SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71545; File No. SR-FINRA-2014-006)

February 12, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Per Share Estimated Valuations for Unlisted DPP and REIT Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 31, 2014, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the provisions addressing per share estimated valuations for unlisted direct participation program ("DPP") and real estate investment trust ("REIT") securities. The text of the proposed rule change is available on FINRA's website at http://www.finra.org, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend (1) NASD Rule 2340 (Customer Account Statements) to modify the requirements relating to the inclusion of a per share estimated value for unlisted DPP and REIT securities on a customer account statement; and (2) FINRA Rule 2310 (Direct Participation Programs) to modify the requirements applicable to members' participation in a public offering of DPP or REIT securities.

Proposed Amendments to NASD Rule 2340 (Customer Account Statements)

NASD Rule 2340 generally requires that general securities members[3] provide periodic account statements to customers, on at least a quarterly basis, containing a description of any securities positions, money balances or account activity since the last statement. Paragraph (c) addresses the inclusion of per share estimated values for unlisted DPP or REIT securities held in customer accounts or included on customer account statements. The rule also provides for several disclosures regarding the illiquidity and resale value of unlisted DPPs and REITs.

FINRA (then NASD) adopted these requirements[4] in part to respond to concerns expressed by the Commission's Division of Trading and Markets (then Division of Market

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3 NASD Rule 2340(d)(2) defines "general securities member" as any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of Rule 15c3-1(a) under the Act. A member that does not carry customer accounts and does not hold customer funds or securities is exempt from the definition.

4 See Exchange Act Release No. 43601 (Nov. 21, 2000), 65 FR 71169 (Nov. 29, 2000)

Regulation) ("Division") regarding the sufficiency of information provided on customer account statements with respect to the current value of illiquid partnership securities.[5] To address these concerns, the Division suggested that FINRA adopt a rule requiring members to, at a minimum, disclose: (1) that there is no liquid market for most limited partnership interests; (2) that the value of a partnership, if any, reported on the account statement may not reflect a value at which customers can liquidate their positions; and (3) the source of any reported value and a short description of the methodology used to determine the value and the date the value was last determined. FINRA, therefore, developed the provisions found in paragraph (c) of NASD Rule 2340, which have not been amended since original adoption in 2000.[6]

NASD Rule 2340(c) also addresses the sources that may be used in developing the per share estimated value included on a customer account statement. When an unlisted DPP or REIT security's annual report includes a per share estimated value, the general securities member must include the estimated value from the annual report in the customer account statement or an estimated value from an independent valuation service or any other source, in the first account statement issued by the general securities member thereafter.[7] However, the customer account statement may not be left blank when an estimated value is included on an annual report.

(Order Approving File No. SR-NASD-2000-13) ("Original Approval Order").

5 See Letter from Brandon Becker, Director, Division of Market Regulation, SEC, to Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, dated June 14, 1994.

6 See Original Approval Order supra note 4.

7 Notwithstanding this requirement, the rule provides that a general securities member must refrain from providing an estimated value for a DPP or REIT security on a customer account statement if the general securities member can demonstrate that the estimated value is inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust. See NASD Rule 2340(c)(4). In addition, the estimated value must have been developed from data that are

While the rule permits the use of estimated values from sources other than the annual report, it has become industry practice to include the annual report's per share estimated value. During the offering period, the annual report typically reflects the security's gross offering price (e.g., $10.00/share par value). A per share estimated value that reflects the gross offering price does not take into account organization and offering expenses or cash distributions that occur during the offering period. An initial offering period can last for three years and may be extended.[8] Customer account statements thus may reflect the gross offering price for up to seven and a half years.[9]

FINRA proposes to eliminate the requirement in NASD Rule 2340(c) that general securities members, at a minimum, include the per share estimated value that is reflected on a DPP or REIT security's annual report. Under the proposal, a general securities member would not be required to include in a customer account statement a per share estimated value for an unlisted DPP or REIT security, but any member (not only a general securities member) may choose to do so if the value has been developed in a manner reasonably designed to ensure that it is reliable, the member has no reason to believe that it is unreliable,[10] and the account statement

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no more than 18 months old at the time the statement is issued. See NASD Rule 2340(c)(1)(B)(2).

8 Rule 415(a)(5) under the Securities Act of 1933 ("Securities Act") provides that certain types of securities offerings, including continuous offerings of DPPs and REITs, may continue for no more than three years from the initial effective date of the registration statement. Under Rule 415(a)(6), the SEC may declare another registration statement for a DPP or REIT effective such that an offering can continue for another three-year offering period.

9 Because NASD Rule 2340(c) permits the use of an estimated value developed from data that are no more than 18 months old, the estimated value from the annual report may be used until up to a year and a half from the conclusion of the offering.

10 FINRA would not consider a last sale price of an unlisted REIT or DPP in the secondary market, by itself, to constitute a reason to believe that an estimate derived by one of the

includes certain disclosures. FINRA proposes two methodologies under which an estimated value would be presumed reliable: (1) net investment; and (2) independent valuation.

The net investment methodology, which may be used for up to two years following the breaking of escrow,[11] would reflect the "net investment" disclosed in the issuer's most recent periodic or current report ("Issuer Report"). "Net investment" must be based on the "amount available for investment" percentage in the "Estimated Use of Proceeds" section of the offering prospectus or, where "amount available for investment" is not provided, another equivalent disclosure.[12] For example, if the prospectus for an offering with a $10 offering price per share disclosed selling commissions totaling 10% of the offering proceeds and organizational and offering expenses of 2%, the amount available for investment would be 88%, or $8.80 per share.

The per share estimated value also must deduct the portion, if any, of cumulative distributions per share that exceeded Generally Accepted Accounting Principles ("GAAP") net income per share for the corresponding period, after adding back depreciation and amortization or depletion expenses. This provision recognizes that depreciation, amortization and depletion expenses reduce net income per share, but are not expenditures and do not impact the issuer's cash reserves. In addition, the deduction for each distribution would be limited to the full

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methodologies set forth in this proposal is unreliable because these transactions often are infrequent and the illiquid nature of the secondary market may result in large discounts from independent valuation prices.

11 Generally, offering proceeds are placed in escrow until the minimum conditions of the offering are met, at which time the issuer is permitted to access the offering proceeds.

12 This disclosure is typically included in the prospectus for REIT offerings and is described in the SEC's Securities Act Industry Guide 5 (Preparation of registration statements relating to interests in real estate limited partnerships). FINRA would permit the use of equivalent disclosure in DPP offerings if the disclosure provides a percentage amount available for investment by the issuer after deduction of organizational and offering expenses.

amount of the distribution. Therefore, even if net income, which may be negative during the two years following the breaking of escrow, with depreciation and amortization or depletion expenses added back in equals a negative number, the required deduction from the net investment amount would be limited to the amount of the distribution (rather than being further reduced by the amount of any negative net income).

The independent valuation methodology, which may be used at any time, would consist of the most recent valuation disclosed in the issuer's periodic or current reports. The independent valuation methodology requires that a third-party valuation expert or experts determine, or provide material assistance in the process of determining, the valuation.[13]

Consistent with the recommendations of the Division prior to the original adoption of paragraph (c), FINRA proposes to retain disclosure requirements relating to the nature and liquidity of DPP and REIT products in customer account statements. Under the proposal, when a customer account statement includes a per share estimated value for an unlisted DPP or REIT security, the statement must: (1) briefly describe the per share estimated value, its source and an explanation of the method by which such per share estimated value was developed; and (2) disclose that the DPP or REIT securities are not listed on a national securities exchange, are generally illiquid and that, even if a customer is able to sell the securities, the price received may be less than the per share estimated value provided in the statement.

When a member refrains from including a per share estimated value in a customer account statement for an unlisted DPP or REIT security, the statement nonetheless must disclose

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[13] Valuation definitions and methodologies for real estate investments generally use GAAP (ASC 820) as a standard. Performance reporting for institutional real estate investments also relies on GAAP as its foundational basis. See Investment Program Association Practice Guidelines 2013-01, entitled "Valuations of Publicly Registered Non-Listed REITs" ("IPA Guidance") (Apr. 29, 2013).

that: (1) unlisted DPP and REIT securities are generally illiquid; (2) the current value of the security will be different than its purchase price and may be less than the purchase price; and (3) if applicable, an estimated per share value of the security currently is not available.[14]

Proposed Amendments to Rule 2310 (Direct Participation Programs)

FINRA Rule 2310(b)(5) (Valuation for Customer Account Statements) generally provides that no member is permitted to participate in a public offering of DPP or REIT securities unless the general partner or sponsor will disclose in each annual report distributed to investors pursuant to Section 13(a) of the Act: (1) a per share estimated value of the securities; (2) the method by which such estimated value was developed; and (3) the date of the data used to develop the estimated value.

FINRA proposes to amend this provision to provide that a member may not participate in a public offering of a DPP or REIT security unless: (A) a per share estimated value is calculated on a periodic basis in accordance with a methodology disclosed in the prospectus, or (B) the general partner or sponsor has agreed to disclose in the first periodic report filed pursuant to Sections 13(a) or 15(d) of the Act after the second anniversary of breaking escrow: (1) a per share estimated value of the DPP or REIT calculated by, or with the material assistance of, a third-party valuation expert;[15] (2) an explanation of the method by which the per share estimated

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14 FINRA also is proposing to amend the definitions of DPP and REIT in Rule 2340(d) to cover such securities if they are "on deposit in a registered securities depository and settled regular way." FINRA does not believe that the treatment of account statement disclosures for unlisted DPP or REIT securities should be different based upon where they are held on deposit or their settlement cycle.

15 The issuer further must agree to ensure that such valuation is conducted at least once every two years, is derived from a methodology that conforms with standard industry practice, and is accompanied by a written opinion to the general partner or sponsor of the program or REIT that explains the scope of the review, the methodology used to develop the valuation and the basis for the per share estimated value.

value was developed; (3) the date of the valuation; and (4) the identity of the third-party valuation expert used. In addition, the general partner or sponsor of the program or REIT must have agreed to ensure that the valuation is conducted at least once every two years; is derived from a methodology that conforms to standard industry practice; and is accompanied by a written opinion to the general partner or sponsor of the program or REIT that explains the scope of the review, the methodology used to develop the valuation, and the basis for the per share estimated value.

Industry Consultation and Alternatives Considered

The proposal is intended to protect the investing public by seeking to ensure that any per share estimated value for an unlisted DPP or REIT security included on a customer's account statement is developed in a manner reasonably designed to ensure that it is reliable. In developing this proposed rule change, FINRA consulted extensively with members and other industry participants, including concerning the issues relevant to the various alternative approaches that were considered. These commenters expressed a variety of opinions concerning what type of valuation should be provided to customers. Specifically, FINRA requested public comment in two Regulatory Notices[16] and met with industry participants, including independent broker-dealers; broker-dealers affiliated with sponsors that act as wholesalers; broker-dealers that specialize in advising boards of directors and general partners; DPP general partners and executives of REITs; clearing firms; and trade association representatives. The comments received in response to the Regulatory Notices are summarized here and discussed in detail in Item II. C. below.

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16 See Regulatory Notice 11-44 (Sept. 2011) ("Notice 11-44") and Regulatory Notice 12-14 (Mar. 2012) ("Notice 12-14").

For example, some commenters to Notice 11-44 favored the use of the gross offering price, while others preferred the use of a net offering price. In Notice 11-44, FINRA proposed to require general securities members that hold DPP or REIT securities in customer accounts to provide a per share estimated value of the security on the account statement only if it appeared in the most recent annual report of the DPP or REIT. Notice 11-44 proposed to prescribe the valuations that could be presented. As a practical matter, the proposal in Notice 11-44 would have required every customer account statement to present the prescribed per share estimated value unless the member had reason to know that it was unreliable.

FINRA considered requiring that every customer account statement provided by a general securities member present a valuation of DPP and REIT securities. Requiring a valuation could provide a level of transparency concerning the value of those securities and the effect of brokerage commissions and other expenses. However, inclusion of a value on customer account statements for unlisted DPPs and REITs is beneficial to investors only if the valuation is reliable. As further discussed below, FINRA has determined not to explicitly require the presentation of a valuation in customer account statements because it could interfere with the objective of ensuring that valuations are reliable.

FINRA believes that a preferable approach is to require that any valuation that is included in a customer account statement has been developed in a manner reasonably designed to ensure that it is reliable, and to prohibit a member from including any valuation that it has reason to believe is unreliable. This approach directly addresses FINRA's concern, which is that members currently are presenting an unreliable valuation (such as the gross offering price) in customer account statements – while also providing members with two possible methodologies that FINRA believe would result in more informative disclosure to investors. Under the

proposal, a methodology developed in a manner reasonably designed to help ensure that it is reliable may be used (unless the member has reason to believe that the valuation is unreliable).

While the proposal would permit a member to develop its own methodology, FINRA expects that, in almost all cases, members would rely on the methodologies suggested by the proposal, both of which would be derived by the program sponsor. Currently, Rule 2340 permits members to present a valuation from an independent valuation service or some other source. When the provision was adopted in 2000, it was unclear whether members would rely on the valuation stated in the annual report, calculate their own valuation, or utilize a valuation service. Experience with the rule since its original adoption has shown that the consistent industry practice is to present the value in the program's annual report. If the proposal were adopted, FINRA believes that members would continue to present the valuation in the program's periodic reports.

Nevertheless, optionality is necessary to ensure that the valuation is reliable. The proposal would prohibit a member from presenting a valuation that it has reason to believe is unreliable. Thus, if FINRA requires presentation of a valuation, then in some circumstances a member might have to weigh two conflicting obligations, to present a valuation or to exclude one that, in the member's judgment, might be unreliable.

The question of whether a valuation is "unreliable" may be difficult under particular facts. It would require consideration of the circumstances under which it was developed, the evidence of any "red flags" that indicate it may be unreliable and the significance of various aspects of the methodology. The difficulty is compounded by the fact that the valuation has been developed by the sponsor, not the member. FINRA believes that if presentation of a valuation was optional, then the rule would not deter the member from following up on red flags and excluding a valuation that it has reason to believe is unreliable. FINRA believes that a

requirement to present the valuation would place the member in a conundrum: Should it exclude a suspicious valuation based upon the limited facts at its disposal, or must it present the valuation because the rule requires it? FINRA believes that a requirement that might discourage members from being vigilant would not be consistent with the objective of investor protection.

FINRA believes that members and program sponsors have a strong incentive to provide these valuations; they know that their customers react very negatively to seeing their positions shown without a value. If the Commission approves the proposal, FINRA will monitor for changes to business practices and, if there is a significant shift to not presenting a valuation, then FINRA will reconsider the optional nature of the proposal.

FINRA recognizes that the question of whether to require a valuation in all customer account statements of a general securities member is fundamental to the proposal. FINRA will carefully review any comments on whether a valuation should be required and whether valuations will continue to be made available.

Among others, FINRA consulted extensively with the Investment Program Association's ("IPA") Task Force on Account Statement Reporting. On January 31, 2013, the IPA sent a letter proposing "possible solutions which achieve [FINRA's] regulatory objectives and enhance transparency, accuracy and understandability of account statement reporting for investors."[17] The IPA suggested that account statements reflect a net offering price until the earlier of (1) an appraisal-based valuation of the securities is published in the issuer's periodic or current report, or (2) the filing of the issuer's first periodic report following the first anniversary of the date when initial escrow is released to commence investments. The IPA proposed to define "net offering price" as the gross offering price less sales commissions and dealer manager fees (i.e.,

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[17] See Letter from IPA Task Force on Account Statement Reporting, to Robert L.D. Colby, Chief Legal Officer, FINRA, dated January 31, 2013.

front-end underwriting compensation expenses as defined in Rule 2310(b)(4)(c)(ii)) reimbursed or paid for with offering proceeds.

The IPA suggested that, following the filing of the issuer's first periodic report after the first anniversary of the breaking of escrow, the net offering price included on a customer account statement should be reduced to reflect that portion, if any, of cumulative distributions to investors through the anniversary of the breaking of escrow which was provided from borrowings, net offering proceeds, returns of capital in distributions from asset sales proceeds, or stock dividends. Such an adjustment would capture any dilution of per share value resulting from unearned distributions in the initial year following breaking of escrow. The IPA suggested that after the filing of the second periodic report following the second anniversary of the effective date of the first registration of the offering, the account statement should reflect the per share estimated value.

The IPA also recommended amending FINRA Rule 2310(b)(5) to prohibit a member from participating in an offering unless the general partner or sponsor of the REIT or DPP agrees to provide a per share estimated value no later than the filing of the second periodic report following the second anniversary of the effective date of the first registration of the offering. As noted earlier, FINRA proposes to prohibit a member from participating in an offering unless the general partner or sponsor of the REIT or DPP agrees to provide a per share estimated value in a periodic report filed pursuant to Section 13(a) or 15(d) of the Act, no later than the second anniversary of breaking escrow and in each annual report thereafter.

On April 29, 2013, the IPA issued its IPA Guidance recommending that REITs, subject to the approval of a valuation committee and its board of directors, engage a third-party valuation

expert to assist in the process of determining an estimated per share value.[18] The IPA Guidance generally recommends that the independent third party be a qualified firm with substantial and demonstrable expertise in valuation of assets or investments similar to those owned by the REIT, that the valuation be first conducted after the closing of the REIT's initial public offering and at least once every two years thereafter, that it be conducted in accordance with the standards of the Appraisal Institute,[19] and that it be certified by a member of the Appraisal Institute with an appropriate designation.

Similarly, the proposed amendments to Rule 2310 would require that the general partner or sponsor of the REIT or program agree to ensure that the valuation is conducted at least once every two years, is derived from a methodology that conforms to standard industry practice, and is accompanied by a written opinion to the general partner or sponsor of the program or REIT that explains the scope of the review, the methodology used to develop the valuation, and the basis for the per share estimated value. The proposed rule change also builds upon the IPA Guidelines by offering a set of valuation methodologies that are similar, but somewhat more expansive.[20]

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18 See IPA Guidance at supra note 13.

19 The Appraisal Institute is a trade organization that, among other things, focuses on education, testing, experience and demonstration of knowledge, understanding and ability for real estate appraisers.

20 For example, the net investment methodology suggested by the IPA would not deduct distributions until the end of the first year, whereas the current proposal provides for such deductions immediately. FINRA believes that investors will be better served by understanding immediately the effect of a return of capital as a distribution (rather than the use of the capital to generate a return on investment) on the value of their investment. Since expenses, other than those for distribution – such as program management fees – may contribute to a return on investment, the current proposal would not deduct those fees in the net investment calculation.

As further discussed in Item II. B. below, FINRA does not believe that the proposal will cause a significant economic impact on members. The current rule, and each of the previously proposed approaches to estimated valuation, requires the inclusion of estimated valuations in customer account statements in certain circumstances. In contrast, the proposal would remove this requirement, while allowing all members to voluntarily provide estimated values. Neither the disclosure requirements nor the proposed amendments to Rule 2310 should impose a significant economic impact on members. The Rule 2310 amendments generally build upon the existing requirements and are consistent with the IPA's guidance. The disclosures proposed by the amendments are substantially similar to those in the existing rule.

The effective date of the proposed rule change will be announced in a Regulatory Notice no later than 90 days following Commission approval. In order to give industry participants time to make changes to distribution agreements they may wish to implement in response to the amendments, the effective date of the proposed rule change will be no earlier than 180 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed rule change is necessary for the protection of investors in unlisted DPP and REIT securities in that it seeks to ensure that per share estimated values for unlisted DPP and REIT securities included on customer account statements have been developed in a manner

[21] 15 U.S.C. 78o–3(b)(6).

reasonably designed to ensure their reliability. The proposed rule change also would eliminate the current requirement that members must, at a minimum, include on customer account statements the per share estimated value of these securities when a value appears in the annual report. For the reasons explained earlier, FINRA has determined not to explicitly require the presentation of a valuation in customer account statements because it could interfere with the objective of ensuring that valuations are reliable. Instead, under the proposal, a general securities member would not be required to include in a customer account statement a per share estimated value for an unlisted DPP or REIT security, but any member (not only a general securities member) may choose to do so if the value has been developed in a manner reasonably designed to ensure that it is reliable, the member has no reason to believe that it is unreliable, and the account statement includes certain disclosures.

In addition, the proposed rule change would ensure that customers continue to receive meaningful information about the nature of DPPs and REITs where a value is not included and, when a value is provided, the source of the per share estimate, the methodology by which it is developed and the illiquid nature of the securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, FINRA believes that this proposed rule change is necessary for the protection of investors in unlisted DPP and REIT securities who currently often receive unreliable per share estimates on their customer account statements. Further, the proposed rule change treats all general securities members uniformly, including in cases where the general securities member voluntarily refrains from including a per share estimate, which is permissible under the proposal.

Each general securities member may choose either to: refrain from including a per share estimated value (though the member must include the required disclosures, which are substantially similar to those currently required); choose from one of the methodologies described in the proposed rule change (so long as the member has no reason to believe it is unreliable);[22] or provide a per share estimated value that is derived from some other methodology that was developed in a manner reasonably designed to ensure that it is reliable (and so long as the member has no reason to believe that it is unreliable).

Irrespective of the methodology used, any member choosing to include a per share estimated value on a customer account statement must provide the disclosures required under the proposed rule, which also are substantially similar to those currently required. Therefore, FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In September 2011, FINRA published Notice 11-44 requesting comment on proposed amendments to NASD Rule 2340(c). The comment period expired on November 12, 2011, and FINRA received 25 comments.[23] In March 2012, FINRA published Notice 12-14, which re-

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22 FINRA also notes that the methodologies proposed are intended to provide general securities members with two acceptable approaches where they choose to continue to include per share estimated values on customer account statements. Such guidance was requested by commenters to the prior proposals, as further discussed in Item II. C. below.

23 See Letters to Marcia Asquith, Senior Vice President and Corporate Secretary, FINRA, from: Ryan Bakhtiari, President, Public Investors Arbitration Bar Association ("PIABA"), dated November 11, 2011; David Bellaire, General Counsel and Director of Government Affairs, Financial Services Institute, dated November 11, 2011; Stephanie Brown, Managing Director and General Counsel, LPL Financial, dated November 12, 2011; Richard Chess, President, Real Estate Investment Securities Association ("REISA"), dated November 12, 2011; Ryan Conley, Senior Vice President, Franklin Square Holdings, L.P. ("Franklin Square"), dated November 11, 2011; Martel Day,

proposed amendments to NASD Rule 2340(c) in light of comments received in response to Notice 11-44. The comment period expired on April 11, 2012, and FINRA received 17 comments.[24] A summary of the comments and FINRA's response is provided below.

Chairman, IPA, dated November 11, 2011; DFPG Investments, Inc., undated; Daniel Gilbert and Timothy O'Toole, NorthStar Realty Finance ("NorthStar"), dated November 11, 2011; Jon Hale, President, Partnership Consultants, Inc., dated November 11, 2011; Jon Hale, President, Partnership Consultants, Inc., dated November 11, 2011; Jack Herstein, President, North American Securities Administrators Association, Inc. ("NASAA"), dated November 18, 2011; David Hirschmann, President and Chief Executive Officer, U.S. Chamber of Commerce, dated November 11, 2011; Charlie Howell and Laura Stankosky; William Jacobson and Brittany Ruiz, Cornell University Law School, dated November 11, 2011; John Kearney, General Counsel, Research and Due Diligence Association, Inc., dated November 11, 2011; Randy Lewis, President, Ascent Real Estate Securities, LLC, dated November 11, 2011; Thomas Price, Managing Director, Securities Industry and Financial Markets Association ("SIFMA"), dated November 10, 2011; Prodigious, LLC ("Prodigious"), dated November 11, 2011; Jeffrey Rubin, Federal Regulation of Securities Committee Chair, American Bar Association ("ABA"), dated November 16, 2011; Nicholas Schorsch and Michael Weil, American Realty Capital, dated November 11, 2011; James Stanfield, Chief Executive Officer, VSR Financial Services, Inc., dated November 11, 2011; Gordon Taylor, Vice President and Chief Compliance Officer, Dividend Capital Securities LLC, dated November 17, 2011; Steven Wechsler, President and CEO, National Association of Real Estate Investment Trusts ("NAREIT"), dated November 11, 2011; Daniel Wildermuth, Chief Executive Officer, Kalos Financial, undated; and W.P. Carey & Co. LLC ("W.P. Carey"), dated November 11, 2011.

[24] See Letters to Marcia Asquith, Senior Vice President and Corporate Secretary, FINRA, from: Ryan Bakhtiari, President, PIABA, dated April 11, 2012; Martel Day, Chairman, IPA, dated April 11, 2012; Michael Forman, Chief Executive Officer, Franklin Square, dated April 11, 2012; Mark Gatto and Michael Reisner, ICON Investments, dated April 12, 2012; Daniel Gilbert and W. Timothy Toole, NorthStar, dated April 11, 2012; Jon Hale, President, Partnership Consultants, Inc., dated March 22, 2012; Jack Herstein, NASAA, dated April 11, 2012; David Hirschmann, President and Chief Executive Officer, U.S. Chamber of Commerce, dated April 11, 2012; Daniel Oschin, President, REISA, dated April 11, 2012; Prodigious, dated April 12, 2012; Jeffrey Rubin, Federal Regulation of Securities Committee Chair, ABA, dated April 9, 2012; Nicholas Schorsch and Michael Weil, American Realty Capital, dated April 11, 2012; Steven Wechsler, President and CEO, NAREIT, dated April 11, 2012; and W.P. Carey, dated April 11, 2012.

See also Letters to Robert Colby, Chief Legal Officer, FINRA, from: IPA Task Force on Account Statement Reporting, IPA, dated January 31, 2013; Steven Wechsler, President and CEO, NAREIT, dated March 8, 2013; and Mark Goldberg, Chairman, IPA, dated

Notice 11-44 Proposal

In Notice 11-44, FINRA proposed several modifications to NASD Rule 2340 that were designed to improve the quality of the information provided to customers on account statements. The amendments proposed in Notice 11-44 would have limited the period of time during which per share estimated values could be based on the gross offering price to the initial three-year offering period provided for under Rule 415(a)(5) of the Securities Act. These amendments also would have required firms to deduct organization and offering expenses from the gross offering price to arrive at a per share estimated value (i.e., a net offering price). In addition, these amendments would have prohibited a firm from using a per share estimated value from any source, if it "knows or has reason to know the value is unreliable," based upon publicly available information or nonpublic information that came to the firm's attention. Finally, in Notice 11-44 FINRA proposed to permit members to refrain from providing a per share estimated value on a customer account statement if the most recent annual report of the DPP or REIT did not contain a value that complied with the disclosure requirements of NASD Rule 2340.

While commenters generally supported the proposed changes in Notice 11-44, the most notable comments concerned using a value other than the public offering price during the initial offering period and imposing an affirmative duty on members to monitor and confirm the reliability of the per share estimated value given the proposed requirement that the member must refrain from using the value if it knows or "had reason to know" that the value was unreliable.[25]

January 14, 2013.

[25] ABA and SIFMA.

Notice 12-14 Proposal

FINRA considered the comments received in response to Notice 11-44 and issued Notice 12-14 reflecting changes that were responsive to the comments received. Under the revised proposal in Notice 12-14, general securities members would no longer be required to provide a per share estimated value, unless and until the issuer provided an estimate based on an appraisal of assets and liabilities in a periodic or current report. During the initial offering period, member firms would have the option of using a modified net offering price or designating the securities as "not priced." The revised proposal also modified the account statement disclosures that accompany per share estimated values. Notice 12-14 also included alternative disclosure requirements for DPPs or REITs that calculate a daily net asset value ("NAV").

While most commenters supported the use of a modified net offering price on the customer account statement during the initial offering period,[26] some commenters requested that FINRA change the proposed rule language to uniformly state whether the net offering price should exclude fees other than front-end underwriting compensation expenses, as opposed to requiring it "at a minimum."[27]

Further, while some commenters supported FINRA's proposed use of a "not priced" option,[28] other commenters objected to members designating securities as "not priced" on the customer account statement.[29] In light of these comments, FINRA's proposal would, as described above, allow members to choose to not provide a per share estimated value for an

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26 American Realty Capital, NAREIT, REISA and U.S. Chamber of Commerce.

27 NASAA and NorthStar.

28 ABA and NASAA.

29 Franklin Square, IPA, NAREIT, NorthStar and PIABA.

unlisted DPP or REIT security on the customer account statement, but any member could do so if the value has been developed in a manner reasonably designed to ensure that it is reliable, the member has no reason to believe that it is unreliable, and the account statement includes certain disclosures.

FINRA received several comments on the use of a per share estimated value based upon an appraisal or valuation of the program's assets and operations. While some objected,[30] several commenters supported the use of a per share estimated value, as proposed,[31] while others suggested that FINRA require the use of an independent third-party valuation service to provide the value.[32] Some commenters requested that FINRA, at a minimum, clarify whether it would create or require members to use a standardized valuation methodology.[33] In view of the broad range of DPPs and REITs existing in the marketplace, FINRA believes that the current proposal permits flexibility in choosing a methodology for developing an independent valuation.

Several commenters requested that FINRA broaden the proposal to accommodate programs, such as business development companies that use a NAV on a periodic basis.[34] The new proposed amendments do not specify the use of a daily NAV, but rather would accommodate any DPP or REIT that provides a per share estimated value reflecting a valuation disclosed in the issuer report where a third-party valuation expert or experts determine, or provide material assistance in the process of determining, the valuation.

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30 ABA, ICON Investments, IPA and NAREIT.

31 American Realty Capital and W.P. Carey.

32 NASAA.

33 NASAA and Prodigious.

34 American Realty Capital, IPA, and NAREIT.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Two commenters requested that the Commission provide a 90-day comment period for the proposal, arguing that the rule was complex and technical. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 provides for 45 days (with a possible extension up to 90 days) for the Commission to act on proposed SRO rule changes. In light of this statutory deadline, the Commission is not extending the comment period at this time.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2014-006 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2014-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-FINRA-2014-006 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill
Deputy Secretary

[35] 17 CFR 200.30-3(a)(12).