime frustrating results. Regardless of the ultimate outcome of the proposed LCFB rule set, we encourage FINRA to continue its efforts in this regard.

With respect to the newly proposed rule set, it is our view that however commendable the intent, it falls short of offering any meaningful improvement over the status quo. The most substantive proposed change appears to be elimination of the Regulatory Element continuing education requirement for registered personnel. While we support that change, it could – and in our opinion, should – be adopted independent of the creation of new LCFB category, simply by modification of the current rules such that the mere holding of a Series 79 registration would not trigger a need to participate in Regulatory Element continuing education absent some other obligation to do so[1].

The proposed new rule set does virtually nothing to meaningfully address what we believe is the main complaint about the current environment, which is the extraordinary cost

[1] We encourage FINRA to use this opportunity to review its entire approach to the Regulatory Element process. Under the current procedures, employees are required to travel to an offsite location, where they are asked to remove jewelry and turn their pockets inside-out for inspection. Many employees, whose only contact with FINRA is in connection with the bi-annual Regulatory Element process, report finding it to be unduly intrusive and demeaning. FINRA should demand a more nuanced approach from its vendors and should explore ways to deliver continuing education directly to users.

Signal Hill Capital Group LLC • 300 East Lombard Street, Suite 1700 • Baltimore, Maryland 21202
Tel 443-478-2400 • Fax 443-478-2401 • www.signalhill.com

associated with maintaining a standard broker-dealer registration. In particular, an LCFB presumably would continue to be required to undergo an annual independent broker –dealer audit by a PCAOB registered public accounting firm, as well bi-annual AML independent testing. Since, by definition, an LCFB could be neither a broker nor a dealer, nor permitted to hold or even handle customer funds or securities, continuing to subject those firms to those requirements (and costs) makes no sense and offers no protections to anyone. That said, we understand relief from those requirements may be beyond FINRA's jurisdiction.

Likewise, despite having no customer accounts and holding no customer funds or securities, it appears that the proposed rules offer no relief from the current requirement that LCFB firms continue to be members of SIPC. SIPC assessments, which are based on revenues regardless of how generated, are onerous and constitute an unwarranted tax on LCFB firms whose clients are not eligible for SIPC protection in any event.

In response to some of the particular questions raised by FINRA at the end of Notice 14-09, it is our view that:

- most firms that qualify for LCFB status would ultimately choose not to, given the scant incentives for doing so and the strictures such a classification would impose

- the proposed new rules offer little economic benefit to LCFBs over the status quo

- principals and representatives who hold registration categories not included with LCFB Rule 123 should be permitted to continue to retain those registrations. Termination of those registrations offers no benefit to FINRA and would constitute a disincentive to firms that might be considering making the switch, particularly given that pursuant to proposed Rule 240, FINRA specifically reserves the right to subsequently require that a firm revert to existing broker-dealer standards

- the SEC no-action letter recently issued to Faith Colish *et al* significantly impacts the analysis (and desirability) of whether a firm would elect to pursue becoming an LCFB. Many, perhaps most, firms that would meet the eligibility standards for LCFB also satisfy the parameters of the no-action letter. There are no obvious reasons why a firm that did so would nevertheless elect to voluntarily continue to assume the costs and responsibilities associated with being an LCFB when it could relieve itself entirely of those by reliance on the no-action letter. Likewise, pending legislation in the US House of Representatives and Senate may further undermine the appeal of LCFB status.

Thank you for considering these comments. Please contact the undersigned if you have any questions or if we may be of any assistance.

Very truly yours,

Robert E. Patterson
General Counsel

HAMERSLEY™
PARTNERS

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

My firm is a FINRA member specializing in placement agent services to institutional investors, primarily corporate and public pension plans and investment consulting firms. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCFB). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary in the attached PDF, which has earned my strong support.

Regards,

Peter Pavlina

Managing Principal

PFM Perkins
Fund Marketing

April 28, 2014

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

Perkins Fund Marketing ("PFM") has been a FINRA member since October of 1998. We provide professional alternative investment marketing services to fund managers including hedge and private equity funds. PFM employs ten professionals, seven of which are Series 7, 82 and/or 63 registered representatives and three of which are Series 24 registered principals.

PFM's professional marketing representatives bring broad and deep experience in the financial services sector. Some of the benefits we provide to fund managers include:

- PFM's full service approach which allows fund managers the ability to devote their immediate and limited resources to portfolio management rather than marketing and sales.

- Access to deep and trusting investor relationships built through years of quality service provided by our professionals. PFM's investor contacts expect us to bring to them high quality, pre-screened opportunities on which significant due diligence has been performed with an understanding that we are only introducing the investment opportunity, and that the prospective investor must perform their own due diligence and not rely solely on our work.

- Creating/enhancing marketing materials (which includes ensuring all material is FINRA compliant) and working with fund managers on presentation skills to best articulate their strategy, investment philosophy and risk management process to potential investors.

- Defining the target market, streamlining the marketing process and providing ongoing communication with prospective and current investors.

We are a founding member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCFB).

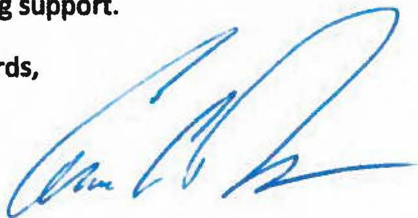
We would like to highlight the following about our firm which support the very valid points in the 3PM letter:

- We do not open or maintain any customer accounts, we do not accept any customer funds nor do we manage or advise on investments for any investors.
- We do not generate any revenue from investors, only from the fund managers who retain us.

With the above points in mind, we strongly feel that we should not be obligated to pay into customer related programs including SIPC as we do not take custody of customer capital nor open or maintain customer accounts.

I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary which has earned my strong support.

Regards,



Gilman C. Perkins
Principal and Managing Member

HAMERSLEY™
PARTNERS

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

My firm is a FINRA member specializing in placement agent services to institutional investors, primarily corporate and public pension plans and investment consulting firms. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCFB). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary in the attached PDF, which has earned my strong support.

Regards,

Andrew Phillips
Principal – Hamersley Partners

RW SMITH & ASSOCIATES, INC

28 April 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006

Dear Ms. Asquith,

RW Smith appreciates the opportunity to comment on Regulatory Notice 14-09, the proposed rule set for Limited Corporate Financing Brokers ("LCFB"). RW Smith supports FINRA's initiative to address the need for a relevant, separate rule set for limited purpose firms, in this instance LCFB firms.

While we applaud the measures FINRA has undertaken to move this important initiative forward, both the establishment of an industry participant working group and the undertaking of a revision of the current rule set to more accurately reflect the LCFB business model in order to more effectively regulate LCFB firms, we believe the proposed rule set needs more work.

If the objective is to understand the LCFB business model in order to be able to write appropriate rules and regulations in order to protect the investing public, our markets, and our member firms, then we still have a ways to go on the proposed rule set in 14-09. To that end, RW Smith would like to voice our support of the comment letters submitted by the Third Party Marketers Association ("3PM") and Lisa Roth, respectively, and encourage FINRA to thoughtfully consider both letters and our support of them.

I commend FINRA's focus on understanding the individual categories and business models of their member firms in order to write and enforce appropriate regulation to better protect the investing public and the markets we work in and for, and the LCFB category of firms seems as logical a place to begin as any. As the CEO of an "Other" category of firm, an interdealer broker, the comments made by 3PM regarding SIPC, PCAOB required audits, Fidelity Bonds, Net Capital Requirements, AML and more really resonated with me because they apply to our business model as well. I look forward to being able to contribute to furthering the development of the proposed rule set through to implementation.

Best regards,

Paige W. Pierce
President & CEO, RW Smith & Associates, Inc.

8955 TAFT HILL DRIVE SANDY, UT 84093 · PHONE: 801.943.3010 · FAX: 801.733.7767 · WWW.RWSBROKER.COM

Harris Williams & Co.
middle market

April 28, 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Subject: Limited Corporate Financing Brokers Proposed Rule Set

Dear Ms. Asquith:

This letter is in response to FINRA's solicitation of public comments on its proposed rule set (the "Proposal") for Limited Corporate Financing Brokers ("LCFB").

Harris Williams LLC d/b/a Harris Williams & Co. ("HW&Co." or the "Firm") is a FINRA-registered broker-dealer that provides mergers and acquisitions advisory and related services ("M&A Services") to companies and their owners. HW&Co. does not extend credit, hold customer accounts or engage in banking or investing transactions on its own or its customers' behalf. The Firm's revenue is comprised entirely of fees derived from M&A Services.

The Firm believes that HW&Co. meets the definition of LCFB under proposed Rule 016(h)(i) because HW&Co.'s M&A Services are encompassed by the activities set forth in 016(h)(1)(A)-(F). Moreover, HW&Co. does not engage in any of the activities set forth in 016(h)(i). FINRA has particularly requested comments concerning the issues set forth below. HW&Co.'s comments are set forth in immediate response thereto.

- Does the proposed rule set provide sufficient protections to customers of an LCFB? If not, what additional protections are warranted and why?

  Yes. One of the benefits of the Proposal is it distinguishes among types of customers and business models and the protections that customers require and the concomitant burdens for the providers of services thereto. For example, HW&Co.'s customers are sophisticated corporate and institutional clients seeking advice on mergers and acquisitions (as opposed to assistance in buying and selling securities as investments, for example). Therefore, protections such as those provided by the best execution and suitability rules or current minimum capital requirements should not be applicable to the Firm as they are to securities brokerage activities. The limited scope of LCFB activities and clients means that rules designed to protect retail customers, account beneficiaries and securities investors are not necessary for an LCFB.

- Does the proposed rule set appropriately accommodate the scope of LCFB business models? If not, what other accommodations are necessary and how would customers be protected?

  For closer alignment between the proposed LCFB rule set and the nature of LCFB activities and customers, certain of the rules that remain applicable to LCFBs could be modified or removed.

For example, the annual gift limit of $100 may provide meaningful anti-conflicts protection in a retail securities brokerage context. But for an LCFB, such rules result in administrative burdens but do not provide meaningful protection in light of the nature of an LCFB advisory business model and corporate/institutional clients.

- Is the definition of "limited corporate financing broker" appropriate? Are there any activities in which broker-dealers with limited corporate financing functions typically engage that are not included in the definition? Are there activities that should be added to the list of activities in which an LCFB may not engage?

For the avoidance of doubt, it may be helpful to insert language (in **bold**) such as: "advising a company regarding its purchase or sale of **controlling or minority ownership interests** in a business..." It may also increase clarity to enumerate activities such as "advising with respect to strategic alternatives" and "providing valuations". Such services may be provided on a stand-alone basis as well as in the context of an acquisition or divestiture.

- Are there firms that would qualify for the proposed rule set but that would choose not to be treated as an LCFB? If so, what are the reasons for this choice?

HW&Co. has no comment.

- What is the likely economic impact to an LCFB, other broker-dealers and their competitors of adoption of the LCFB rules?

Given the nature of LCFB activities and client base, it is doubtful that LCFB customers would switch firms because of a potential perception of reduced protections. HW&Co. believes that its essential compliance infrastructure will not substantially change upon implementation of the Proposal. However, implementation of the Proposal will meaningfully reduce unnecessary administrative burdens and costs for the Firm.

- FINRA welcomes estimates of the number of firms that would be eligible for the proposed rule set.

HW&Co. has no comment.

- Proposed LCFB Rule 123 would limit the principal and representative registration categories that would be available for persons associated with an LCFB. Are there any registration categories that should be added to the rule? Are there any registration categories that are currently included in the proposed rule but that are unnecessary for persons associated with an LCFB?

HW&Co. believes that the current registration categories are sufficient.

- **Should principals and representatives that hold registration categories not included within LCFB Rule 123 be permitted to retain these registrations?**

  Probably not; HW&Co. believes that principals and representatives should be permitted to hold non-included registrations only if the firm in question can adequately supervise the activities covered by such registrations, which may be doubtful in the context of an LCFB.

- **Does an LCFB normally make recommendations to customers to purchase or sell securities? Should an LCFB be subject to rules requiring firms to know their customers (LCFB Rule 209) and imposing suitability obligations (LCFB Rule 211) to an LCFB?**

  The extent to which an LCFB's advice constitutes "recommendations to customers to purchase or sell securities" is a consequence of the general definition of securities and the forms of business acquisitions and divestitures. The manner in which an acquisition or divestiture is accomplished – the sale or purchase of assets and liabilities or securities is driven by considerations that bear no relationship to the securities laws or FINRA regulations. Given the nature of LCFB activities and client base, an LCFB should not be subject to rules requiring firms to know their customers (LCFB Rule 209) and imposing suitability obligations (LCFB Rule 211) on an LCFB.

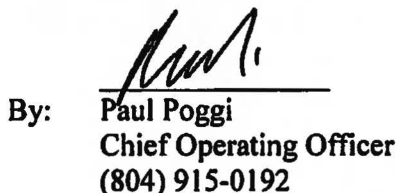
- **Does the SEC staff no-action letter issued to Faith Colish, et al., dated January 31, 2014, impact the analysis of whether a firm would become an LCFB? Is it likely that some limited corporate financing firms will not register as a broker consistent with the fact pattern set forth in the no-action letter, or will they register as an LCFB?**

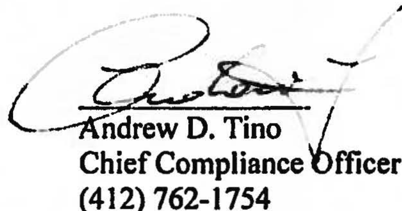
  HW&Co. has no comment.

Thank you for the opportunity to provide comments to this important proposed rule set. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

Harris Williams & Co.





By: Paul Poggi
Chief Operating Officer
(804) 915-0192

Andrew D. Tino
Chief Compliance Officer
(412) 762-1754

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

My firm is an institutional division of Compass Securities Corporation, a FINRA member specializing in institutional outsourced marketing services. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

Sincerely,

Sandra Powers
Founder & CEO
ARK Global LLC
An Institutional Division of Compass Securities Corporation
Office: 1-800-676-2921
Mobile: 1-781-572-5288
Email: powers@arkglobalonline.com
44 Washington Street Suite 50
Wellesley Hills, MA 02481

Fells Point Research LLC
Baltimore, Maryland
CRD# 148090

Re: Comments on Regulatory Notice 14-09

Fells Point is a firm that provides sell side research to institutional clients. Were we a corporate financing broker, we would fit the criteria for the proposed rule. Why not broaden the rule to include research providers?

Thank you for providing the opportunity to comment.

David N. Pringle
(410) 464-3111

Marcia E. Asquith

Office of the Corporate Secretary FINRA

1735 K Street, NW

Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

My firm is a FINRA member specializing in Reg D offerings and placement agent services to large US-based institutional investors. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

Steven Rubenstein

Arrow Investments, Inc.

VIA E-MAIL

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street
Washington, D.C. 20006-1506

April 25, 2014

RE: Comments on Regulatory Notice 14-09 re: Limited Corporate Financing Brokers

Dear Ms. Asquith,

Below are our comments regarding Regulatory Notice 14-09, which was issued in February. As an initial matter, Q Advisors LLC, CRD #127232 ("Q LLC") believes it could fit under the definition of a Limited Corporate Financing Broker ("LCFB") under FINRA's proposed definition. However, there are deficiencies in both the definition and the accompanying proposed regulations that make it unlikely that Q LLC would change its registration from its current status as a Broker-Dealer ("BD") to that of an LCFB, unless the proposed category and attendant rules are altered. Before addressing some of FINRA's direct questions, we will note several issues that we feel merit discussion.

1. **"Institutional Investor."** For the most part, the definition of "Institutional Investor" (including certain types of institutions and benefit plans, as well as 'persons' with total assets of at least $50 million) would permit Q Advisors to continue to offer its services in the manner we have to date. The purchasers or investors in our clients' transactions have consistently met such a definition, with few exceptions. It has never been our practice to solicit investments from persons who are "Accredited Investors" as defined in Regulation D under the Securities Act of 1933. However, it seems to us there could be circumstances in which one of a group of potential investors might fall somewhat below the "Institutional Investor" level – for example, in the case that company insiders, such as directors or officers, were offered securities in a merger, reorganization, or other capital raising transaction.

   It would make sense to either (a) lower the threshold, as other commentators have suggested, to something along the line of "qualified purchasers" as defined in the Investment Act of 1940 (i.e., $5,000,000 in assets), or (b) include a list of exceptions to the "Institutional Investor" standard. Without lowering the amount, or adding exceptions, most current BD's would probably be wary of the new LCFB category in the event an investor even occasionally falls outside of the proposed standard. Taking either one of these steps would enable LCFBs to carry on the work that was done by them previously

as BDs, without lowering the standard to the point that FINRA's concerns over private placement offerings to "Accredited Investors" would be triggered.

2. **Equity/Debt Raises**. We want to ensure that the concept of "capital raising activities" in the LCBD registration category is broad enough to encompass debt, equity or equity-linked instruments, and not solely one category of securities. In addition, the list of permitted activities in the LCFB definition seems somewhat limited to us, and ought to be enlarged to encompass all of the "active" tasks that we undertake on behalf of clients – negotiations, meetings, valuations, etc. (It might be helpful, in fact, to have a definition of the word "advising," or to add examples in the footnote to the LCFB definition.) Finally, it would benefit our business to be able to pay a referral fee in certain circumstances to unregistered persons who solely provide introductions to new clients.

3. **SIPC**. We understand that FINRA is not in a position to alter the current requirement of the Securities Investor Protection Corporation ("SIPC") that all licensed Broker Dealers pay fees based upon their income. However, we continue to feel that a conversation needs to be continued regarding the requirement that a firm such as ours, which has no customer accounts and therefore would never be able to take advantage of SIPC protection for our clients, must pay 0.25% of our revenue to SIPC. In light of the proposed new LCFB designation, we feel it is now even clearer that the fees are an unacceptable tax on businesses that are providing no services whatsoever to SIPC's intended beneficiaries. It seems obvious to us that the LCFB designation should be added to the list of exempt entities contained in the SIPC rules.

4. **FINRA questions regarding the LCFB registration category (edited)**.

   A. ***Are there any activities in which Broker-Dealers with limited corporate financing functions typically engage that are not included in the definition?***

   As mentioned above, services such as acting as a placement agent and providing valuations (rather than just the issuance of fairness opinions) should be included in the list of permitted activities.

   B. ***Are there activities that should be added to the list of activities in which an LCFB may not engage?*** We do not engage in any of the five proposed prohibited activities (carry or maintain customer accounts, hold or accept customer funds or securities, accept orders from customers to purchase or sell securities either as principal or agent for the customer, possess investment discretion on behalf of a customer, or engage in proprietary trading of securities or market-making activities). However, prior comments have expressed concern regarding whether the prohibition on accepting orders from customers to purchase or sell securities would impact an LCFB's activities in recommending M&A transactions or particular structures to its clients. We believe this potential confusion should be explicitly clarified. In addition, as the use of the term "customer" with respect to an LCFB is confusing, in the context of many other FINRA rules, we agree with others that the use of a distinctive word such as "client" would be a better fit for LCFBs.

   C. ***What is the likely impact to an LCFB , other broker-dealers and their competitors of adoption of the LCFB rules?*** For Q Advisors, the new category of LCFB would provide minimal benefits as an alternative to our current registration. Under the LCFB rules, we would still be required to pay fees to SIPC (so far); have a PCAOB-approved auditor; obtain a securities dealer blanket bond (though we do not

hold securities for customers); conduct AML testing (though every two years rather than annually) - despite the fact that the definition of an LCFB excludes carrying or maintaining customer accounts; and generally be subject to the remainder of our current regulations, though in some cases "streamlined" ones. Other, unregistered brokers (such as those described in the January 2014 SEC No-Action letter, see below) would retain an economic advantage. However, our clients appreciate our registration, and the new LCFB category as currently envisioned would not provide us with enough benefits to make it worthwhile to switch.

D. ***Registration categories for principals and representatives.*** There does not seem any point to us in limiting principals' and representatives' registrations; the limits on an LCFB's activities would control the actions of each person associated with the firm. The proposed limitations would merely unfairly limit individuals' job mobility.

E. ***Does an LCFB normally make recommendations to customers to purchase or sell securities?*** Please see 4.B. above. In addition, we do not "accept orders" from clients, *per se* (i.e., in the retail customer sense), but making recommendations to our clients in the M&A or private placement realm is a large part of what we do. If the language in the proposed rule is likely to lead to confusion on this point, it should be further clarified.

F. ***Does the SEC staff no-action letter issued to Faith Colish, et al., dated January 31, 2014 (the "M&A Broker Letter"), impact the analysis of whether a firm would become an LCFB? Is it likely that some limited corporate financing firms will not register as a broker consistent with the fact pattern set forth in the no-action letter, or will they register as an LCFB?*** Yes, we think it is likely that most firms that are currently unregistered will remain so after the issuance of the M&A letter, so long as their activities fall within the parameters set forth therein. If a firm sometimes diverges from that model (e.g., a buyer in a client transaction will not "control and actively manage" a purchased entity), it may determine that it must register as an LCFB. On the other hand, the financial and regulatory differences between a regular BD and an LCFB are minimal, so such an M&A Broker might decide to register as a full BD instead.

Thank you in advance for your attention to these issues. Please contact me directly if you have any questions or would like additional information.

Sincerely,

Michael S. Quinn, Member and CCO

Lisa Roth
930 First Avenue
San Diego, CA 92101
Phone: 619-283-3500

April 28, 2014

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

I have collaborated with the Third Party Marketer's Association (3PM) to develop comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider the thoughtful and informed commentary submitted by 3PM, which I support in its entirety.

For many years, decades even, industry professionals including myself have advocated for smarter rulemaking regarding certain sub-sectors of the FINRA membership; mostly small firms. This particular sector (corporate finance BDs) has been a central target due to the unique challenges of conforming to FINRA rules. I, along with others, have made presentations to FINRA staff, the Small Firm Advisory Board, the PCAOB and SIPC in hopes of fostering a clear understanding of the manner in which LCFB firms operate, the risks associated with our businesses, relative cost and impact of rulemaking, and concepts for rule changes that would better serve the mission of our regulators.

With respect to the particular LCFB initiative, it was communicated that steps to clarify this segment of the industry and develop a unique rule set had the interest and support of FINRA's CEO, Rick Ketchum. So, BD executives spent considerable time meeting amongst ourselves to vet ideas, draft concept releases, discuss our FINRA examination experiences and develop best practices. We also met with FINRA senior staff to discuss and describe the scope and associated risks of relevant business models. This substantial effort was undertaken with the goal of assisting FINRA in developing a better understanding of LCFB firms. It is somewhat disappointing then, that fundamental concepts of the LCFB business model are not reflected in the proposed rule set. Notwithstanding my appreciation for FINRA's contribution in getting to the stage of a rule proposal, I believe it is important to overcome this communication breakdown. After all, LCFBs represent approximately 10% of the FINRA membership.

Following the release of 14-09, members of 3PM reconvened a working group intent on more clearly articulating the business we conduct. This time, we considered fundamental governing principles like 'know your customer',

CIP and suitability. We addressed the potential for loopholes, misunderstandings and unintended consequences in the context of a rulemaking regime. We challenged ourselves to find a way to present our ideas in a manner that would overcome whatever communication failures had previously transpired.

It is my sincere belief that we have furthered our goal, crystalizing foundational concepts in the 3PM letter. In it, we propose the elimination of troublesome stumbling blocks (like "customer"), tightening up suitability requirements relevant to the timing of placements (such as a requirement for an ongoing due diligence process) and addressing the functional roles and required qualifications of counterparties (such as federally regulated Intermediaries). We directly addressed each of questions posed in the Notice.

I know that you will read the 3PM letter, and likely, judging by its length and scope, you will appreciate the effort that went into the presentation of comments, ideas and recommendations. What I wanted to convey in this letter of mine, is a bit of the back-story, in hopes that you will leverage the contribution of the industry in furthering this concept through to implementation.

Best regards,

Lisa Roth
President, Monahan & Roth, LLC

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

Via email: pubcom@finra.org

April 28, 2014

RE: Regulatory Notice 14-09:
Limited Corporate Finance Brokers

Integrated Management Solutions USA LLC ("IMS") is pleased to comment on Regulatory Notice 14-09 ("RN 14-09"), Limited Corporate Finance Brokers ("LCFB"). IMS is one of the largest providers of compliance consulting and financial accounting services to the financial services industry, providing such services to about 100 FINRA members, among others types of financial services firms.[1] We counsel clients daily on the scope of permissible broker-dealer activities under various FINRA, SEC and other rules. At any one time, we have several New Member Applications or Continuing Membership Applications submitted to FINRA on behalf of clients. We believe that our regular, daily experience with FINRA's membership categories and rules, SEC and other rules, and how they are implemented by the various regulators, enables us to assess the impact of RN 14-09 on current or future FINRA members from both a regulatory and business perspective.

[1] The statements in this comment letter incorporate the views of IMS, not those of our clients.

The Regulatory and Congressional Landscape for Advisory Services since Dodd-Frank

FINRA's LCFB proposal must be evaluated in context with other recent SEC and FINRA actions taken under both the Dodd-Frank and JOBS Acts, as well as pending Congressional legislation, with respect to the activities of broker-dealers that do not carry, clear or maintain customer accounts or even handle customer funds or securities (collectively, "Proposals Concerning Non-Custodial Brokers"). These include Crowdfunding[2]; the no-action letters issued to AngelList[3] and FundersClub;[4] the Six Lawyers No-Action Letter regarding the regulation of merger and acquisition brokers (the "Six Lawyers Letter")[5] and FINRA's proposal to improve the membership application process.[6]

Congress has also indicated its interest in taking some of these decisions away from both the SEC and FINRA. In H.R. 2274,[7] the House seeks to amend the Securities Exchange Act of 1934 (the "34 Act") and modify the FINRA registration and regulatory processes when a broker

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[2] SEC Release Nos. 33-9470; 34-70741; File Number S7-09-13; and RN 12-34.

[3] SEC No-Action Letter, dated March 28, 2013, available at: http://www.sec.gov/divisions/marketreg/mr-noaction/2013/angellist-15a1.pdf.

[4] SEC No-Action Letter, dated March 26, 2013, available at: http://www.sec.gov/divisions/marketreg/mr-noaction/2013/funders-club-032613-15a1.pdf.

[5] 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. We note, somewhat ruefully, given the amount of time that has elapsed, that the Six Lawyers Letter largely incorporates a proposal first made in 2005 by the Task Force of the American Bar Association's Section of Business Law on Private Placement Broker-Dealers ("ABA Task Force Report"). 60 Bus. Law. 959 (2005) or http://www.sec.gov/rules/other/265-23/gvniesar091205.pdf. The ABA Task Force Report contains a very useful analysis of earlier rulings, by regulators and courts, to define the scope of permissible broker-dealer private placement activities. We fully agree with the statement by the Report's authors, as true in 2005 as it is today, that:

> The impetus for this Report is a widely held perception by many members of the Committees mentioned that there exists a major disconnect between the various laws and regulations applicable to securities brokerage activities, and the methods and practices actually in daily use by which the vast majority of capital is raised to fund early stage businesses in the United States. (Id.)

[6] RN 13-29; RN 10-01. In addition, proposed amendments to Regulation A, known as Regulation A-plus, are also part of this liberalizing regulatory trend. Reg A-plus, if adopted, will allow issuers more flexibility when using an exemption from the SEC's registration requirements for securities offerings.

[7] Introduced June 6, 2013.

advises the ownership transfer of smaller, privately held companies.[8] The House bill provides for a notice-filing registration procedure and more limited ongoing regulatory compliance requirements.[9] This bill has already been passed by the House.[10] A contemporaneous Senate bill, S. 1923,[11] goes even further. It seeks to amend the 34 Act by exempting from registration brokers who advise the ownership transfer of smaller, privately held companies.

The Fundamental Flaw

Regrettably, there is a fundamental flaw that permeates all of the Proposals Concerning Non-Custodial Brokers, including the LCFB proposal: the failure to regulate on the basis of risk.[12] We believe that an assessment of the business risk that these activities may cause in the marketplace would result in a much simpler, unified regulatory approach to the non-custodial or advisory activities of broker-dealers. Instead of perpetuating the archaic notion that receipt of transaction-based compensation automatically requires registration as a broker-dealer,[13] the analytic focus of all regulators should be on risk and risk management. As discussed below, these multiple Proposals Concerning Non-Custodial Brokers have resulted in the Balkanization[14] of financial services activities. Our recommendation would be for a joint committee composed of the SEC, FINRA and NASAA[15] to review the risks inherent in broker-dealer advisory services, with the intent of implementing a simple, unified regulatory approach. This committee

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[8] Defined as private companies with earnings less than $25 million and revenues of less than $250 million.

[9] It denies such registration exemption to brokers who: (1) receive, hold, transmit, or have custody of any funds or securities to be exchanged by parties to an ownership transfer of an eligible privately held company; or (2) engage on behalf of an issuer in a public offering of securities that are either subject to mandatory registration, or with respect to which the issuer must file periodic information, documents, and reports.

[10] Passed on January 14, 2014.

[11] Introduced January 14, 2014.

[12] Interestingly, although not explicitly, the Congressional proposals are more practical and incorporate an assessment of risk that may result from broker advisory services.

[13] We recognize that this concept was not created by FINRA but rather by the SEC many years ago.

[14] Bal·kan·ize, Bal·kan·ized, Bal·kan·iz·ing (from dictionary.com). 1. to divide (a country, territory, etc.) into small, quarrelsome, ineffectual states. 2. (often lowercase) to divide (groups, areas, etc.) into contending and usually ineffectual factions: a movement to balkanize minority voters.

[15] North American Securities Administrators Association.

should be joined by representatives of the CFTC, the NFA and responsible industry professionals. Hopefully, all of these individuals will ignore the fact that in many instances the current complexities represent employment security for each of them. They should act under a mandate to do the right thing for the marketplace and the investing public. Existing antiquated rules should be eliminated because they are expensive or wasteful and fail to incorporate a realistic assessment of risk. Without question, their recommendations should go far beyond the incredibly narrow proposals articulated in RN 14-09.

What is an LCFB?

Overall, RN 14-09 limits the activities of LCFBs to a short list of exclusive activities. Specifically, the following activities are encompassed:

(1) advising companies and private equity funds on capital raising, the purchase or sale of a business or assets, and corporate restructurings (including, without limitation, a going-private transaction, divestiture or merger);

(2) advising a company regarding its selection of an investment banker;

(3) assisting an issuer in the preparation of offering materials;

(4) providing fairness opinions; and

(5) qualifying, identifying or soliciting potential institutional investors.

Explicitly ineligible for LCFB status are firms that engage in a self-evident range of activities: firms that carry or maintain customer accounts, handle customers' funds or securities, accept customers' trading orders, exercise investment discretion on behalf of customers or engage in

proprietary trading or market-making.[16] Collectively, most of these are traditional activities for which FINRA membership is mandatory. Nor may LCFBs engage in transactions involving municipal securities.

Is There a Benefit to Being or Converting to LCFB Status?

If an existing broker-dealer client that already provided only the limited list of services set out in RN 14-09 were to ask us if they should convert to LCFB status, our answer would be a resounding "no!" For a current FINRA member, there is hardly any business or regulatory advantage to changing its status.[17] Nor would we recommend a firm contemplating FINRA registration to seek LCFB status. There are too many intrinsic limitations to LCFB status, as discussed below. This Emperor has no clothes.

Sadly, LCFBs are one of the most poorly thought-out, and useless, proposals FINRA has come up with a long time. Some examples should suffice. There are no demonstrable cost savings for an LCFB firm. Such firms are still subject to the SEC's net capital rules, must file periodic FOCUS Reports, the Supplemental Statement of Income Report and Form Custody,[18] maintain the same books and records as other broker-dealers and must have an annual audit conducted by a PCAOB-registered auditor. A fidelity bond is mandatory. An LCFB must still pay for SIPC coverage because of the definition of "Customer" in the Securities Investor

[16] Actually, proprietary trading or, specifically certain market-making, does not necessarily trigger a requirement to become a FINRA member. There are many entities that engage in these activities and, as SEC registrants, elect to join a national securities exchange instead of joining FINRA. Many professional proprietary traders are not registered as broker-dealers at all. Moreover, some of the enumerated permissible LCFB activities are currently provided by many parties that are not registered with the SEC and thus are not even eligible for FINRA membership.

[17] We do not regard as a significant advantage the fact that LCFBs won't need to conduct an annual compliance meeting or that they won't need to deal with the regulatory element of the continuing education rule.

[18] Form Custody is particularly strange since by definition there should be virtually nothing for a non-custodial broker to report. Fortunately, it doesn't take much time to complete or file it.

Protection Act of 1970.[19] There are no benefits in terms of the registration process, for either the firm or its Registered Representatives; it can still take up to 6 months and require the filing of many meaningless documents. Under the LCFB proposal, in fact, the Registered Representatives of a firm who have the current standard FINRA licenses would apparently be penalized because they would be eligible for fewer registration categories.[20] The Firm still needs a Chief Compliance Officer and all Registered Persons must conduct the same know-your-customer and suitability[21] analysis as traditional broker-dealers, report outside business activities and are still subject to the firm element of Continuing Education compliance. An LCFB must have an AML Program in place in accordance with a new FINRA rule calling for biennial independent testing as opposed to annual independent testing.[22]

Most shocking is the restriction that LCFBs can only serve corporate issuers and only institutional investors. The failure to include partnership and limited liability company issuers ignores a very significant pool of investment opportunities that many existing FINRA members

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[19] SIPA Sec. 16(2). We note that clients of an LCFB would not benefit from its membership in SIPC except under very unusual circumstances, if any.

[20] Though the text of RN 14-09 seems to indicate that this is so, the text of the accompanying proposed Rule 121 seems to contradict that notion since it incorporates by reference NASD Rules 1021 and 1031, which clearly do not limit people from maintaining registrations so long as they remain active in the investment banking or securities business. We note that the proposed Rule 123 seems to exclude or disregard proposed Rule 121.

In addition, we continue to be appalled by the perpetuation of what we call the current "use it or lose it" rules where, if a registration is not used for two years, it lapses. We believe that the securities industry is the only one whose professionals lose their licenses even if they leave and use the competencies of those licenses in some related venue, such as when a sell-side person works on the buy-side for a few years, causing his or her licenses to lapse.

There are other professions where licenses do not lapse in a manner requiring requalification by examination. For example, we are aware of an attorney who has decades of experience as a prosecutor and in the private sector, too. She currently is employed by an agency of the United States government and when she finishes her tenure there, we doubt that this current member of the New York Bar would be required to requalify by examination to resume practicing law. Why should SEC Chair Mary Jo White be treated any differently than securities industry professionals, especially seasoned ones, who leave broker-dealers? We are also reminded that the FINRA person who is FINRA's designated contact for RN 14-09 and the Chairman and CEO of FINRA are both members of the D.C. Bar and we doubt that they would need to requalify by examination in order to practice law either.

[21] LCFB Rule 211(a) specifically spells out the suitability analysis to be undertaken with respect to retail customers, yet LCFBs are not authorized to transact business with retail customers. Who edits these proposed rules?

[22] At least the proposed rule does not define the time period between testing activities based on the calendar year as does current Rule 3310. This is wise.

service by raising money for non-corporate private equity funds or hedge funds. We regard this as a classic error of ignoring a huge constituency of FINRA members that raise money for those issuers. In addition, by ignoring high-net worth individuals, FINRA ignores a key customer base for many hedge funds – supposedly, the very client base an LCFB is intended to serve. These blatant omissions also demonstrate FINRA's failure to understand business practices and the market place. By ignoring other well-established and understood categories of investors, such as "qualified purchasers," FINRA eviscerates the utility of, and sabotages, the LCFB proposal.[23]

What is truly dismaying is these activities are subject to a set of newly proposed LCFB Rules that explicitly incorporate many of the existing FINRA Rules. Rather than have a succinct, useful set of rules that would, of necessity, be incorporated into an LCFB's WSPs, two sets of rules must be consulted to determine the appropriateness of a firm's business activities. Most of the proposed LCFB Rules merely parrot existing FINRA and NASD Rules. That clumsy approach alone would deter many firms from requesting LCFB status because it is a compliance trap waiting to happen. We sincerely hope that this approach of mandating a separate set of rules (currently, more than 45 separate rules), coupled with explicit references to other FINRA Rules, as the price of admission for a supposedly simplified regulatory status dies a very quick death.

We are baffled by FINRA's continued insistence on net capital (recognizing it is an SEC Rule) as the price of entry into the proposed new category of FINRA membership. Given the limited risk and scope of activities of an LCFB, in particular, and in the other carve-outs in the Proposals Concerning Non-Custodial Brokers, in general, we believe the net capital rule serves

[23] We read the endnotes of RN 14-09 wherein FINRA expresses concern about opening the floodgates of the new member category to serve accredited investors who may not be nearly as sophisticated as institutional investors. On the other hand, there are many potential investors that are sophisticated though they are not necessarily institutional. The authors of this letter regard themselves as being sufficiently sophisticated. Why should we not be able to be served by this new category of FINRA member?

no benefit either as a measure of fiscal integrity or as a meaningful barrier to entry into the business covered by the LCFB rules. We believe that, alternatively, the net capital rule should be replaced by a requirement to carry a significant insurance bond that could cover more than just what the existing fidelity bond rule covers. Reliance on market-based insurance underwriting standards, with insurers having their money and reputations on the line, would provide more realistic investor protection. Non-custodial brokers have no need for annual audited financial statements that no one reads or relies upon other than the regulators. With no customer funds or securities at risk, even the filing of periodic FOCUS Reports by non-custodial brokers is of marginal, if any, utility.

What this LCFB proposal appear to be is a last-minute attempt by FINRA to catch-up as the SEC begins to exempt certain activities from broker-dealer registration. If this is the best FINRA can do, the horses have already escaped past the barn door. It seems apparent to us that FINRA drafted the proposed LCFB Rules without hearing the concerns of many industry experts. Perhaps FINRA conferred with some industry participants who prefer the status quo since they are currently subject to it anyway. Members of a club enjoy preferences when the threshold for membership in the club remains high. After all, their thinking is that since they had to run through the gauntlet of the FINRA membership process, why shouldn't new participants do the same?

Effective regulation begins with an assessment of risk. A drastic re-evaluation of the role of regulators for firms with limited risk with respect to customers and the marketplace is needed. This should serve as a wake-up call to FINRA and other regulators.

Why the Balkanization of Financial Services Activities?

We have watched with great interest as both the SEC and FINRA have begun carving out certain broker-dealer activities from the maw of mandating FINRA registration for those receiving transaction-based compensation. Clearly, this has also prompted a Congressional response. With Crowdfunding, the SEC recognized the limited risk if an issuer were willing to raise only up to $1 million. Under the AngelList, FundersClub and Six Lawyers Letters, people engaged in certain restricted advisory activities can avoid SEC registration, presumably again because of the limited risk their activities create for investors. Under FINRA's proposals in RN 13-29, there are hesitant steps to simplify and improve the membership application process. With LCFBs, FINRA apparently acknowledges that institutional investors don't need the same set of protections as retail customers. What's new about that?

This piecemeal approach to regulating carved out activities is time-consuming and inefficient. Instead, FINRA, in conjunction with the SEC and NASAA, should be proposing rules that demonstrate sophisticated analysis based on risk, economic realities and financial and functional distinctions. Of course, FINRA can't do this unilaterally. Nor would such action, or the continued Balkanization of regulatory approaches, be cost effective. What the industry needs is a simplified, rational and uniform approach to the regulation of broker services. This would also benefit the end-users of such brokerage services. The key dictates for such an undertaking should be risk assessment and cost efficiency. The industry understands this; our customers expect it. Our regulators should be promoting customer protection and market integrity but not through the continuation of rules that are complex and often counter-productive. Rules should not have unintended consequences that are worse than what the rules were designed to prevent.

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Thank you for the opportunity to comment on RN 14-09. Should you have any further questions, please feel free to call Howard Spindel at 212-897-1688 or Cassondra Joseph at 212-897-1687, or contact us by e-mail at hspindel@intman.com or cjoseph@intman.com, respectively.

Very truly yours,

Howard Spindel
Senior Managing Director

Cassondra E. Joseph
Managing Director

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

April 2, 2014

Re: Request for Comment: Limited Corporate Financing Brokers
Regulatory Notice 14-09

Dear Ms. Asquith,

The AIW, LLC team comprised of experienced American Society of Appraisers and National Association of Certified Valuation Analysts, has conducted thousands of engagements for businesses across hundreds of Standard Industrial Classification and North American Industry Classification System codes for diverse purposes. AIW appreciates the opportunity to submit this comment letter on the proposed rule set for Limited Corporate Financing Broker ("LCFB").

Issue Statement

As a whole, does the proposed rule, the SEC staff no-action letter issued to Faith Colish, et al., dated January 31, 2014, and Senate Bill 1923 ("the bill"); **prevent** a safe harbor for bad actors, money laundering or the funding of terrorism?

Brief Answer

No. The proposed rule for LCFB's recognizes the need for a Client Identification Program (CIP) (rule 209) along with an Anti-Money Laundering Compliance Program (AML) (rule 331) but for "institutional investors" only.[1] Meanwhile, the SEC no-action letter and the bill provide a safe harbor for Private Placement transactions involving "accredited investors." FINRA has established that they have "...uncovered serious concerns with the manner in which firms market and sell private placements to accredited investors."[2] Together, the proposed rule, the SEC no-action letter, and the bill create a critical flaw in the oversight necessary to ensure the illegal and insidious activity of some unregulated, unlicensed, and unsupervised M&A Brokers do not receive a free pass. This flaw places our national security at risk.

[1] FINRA Regulatory Notice 14-09 Attachment A.
2 *Id.* Pg 9.

Statement of Facts

According to BizBuySell, the largest marketplace for sale listings with inventory of over 45,000 businesses for sale, the transfer of securities is continuing,[3] predicting approximately $10 trillion will be transferred. The majority will be in privately held stock in privately held businesses,[4] giving criminals and terrorists' opportunity if these transactions go unmonitored as proposed in the rule, the bill, and the SEC no-action letter. Such sales imply there will be gaps between regulatory rules and statutory requirements, creating fertile ground for money laundering, embezzlement, terrorist financing, public corruption, and racketeering.[5] The U.S. Department of Treasury estimates as much as $15 to $20 million per year was laundered internationally to the Al Qaeda organization responsible for the September 11, 2001 attacks on the United States.[6] Stanford School of Law reported an annual damage estimate of nearly $700 billion in 2007 due to civil securities fraud.[7] The rules included in the Bank Secrecy Act of 1970 are tools to assist against AML and the funding of terrorism. The CIP and AML are now outlined under the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" – the USA PATRIOT Act.[8]

Unregistered M&A Brokers and other unregistered intermediaries will avoid scrutiny under the SEC no-action letter, the bill in current form, and the proposed rule. These unregistered individuals, in addition to forgoing any oversight, will be able to conduct business without having to follow AML procedures along with CIP, which is an integral part of AML.[9]

CIP assists the U.S. Department of Treasury with fighting terrorism funding, combating money-laundering activities, and providing investor protection.[10] Terrorists and criminals use money laundering and shell companies to receive and distribute illicit funds by purchasing all or substantially all of the assets of a business enterprise with cash. It is imperative that unregistered M&A Brokers be required to comply with CIP.

To disguise criminal or terrorist activity, criminals may merge or acquire businesses that might engage in legitimate transactions to establish credibility in the business community. Terrorists groups require significant assets to create and service the infrastructure of the group. Terrorists and criminals often use stolen or falsified identification to pay for their operations.[11] This allows terrorists to avoid watch lists, assist in terrorist funding transactions and gain access to restricted areas[12]. It is even easier to obscure intentions in transactions when CIP is not followed by the

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[3] BizBuySell, Available at http://www.bizbuysell.com/news/media_insight.html
[4] Jackman, R.E., & Christman, P.G., *The $10 Trillion Opportunity* 22 (2nd ed. 2005).
[5] Association of Certified Fraud Examiners, *Financial Institution Fraud* 17 (2009).
[6] Shawn Turner, *U.S. Anti-Money Laundering Regulations: An Economic Approach to Cyber laundering,* 54 Case W. Res. L. Rev. 1389, (2003).
[7] *Securities Fraud*, 24 Fraud Mag. 57 (2009).
[8] 115 STAT 272 § 351-352 (2001).
[9] FINRA, *Anti-Money Laundering* Available at http://www.finra.org/Industry/Issues/AML/
[10] 68 Fed. Reg. 25091 (May 9, 2003).
[11] Scott, K.H., *MSU lab helping FBI hunt down terrorists.* (Mar. 11, 2003). Available at www.allbusiness.com/public-administration/955156-1.html
[12] Gartenstein, D., & Dabruzzi, K., *The convergence of crime and terror: law enforcement opportunities and perils.*, Center for Policing Terrorism, (Mar. 26, 2007). Available at

unregistered M&A Broker. Enforcement agencies are aware that money laundering occurs in the private sector but there has been little reporting of money laundering and possible terrorist financing issues among the clients of private-sector business transactions.[13]

Discussion of Law

I encourage staff to read cases involving M&A Brokers who deal with sophisticated or "accredited investors."

Matthew Smith Company, Inc. v. Donald Chill

United States Commodity Futures Trading Commission v. Hunter Wise Commodities...Fred Jager 9:12-cv-81311

The Commodity Futures Trading Commission is uncovering and prosecuting those who break the law and is not granting safe harbors. For example see exhibit A.

Conclusion

Harry Markopolos, Certified Fraud Examiner, during his testimony before the Financial Services Subcommittee on Capital Markets said, "My team and I tried our best to get the SEC to investigate and shut down the Madoff Ponzi scheme with repeated and credible warnings."[14]

My first credible warning is an unregistered M&A Broker, engaged as an intermediary, with a safe harbor from oversight, is a disaster waiting to happen. LCFB and M&A Brokers should have the same qualifications and meet the same standards as a FINRA regulated investment banking representative, to include oversight. We have spent too much treasure and blood to allow rule sets excluding "accredited investors", SEC no-action letters, and the bill to become law as it all creates safe harbors.

The solution is:

A. REGISTRATION BY NOTICE-FILING

B. EXAMINATION REQUIREMENTS

B. MONITORING PRIVATE PLACEMENTS

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www.reas.gr/index.php?option=com_content&view=article&id=707&catid=21&Itemid=63.

[13] Shelly, L., & Melzer, S, "The Nexus of Organized crime and terrorism: Two case Studies in Cigarette Smuggling.", *International Journal of Comparative and applied Criminal Justice*, 32(1), 43-63 (2008).

[14] *Chasing Madoff*, 23 Fraud Mag. 36 (2009).

Please contact me with any questions you may have about these comments.

Lou Stough, CFE
Certified Fraud Examiner

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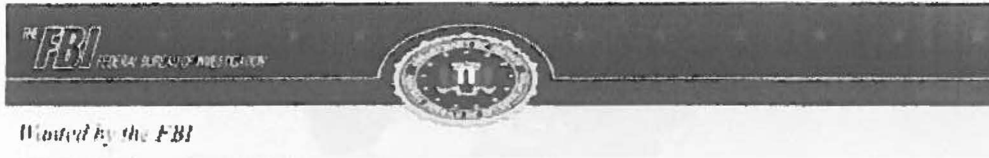
About the author:

Over thirty years of combined experience in Financial Services and Law Enforcement, specializing in Criminology & Ethics, Financial Transactions & Fraud Schemes, Legal Elements of Fraud, and Fraud Investigation. Degrees and experiences are: Masters in Paralegal Studies, M.B.A., M.S. Administration of Justice, B.S. Criminal Justice, Certified Fraud Examiner (CFE) Deputy Provost Marshal U.S. Army, DOD Hostage Negotiation Course, Indiana State Police Academy, Adjunct Professor, General Securities Principal, Chief Compliance Officer, Registered Representative, Registered Investment Banker and Registered Investment Advisor, Series, 7, 24, 66, 79, 99, Insurance License, and Certified Business Intermediary (CBI).

exhibt A



Wanted by the FBI

[illegible]

WANTED
BY THE FBI

Print Version

[illegible] Conspiracy to Commit Witness Tampering

LUIS FERREIRA

Photograph taken in 2012 | Photograph taken in 2010 | Photograph taken in 2010

Multimedia: Images

Aliases:

Luis Ferreira, Luis Almeida, Luis Carlos de Almeida, [illegible] de Almeida, Luis Carlos de Almeida, [illegible]

DESCRIPTION

Date(s) of Birth Used:	February 13, 1957	Hair:	Brown
Place of Birth:	Brazil	Eyes:	Brown
Height:	6'1"	Sex:	Male
Weight:	[illegible] pounds	Nationality:	Brazilian
NCIC:	[illegible]		
Occupation:	Commodities Broker, [illegible]		

Scars and Marks: Ferreira has a tattoo on his left shoulder.

Remarks: Ferreira speaks Portuguese and English. Ferreira may have been living in South America, possibly in Sao Paulo, Brazil or Rio de Janeiro, Brazil since May of 2011. Ferreira has owned and operated an Internet business called Brazilian Hair Experts, LLC, [illegible], and is likely still involved with that company.

CAUTION

Luis Ferreira, a convicted felon, is wanted for failing to surrender to serve a sentence in Florida for conspiracy to commit witness tampering in connection with his involvement in a high-yield investment scam to defraud individual investors.

From mid-2009 through 2010, Ferreira was one of the principal owners of three investment firms that operated out of Deerfield Beach, Florida [illegible]. However, [illegible] Ferreira [illegible] federal [illegible] authorities.

On November 30, 2010, Ferreira was [illegible] for obstruction of justice, making false statements and conspiracy to obstruct justice, and he was arrested on December 7, 2010.

In January 2011, Ferreira pled guilty to one count of conspiracy [illegible] witness tampering. On April 18, 2011, Ferreira was sentenced to 30 months in prison, followed by three years of supervised release. Ferreira was released after sentencing and was scheduled to appear in prison no later than August 29, 2011. Ferreira was given electronic monitoring [illegible], however, on or about May 13, 2011, Ferreira did not report [illegible] and a federal warrant was issued for his arrest the next day.

On August 29, 2011, Ferreira failed to report to prison to begin serving his sentence. Ferreira was indicted again on September 1, 2011 by a Federal Grand Jury for the United States District Court, Southern District of Florida for failure to surrender to serve his sentence, and a federal warrant was issued for his arrest.

If you have any information concerning this person, please contact your local FBI office or the nearest American Embassy or Consulate.

RWI

Reliance Worldwide Investments, LLC

April 25, 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Request for Comment, Regulatory Notice 14-09
Limited Corporate Financing Brokers

Dear Ms. Asquith:

Reliance Worldwide Investments, LLC ("RWI") welcomes this opportunity to comment on the proposed rule set for Limited Corporate Financing Brokers.

RWI is a full service general securities firm, licensed to conduct business in 36 States. The firm generates considerable revenues from investment banking activities. While the majority of these revenues are generated internally, a portion of our overall revenues are produced by independent contractor registered representatives who conduct approved outside business activities as business brokers. The majority of these independent contractors limit their securities practice to clearing the securities of their privately-held company investment banking transactions through our firm.

The vast majority of our investment banking clients are privately-held corporations involved in acquisitions, divestitures, and mergers. Typically, these transactions have a debt and/or equity capital structuring component.

With respect to FINRA's request for comment concerning the following issues:

Question 1. Does the proposed rule set provide sufficient protections to customers of an LCFB? If not, what additional protections are warranted and why?

The protections are sufficient to the extent that an LCFB customer, directly or indirectly, benefits from Rule 209 Know Your Customer, Rule 211 Suitability, Rule 221 Communication with the Public, Rule 324 Borrowing From or Lending to Customers, Rule 327 Outside Business Activities of Registered Persons, Rule 331 Anti-Money Laundering Compliance Program, various supervisory rules etc.

However, our firm would suggest the FTC Red Flag Rule should also apply to LCFBs. Even though there are no covered accounts per se, the LCFB would be in possession of certain confidential and sensitive information regarding their customers. It is reasonably foreseeable that those customers might be exposed to risks associated with identity theft.

Member FINRA/SIPC

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CRD# 143546
SEC# 8-67575

Question 2. Does the proposed rule set appropriately accommodate the scope of LCFB business models? If not, what other accommodations are necessary and how would customers be protected?

To the extent that an LCFB's business model would be providing investment banking services (advising companies regarding the purchase or sale of a business or assets, or corporate restructuring, or divestitures or mergers) to customers who are privately-held corporations, the answer would be no.

An analysis of U.S. companies by size reveals that over ninety-nine percent of businesses generate less than $50 million in annual revenues (U.S. Census Bureau, 2009). Established small to mid-size private businesses (operating for 3 years or more) have annual sales ranging from about $1 million to $75 million. Best estimates indicate there are approximately 8.1 million established businesses in the U.S. Factoring in companies with multiple owners, there are approximately 10.2 million owners. (davemead.blogspot.com/2012/02 baby-boomers-again-think-about-selling.html).

The vast majority of the purchasers of these privately-held companies are private equity groups and accredited investors.

In 2013, nearly 40% of all private equity deals were valued below $25 million while 60% were valued below $100 million (*Pitchbook* 4Q 2013 *Private Equity Breakdown*, p. 9).

There are 2,797 private equity firms headquartered in the United States. The largest investors in private equity include public and private pension funds, endowments and foundations, which accounted for 64% of all investment in private equity in 2012. And, during the last five years, private equity has invested almost $30 Billion in more than 1,987 U.S.-based companies that had filed for bankruptcy. (http://www.pegcc.org/education/fact-and-fiction).

To our firm's knowledge, there is no publicly available information regarding the number of private equity groups that qualify as institutional investors.

If FINRA excludes accredited investors and private equity from the list of potential investors a LCFB could "qualify, identify, and solicit," the pool of potential transaction participants available to LCFBs would be severely limited. Such a limitation would represent a tremendous disadvantage, from a competitive perspective. We are firmly convinced this factor alone would preclude firms that service this substantial marketplace from considering LCFB registration.

Given FINRA's "serious concerns" cited in Endnote 3 to Regulatory Notice 14-09, additional safeguards would be required to adequately protect investors from "the manner in which firms market and sell private placements to accredited investors." Without further specificity on this issue, it is not possible for our firm to provide constructive suggestions regarding additional customer protection, at this time. We find this statement by FINRA quite disturbing, and look forward to the future issuance of applicable guidance, FAQs, etc. on this matter.

From a practical perspective, we strongly urge FINRA to consider allowing LCFBs to conduct business with accredited investors, and incorporate adequate safeguards into the proposed rules addressing the "serious concerns" identified by FINRA regulatory programs. It would also seem prudent to apply those new rules to all applicable Broker-Dealers as well.

I cannot stress strongly enough – our firm believes limiting the parties that could be "qualified, identified, and solicited" to institutional investors (thereby excluding accredited investors and private equity groups), would eviscerate a LCFB's ability to conduct investment banking business in its privately-held customer's best interests.

Question 3. Is the definition of "limited corporate financing broker" appropriate? Are there any activities in which broker-dealers with limited corporate financing functions typically engage that are not included in the definition? Are there activities that should be added to the list of activities in which an LCFB may not engage?

It is always difficult to know when broader terms with "less specificity" provides the best, workable solution. However, other potential activities performed for privately-held companies that might be considered for inclusion would be:

- Advise and assist in preparing a business for sale
- Advise customer regarding the value of the business
- Advise and Assist customer in preparing financial modeling
- Advise about financing alternatives and financial impact
- Assist customer is evaluating prospective/competing offers
- Advise about transaction structures, terms and conditions
- Advise and assist customer in preparing for due diligence
- Advise about commonly recurring business transition issues
- Acting solely as a Finder (introducing potential parties to a transaction)
- Provide expert witness and litigation support services

Question 4. Are there firms that would qualify for the proposed rule set but that would choose not to be treated as an LCFB? If so, what are the reasons for this choice?

Yes. See response to Question 2 above, regarding accredited investors and private equity groups and the limitation imposed by restricting "qualifying, identifying or soliciting" to institutional investors.

Question 5. What is the likely economic impact to an LCFB, other broker-dealers and their competitors of adoption of the LCFB rules?

As proposed, there is di minimis financial advantage to an existing broker-dealer in applying for LCFB registration.

If asked, most FINRA Members would probably tell you they would like to see the direct, and indirect, costs of membership reduced. I'm sure you won't be surprised to know they would also like their taxes to go down as well! However, we are all realistic enough to understand there are costs associated with being in this industry, and that we all have to pay our own fair share. Psychologically, it is always easier to bear that burden if we perceive there is a value proposition created, and substantive benefit provided, as a result of the expenditure of those funds.

In the spirit of that commentary, our firm sees six cost reduction areas FINRA may wish to consider. Some combination of these suggested items and others might go a long way toward creating a value proposition, and thereby increase the attractiveness of an LCFB to prospective candidates:

- PCAOB Audit – Consider establishing criteria under which a "Review" would be conducted, rather than the more expensive PCAOB Audit, such as:
    - Under a certain revenue or asset size
    - Firms who do not borrow money
    - Firms who have no indirect or external investors
    - Firms who do not issue fairness opinions

  As LCFBs do not carry or maintain customer accounts, hold or handle customer funds or securities, exercise discretion over customer accounts, or engage in proprietary trading or market-making, there is less risk to investors associated with this business model.

- SIPC – Reduce or eliminate the requirement for an assessment on privately-held company securities transactions, as it is outside the general scope of intended SIPC insurance protection.

- Fidelity Bond – Reduce or eliminate the requirement for a bond. As stated above, since LCFBs do not carry or maintain customer accounts, hold or handle customer funds or securities, exercise discretion over customer accounts, or engage in proprietary trading or market-making, there is less risk to investors associated with this business model.

- FINRA Revenue Assessment – Reduce the assessment calculation based upon an analysis of the lower cost to FINRA associated with regulatory oversight of an LCFB as compared to other Broker-Dealer business models.

- Net Capital Requirement – For some of the same reasons cited in the PCAOB Audit discussion above, "right-size" the amount.

- Continuing Membership Application process – Reduce the cost, and streamline the process, whereby a LCFB would be able to return to its prior Broker-Dealer status (as long as it met the current requirements of that prior status). The requirements/process as stated in the proposed rule set may very well be perceived as a disincentive to many Broker-Dealers who might otherwise consider LCFB registration.

Question 6. FINRA welcomes estimates of the number of firms that would be eligible for the proposed rule set.

Our firm has no specific estimate, however, it is aware of certain information which may provide some insight on this issue:

- Within the securities industry: On December 20, 2013, FINRA Small Firm Governors Norensberg, Carreno, and Keenan sent an email entitled "Small Firm Update" regarding the FINRA Board of Governors December 2013 meeting. In this email it was stated that the forthcoming LCFB proposal was "expected to affect nearly 700 broker-dealers." No information was provided alluding to the basis for such an expectation. According to Chairman Ketchum's Management Report on Financial Operations, "as of December 31, 2012, FINRA oversaw nearly 4,300 broker firms ..." Therefore, if the 700 broker-dealer number is assumed to be correct, approximately 16.3% of all current FINRA broker-dealer firms would be affected.

- Outside the securities industry: A Business Broker is generally defined as a person who assists individuals in selling or buying a small or mid-size business. The activities of a business broker can range from simply introducing two parties to more complicated functions such as analyzing a business's financial statements, marketing the business for sale, and assisting the client's other advisors in negotiation the terms of a transaction. **It is estimated that there are approximately 3,000 – 4,000 business brokers in the United States.** A business broker is often utilized by companies who are interested in selling, but not large enough to attract the interest of traditional investment banks. Most investment banks work on transactions with companies generating in excess of $100 million dollars in revenues. **An analysis of U.S. companies by size reveals that over ninety-nine percent of businesses generate less than $50 million in annual revenues.** It is this large, underserved market that business brokers service. (http://www.cvbba.com/images/APMAA_Reg_Issues_3-17-2010.pdf)

  Our firm believes business broker firms are typically small businesses composed of one to ten producing brokers. Shane Hansen, an attorney who represents business broker associations testified in a U.S. House of Representatives hearing on June 12, 2013: "Accordingly, a very high percentage of M&A brokers are not registered with the SEC and so, technically, are violating the registration requirements in federal securities laws today." Therefore, our firm believes it would be safe to say that in excess of 300 business brokerage firms would be eligible to become securities licensed, and such firms could potentially qualify under the proposed rule set. Although, we consider it unlikely that any of them would have an interest, in no small part due to the M&A Broker No-Action Letter that was issued by the SEC on January 31, 2014, the passage of H.R. 2274 by the U.S. House of Representatives (422 to 0), and the current bill in the Senate Banking, Housing, and Urban Affairs Committee (S. 1923).

As our firm does not anticipate any meaningful number of Broker-Dealers electing to apply for LCFB registration, nor do we believe any firms new to the industry will be filing applications for LCFB registration, we do not anticipate a noteworthy impact.

Question 7. Proposed LCFB Rule 123 would limit the principal and representative registration categories that would be available for persons associated with an LCFB. Are there any registration categories that should be added to the rule? Are there any registration categories that are currently included in the proposed rule but that are unnecessary for persons associated with an LCFB?

It would appear appropriate to include Direct Participation Programs within the scope of the LCFB, as most of these transactions typically occur through private placements.

Question 8. Should principals and representatives that hold registration categories not included within LCFB Rule 123 be permitted to retain these registrations?

Yes, subject to the principals and representatives: (1) being associated with a LCFB firm, and (2) remaining current with the regulatory element continuing education requirements during the entire "inactive" period for non-LCFB categories of registration.

FINRA might also wish to consider instituting a prescribed inactive period (for example, 5 years) after which the principals and representatives would have to requalify for those registration categories by examination; however, this prescribed inactive period would be superseded by the current 2 year rule in the event a U-5 was filed and the registrant did not associated with another LCFB or broker-dealer.

Question 9. Does an LCFB normally make recommendations to customers to purchase or sell securities? Should an LCFB be subject to rules requiring firms to know their customers (LCFB Rule 209) and imposing suitability obligations (LCFB Rule 211) to an LCFB?

Yes. The activities listed in the proposed rule set include the words "advising an issuer" and "advising a company" – and it is clearly understood that there is almost always a fee involved when providing such services. Thus, the act of advising, be it oral or in writing, involves either an actual recommendation or some form of implicit recommendation by the person providing the advice. Our firm believes this is true irrespective of whether the advice provided is acted upon or not.

Not only do we believe K-Y-C and Suitability apply to LCFBs, we also believe AML and the FTC Red Flag Rule apply (as previously discussed in Question 1 above).

Question 10. Does the SEC staff no-action letter issued to Faith Colish, et al., dated January 31, 2014, impact the analysis of whether a firm would become an LCFB? Is it likely that some limited corporate financing firms will not register as a broker consistent with the fact pattern set forth in the no-action letter, or will they register as an LCFB?

Most firms eligible for LCFB registration are also effectively able to operate within the parameters set forth in the M&A Broker SEC No-Action Letter issued on January 31, 2014. There is no logical reason for such firms to incur the regulatory compliance obligations and associated costs when presented with a "free pass." This M&A Broker No-Action Letter gives new meaning to the old salesman's pitch, "no cost and no obligation."

Unfortunately, the SEC has disregarded investor protection in favor of a small, vocal special interest group who seeks to avoid regulatory oversight and has spent in excess of $700,000 (to date) in attorney and lobbyist fees to achieve that result.

For years, Attorney Shane Hansen has represented M&A Broker associations in their efforts to secure exemption from registration, initially with the SEC and other regulators, and now in their efforts to secure an exemption through legislation (H.R. 2274 and S. 1923).

In his written statement, testifying under oath on June 12, 2013 to the United States House of Representatives Committee on Financial Services, attorney Hansen states:

> "Accordingly, a very high percentage of M&A brokers are not registered with the SEC and so, technically, are violating the registration requirements in federal securities laws today. Their registration violations may put their clients' transactions at risk of being rescinded if the post-closing business does not run as hoped or is run into the ground by the buyer. Registration violations put the M&A brokers at risk for regulatory enforcement and sanctions, as well as their livelihood ..."

If these business broker associations are unsuccessful in their efforts to effect legislation sympathetic to their cause, the vast majority of their membership will unswervingly continue to ignore and violate securities laws in their ordinary course of conducting business -- just as they have since 1985. It is simply unconscionable to allow this group to continue to violate securities laws to the potential detriment of investors involved in M&A Broker transactions.

In 1985, the U.S. Supreme Court ruled in *Landreth Timber Co. v. Landreth*, and a companion case *Gould v. Reufenacht*, that transactions involving the sale of closely-held company stock are "securities" within the meaning of the Securities Act of 1933, and require compliance with Section 15(a) of the Exchange Act (if applicable).

When was the SEC Division of Trading and Markets granted the authority to enact No-Action Letters in potential contraversion to, and/or without deference to, US Supreme Court decisions? I personally believe this is a dangerous path to traverse. I can only assume this has occurred under the guise of "assisting the Commission in establishing rules and issuing interpretations on matters affecting the operation of the securities

markets." Second guessing the U.S. Supreme Court and creating an exception inconsistent with its repetitive, consistent decisions may very well border on unbridled arrogance. What prospective benefit is so overwhelmingly that it would justify such actions?

I urge FINRA, in the strongest possible way – encourage the SEC to reconsider the direction it is taking on this matter and the conflicting message it is sending to licensed M&A Brokers, unlicensed M&A Brokers, private equity groups, institutional investors, and individual investors.

We should not be surprised to see a flood of business cards with the title "Investment Banker" on them, including attorneys and CPAs who now believe the May 17, 2010, SEC **Denial of No-Action Request** has been superseded. This denial was issued with regard to a letter submitted by the law offices of Brumberg, Mackey & Wall, P.L.C. ("BMW").

The SEC cited several reasons for the denial, but one of them was:

> "Moreover, the Staff believes that that receipt of compensation directly tied to successful investments in ... securities by investors introduced ... by BMW [the law firm] would give BMW a "salesman's stake" in the proposed transactions and would create heightened incentive for BMW to engage in sales efforts. Accordingly, the Staff believes that your proposed activities would require broker-dealer registration."

M&A transactional attorneys typically utilize either hourly billing for the services rendered, or one of three types of alternative fee arrangements: (1) a fixed fee, (2) a fixed fee with a collar, or (3) a "broken deal"/success fee. Until the M&A No-Action letter was issued, securities laws preclude lawyers and CPAs from receiving contingent compensation as a percentage of the total price of a successfully completed transaction. Now that has changed. Does the SEC no longer believe there is a "salesman's stake" involved ... or does that just not matter any longer?

WHAT IS THE SCOPE OF THIS PROBLEM ... HOW MANY WILL BE AFFECTED?

Consider the published statistics:

1. The SBA indicates:
   a. There are **23 million** small businesses in America that account for **54% of all U.S. sales**,
   b. Small businesses provide **55% of all jobs**, and
   c. The number of small businesses in the U.S. has increased 49% since 1982.

2. Best estimates indicate there are approximately **8.1 million established businesses in the U.S**. Factoring in companies with multiple owners, there are approximately **10.2 million owners**.
   a. Established businesses are defined to be companies in business for at least 3 years and having a work location outside the owner's home, and

   b. Well established small to mid-size private businesses have annual sales ranging from about $1 million to $75 million.

3. PriceWaterhouseCoopers study determined:
   a. **1 out of every 2** company owners plan to sell their business within the next 10 years, and
   b. People 55 or older own 30 % of all businesses with employees.

4. PriceWaterhouseCoopers Trendsetter Barometer Survey of Business Owners found:
   a. **51%** of business owners were planning to sell their companies to third-party purchasers, and
   b. **14%** of business owners were planning on selling to their employees.

5. Conservative estimates forecast the number of Baby-Boomer owned businesses that will be put on the market for sale in the **next 5 to 10 years will be between 1.36 and 2 million firms, and 2.5 to 3.8 million firms over the next 20 years.**

6. It is estimated that these transaction will result in the transfer of **$10 Trillion** of wealth.

7. Industry estimates indicate **80%** of a small to mid-size business owner's total net worth is attributed to their business.

How is it that this substantial number of individual investors (comprising this group of sellers) – and a like number of buyers – are not deemed to be deserving of regulatory oversight and protection? Especially when these **senior citizen** sellers are counting on the proceeds from these sales, which for most of them represents a once-in-a-lifetime liquidity event, to fund their retirement.

I personally find this surprising, and very disturbing ...

Is it reasonable, rational or prudent to believe the M&A Broker transaction marketplace can properly police itself? Our firm does not believe so.

Thank you for considering our firms comments, and please contact us if have any questions or require clarification regarding any of our remarks.

Sincerely,

RELIANCE WORLDWIDE INVESTMENTS, LLC

Kenneth Sweet
Managing Member, Principal

JLT Capital Partners
| Business Development For Exceptional Asset Managers |

April 28, 2014

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

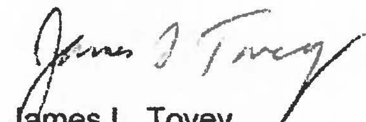
Re: Regulatory Notice 14-09

Dear Ms. Asquith,

JLT Capital Partners LLC is a FINRA member (CRD# 158345) specializing in placement agent services for alternative asset managers. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which I strongly support.

Thank you for your consideration.

Sincerely,



James L. Tovey
Managing Principal

PROFESSOR ANDREW F. TUCH

COMMENTS ON PROPOSED RULE SET FOR LIMITED CORPORATE FINANCING BROKERS (FEBRUARY 2014)

April 28, 2014

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506
Via Electronic Mail (pubcom@finra.org)

Dear Ms. Asquith

I am submitting this letter in response to the invitation by the Financial Industry Regulatory Authority in Regulatory Notice 14-09 to comment on its proposed rule set for limited corporate financing brokers ("LCFBs").[1] In light of the time frame in which FINRA has invited comments, I focus on the implications of the proposed rule set for those LCFBs that engage in traditional investment banking activities.

By way of background, I am a law professor who has researched and written in the areas of securities and financial regulation. In recent years, my writing has focused on the liability of broker-dealers, including investment bankers.[2] The views expressed in this letter are solely my own, and the institutional affiliation provided below is given for identification purposes only.

I. THE DEFINITION OF LCFB

The proposed rule set will apply to LCFBs and persons associated with LCFBs. An LCFB is defined in terms of the activities in which it engages (Proposed Rule 016(h)), and thus the proposed rule set applies to firms, and to persons associated with firms, whose activities do not extend beyond certain enumerated activities (Proposed Rule 014). Generally speaking, the enumerated activities encompass the traditional investment banking activities of advising firms on securities offerings, mergers and acquisitions, and restructurings.[3] The

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[1] See FINRA, Regulatory Notice 14-09, Limited Corporate Financing Brokers, February 2014.

[2] Most of my publications are publicly available at www.ssrn.com.

[3] As to the activities traditional performed by investment bankers, see Alan D. Morrison & William J. Wilhelm, Investment Banking: Institutions, Politics, and Law 22 (2007); James D. Cox et al., Securities Regulation: Cases and Materials 115 (7th ed, 2013); and Bruce Wasserstein, Big Deal: 2000 and Beyond 556 (2000).

The term mergers and acquisitions is used broadly to include numerous types of often overlapping transaction categories, including purchases and sales of businesses or assets, going-private transactions and divestitures.

enumerated activities also include assisting in the preparation of offering materials on behalf of an issuer and providing fairness opinions, which are also activities traditionally performed by investment bankers.[4] However, the proposed rule set would not apply to firms that underwrite securities offerings (another traditional investment banking activity). It is nevertheless clear that the proposed rule set would apply to firms that engage in the traditional investment banking activities other than securities underwriting.

II. FINRA REGULATION OF INVESTMENT BANKING

To begin, I applaud FINRA for specifically addressing the regulation of investment banking activities. Although these activities are not typically performed by traditional broker-dealers, as FINRA's Regulatory Notice acknowledges, they generally fall within the definition of broker in the Securities Exchange Act.[5] In general terms, I understand that firms and individuals engaging in investment banking activities, including advising on securities offerings and M&A, have registered with FINRA.[6] In legal scholarship, little attention has focused on the requirement for those engaged in investment banking activities to register as broker-dealers. Your proposed rule set is likely to lead to broader discussion of the regulation of investment banking activities and FINRA's role in it – a desirable development.

III. CONTENT OF RULES

The proposed rule set includes relatively minor reforms to the content of the rules that apply to firms and individuals engaging in investment banking activities. With the exceptions noted below, the proposed rule set largely includes those rules in FINRA's existing Manual relevant to broker-dealers satisfying the definition of LCFB, although some accommodations have been made for LCFBs. The proposed rules set will provide certainty to LCFBs as to the rules with which they must comply. At the same time, the proposed rule set is unlikely to change the regulatory burden facing LCFBs. It is also a piecemeal set of rules, rather than a broad-based rule set comparable to the conduct rules that apply to other market gatekeepers, such as lawyers and accountants.

The proposed rule set would seem to omit rules concerning two important matters. The first concerns fairness opinions. Rule 5150 has been omitted, an apparent unintended oversight considering the explicit reference to fairness opinions in the definition of LCFB.

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[4] The proposed rule set enumerates two other activities: qualifying, identifying, and soliciting potential institutional investors; and advising on the selection of an investment banker. The former activity may well be performed by investment bankers, although it differs from other enumerated activities since its focus is on investors, rather than corporate clients engaging in transactions. The latter activity is clearly not one performed by an investment banker and its inclusion therefore suggests that LCFBs perform activities beyond investment banking.

[5] Securities Exchange Act of 1934 § 3(a)(4)(A), 15 U.S.C. § 78c.

[6] This approach was supported most recently by the SEC in a no-action letter. *See* Letter re: Merger and Acquisition Activities of Foreign Firms in Reliance on Rule 15a-6, SEC No-Action Letter, July 12, 2012, *available at* http://www.sec.gov/divisions/marketreg/mr-noaction/2012/ernstyoung071212-15a6.pdf. However, no-action relief was provided for certain advisers to private-company M&A transactions. *See* Letter re: M&A Brokers, SEC No-Action Letter, January 31, 2014 (revised February 4, 2014), *available at* http://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf.

The second concerns rules relating to information barriers. The proposal rule set would benefit from an explicit reference to FINRA guidance on these measures to cabin information flows.[7]

IV. ENFORCEMENT OF RULES

The proposed reforms overlooks the more pressing issue of the extent to which FINRA enforces its rules against firms and individuals engaging in investment banking activities. As a regulator concerned with deterring its members and their associated persons from harming investors and others, FINRA must be concerned not only with the content of its rules, but also with their enforcement. The proposed reforms suggest no change in FINRA's enforcement intensity against firms and individuals performing investment banking activities.

The issue of enforcement by FINRA of its rules against those engaged in investment banking deserves close scrutiny. In "The Untouchables of Self-Regulation," a paper forthcoming in the *George Washington Law Review*,[8] I examine the extent to which FINRA enforces its rules against both investment bankers and firms for the conduct of their investment bankers. (I define investment banking to include the investment banking activities referred to above; those activities are therefore largely consistent with the activities enumerated for LCFBs in the proposed rule set, but exclude private placement activities). The study covers the period January 2008 to June 2013.

As the paper explains, I find remarkably weak enforcement intensity against investment bankers and their firms. During the 66-month period under investigation, FINRA sanctioned 4,116 individuals and 1,645 firms. Of these 4,116 individuals, only 18 were investment bankers, and only 10 of these were sanctioned for misconduct toward their clients (rather than toward other actors, such as their firms). Of the 1,645 firms FINRA sanctioned, only seven involved the misconduct of their investment bankers.

Applying optimal deterrence theory, the paper argues that the self-regulation of investment bankers offers no credible deterrence against professional misconduct. It further argues that the costs of self-regulation likely exceed its benefits (measured in terms of deterrent force), and therefore that the self-regulation of investment bankers by FINRA should be considered a failure. Of course, these conclusions depend on the view that some wrongdoing by investment bankers and their firms escapes detection and sanction. That view is based on an extensive consideration of empirical evidence (regarding certain forms of misconduct by investment bankers) as well as anecdotal evidence. However, because the underlying level of wrongdoing by investment bankers is unknown, it is not possible to demonstrate conclusively whether FINRA fails to effectively enforce its rules against investment bankers and their firms. Some doubt will inevitably remain.

Nevertheless, the problem may be considered in more concrete terms. As is well-known, Delaware courts often opine on investment banking conduct in the course of adjudicating

[7] FINRA guidance is provided by NASD, Joint Memorandum on Chinese Wall Policies and Procedures, Notice to Members No. 91-45 (1991) (explaining the "minimum elements" for "adequate" Chinese walls).

[8] The paper will be available on www.ssrn.com in coming days.

disputes in M&A transactions. In 2011, for instance, the Delaware Court of Chancery criticized investment bankers for "secretly and selfishly manipulat[ing] the sale process to engineer a transaction that would permit [their firm] to obtain lucrative ... fees."[9] The following year, it criticized a prominent investment banker for failing to disclose a material conflict of interest with his client, a failure the Court described as "very troubling" and "tend[ing] to undercut the credibility of ... the strategic advice he gave."[10] The disputes involved alleged conduct that would seem at least to have infringed FINRA Rule 2010, which requires broker-dealers and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade." In both of these cases, the investment bankers involved were registered with FINRA. According to FINRA BrokerCheck, however, none has faced disciplinary action. While not conclusive, this evidence raises questions about FINRA's enforcement activities against investment bankers.

Moreover, the actions that FINRA did bring against investment bankers or firms for the conduct of investment bankers (during the period under analysis) are a rather odd assortment, one suggesting no particular enforcement priorities. I do not mean to belittle some of the actions; although small in number, some involve either individuals from prominent firms or apparently serious misconduct. At the same time, most of the disciplinary matters FINRA did bring against investment bankers or against firms for the conduct of investment bankers would have registered little interest among investment bankers. For example, one investment banker was sanctioned for violating his employer's internal policies while "attempting to procure investment banking and consulting business ... from a publicly-traded company."[11] He had used his personal e.mail account (rather than one provided by his firm) to communicate with the potential client and had posted messages about the client on the Yahoo! message board, including "[t]his one looks like a gem" and "[s]till digging into this one but looks like the real deal."[12] FINRA sanctioned another investment banker for embellishing his experience by falsely telling a prospective client that he had advised on a reverse takeover and for misleading another potential client about the work he was doing for it.[13] Not persuaded, the clients went elsewhere – but the banker faced FINRA discipline.[14] Given the nature of these matters, it is surprising that FINRA's enforcement intensity is not significantly stronger than the data in my study suggest.

V. APPLICATION OF THE PROPOSED RULE SET

One further concern with the proposed rule set relates to its application. It will clearly apply to so-called boutique investment banking firms – firms that do not engage in traditional

[9] In re Del Monte Foods Co. S'holders Litig., 25 A.3d 813, 818 (Del. Ch. 2011).

[10] In re El Paso Corp. S'holder Litig., 41 A.3d 432, 442 (Del. Ch. 2011).

[11] FINRA Letter, No. 2011030840501, Re: Christopher A. Carra, June 29, 2012.

[12] *Id.*

[13] FINRA Letter, No. 2010021116001, Re: Richard S. From, Oct. 5, 2011.

[14] He was fined $5,000 and suspended for associating with a FINRA member for 30 days. *Id.*

broker-dealer activities (such as managing client funds or executing client trades) or in other financial activities, such as commercial banking or asset management. But will the rule set also apply to the broker-dealer affiliates of financial conglomerates – enterprises that engage in a broad and diverse range of financial activities, but whose broker-dealer affiliates may engage in a narrow range of activities?

There is a clear danger is seeking to streamline the rules for financial conglomerates, even for their broker-dealer affiliates that may satisfy the definition of LCFB. Financial conglomerates are significantly more likely to face conflicts of interest than boutique investment banking firms. Otherwise put, financial conglomerates have greater incentives and opportunities than boutiques to engage in misconduct, such as skewing their advice to clients and misusing non-public client information.[15] Empirical evidence confirms these dangers.[16]

I would therefore recommend clarifying the propose rule set to provide that it applies only to broker-dealers who enterprise-wide activities satisfy the definition of LCFB. There is no apparent basis for providing any accommodations to broker-dealers affiliated with financial conglomerates, even if those broker-dealers satisfy the definition of LCFB.

Nevertheless, FINRA must ensure that it does not create unjustified distinctions between investment bankers working for financial conglomerates and those working for investment banking boutiques. After all, these individuals may well perform largely identical functions. Yet, if the proposed rule set applies only to the latter type of firm, those investment bankers would seem to benefit from some regulatory relief. One area in which the proposed rule set provides relief is continuing education requirements. Why so? It is difficult to understand the benefits of imposing education requirements on investment bankers that differ depending on the type of firms employing them. However, there would seem to be merit in tailoring education requirements to the distinctive work that investment bankers perform, whatever business model their employer adopts.

* * *

Thank you for the opportunity to comment on the Regulatory Notice. I would be pleased to discuss these comments further.

Andrew F. Tuch
Associate Professor of Law
Washington University School of Law
atuch@wustl.edu

[15] For further discussion, see Andrew Tuch, Financial Conglomerates and Information Barriers, J. CORP. L (2014) (forthcoming), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2363312.

[16] *Id.*

FRONTIER SOLUTIONS

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

My firm is a FINRA member specializing in private placements of alternative investments to institutional clients. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

Please contact me directly by phone at (404) 879-5130 or via email at dvick@frontiersolutions.com should you have any questions or require further information.

Sincerely,

George Vick
Chief Compliance Officer
Frontier Solutions, LLC

FORTRESS
GROUP

April 28, 2014

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith:

My firm is a FINRA member specializing in private placement of alternative asset funds (private equity, private credit, real estate, and natural resource funds) to institutional investors. I am also a member of the Third Party Marketer's Association (3PM).

I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCBD). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary, which has earned my strong support.

Sincerely,

FORTRESS GROUP, INC.
Bruce A. Williamson, CFA
Managing Director & Chief Compliance Officer

HAMERSLEY™
PARTNERS

Marcia E. Asquith
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-09

Dear Ms. Asquith,

My firm is a FINRA member specializing in placement agent services to institutional investors, primarily corporate and public pension plans and investment consulting firms. I am also a member of the Third Party Marketer's Association (3PM). I have had an opportunity to review 3PM's comprehensive comments regarding the rule set proposed by Regulatory Notice 14-09 for Limited Corporate Finance Brokers (LCFB). I urge FINRA's Board to carefully consider 3PM's thoughtful and informed commentary in the attached PDF, which has earned my strong support.

Regards,

Michael Wren