UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

December 10, 2012

Ms. Kris Dailey
Vice President, Risk Oversight & Operational Regulation
FINRA
One World Financial Center
200 Liberty Street
New York, NY 10281

Re: Request for No-Action Relief with Respect to Classification of Certain Persons as Owners of Broker-Dealers for Purposes of Exchange Act Rules 15c3-1 and 15c3-3

Dear Ms. Dailey:

In your December 10, 2012 letter, you request assurance that the staff of the Division of Trading and Markets (the "Division") would not recommend enforcement action to the Securities and Exchange Commission ("Commission" or "SEC") if a broker-dealer ("Broker-Dealer") registered with the Commission pursuant to Section 15 of the Securities Exchange Act of 1934 ("Exchange Act") were to classify certain persons as its owners (and not customers[1]) for purposes of Exchange Act Rule 15c3-3, and their respective contributions in the firm as equity capital for purposes of Exchange Act Rule 15c3-1, under the facts and representations set forth in your letter.

More specifically, you have inquired about a situation in which a Broker-Dealer establishes one or more classes of ownership and the relationship between the Broker-Dealer and such persons that fall within such classes of ownership[2] resembles the relationship between a Broker-Dealer and a customer. Further, you have expressed concern that absent the existence of specific written agreements between the Broker-Dealer and such persons, outlining the nature of the relationship and other applicable conditions of the arrangement, the treatment of such persons' contribution in the Broker-Dealer as equity capital of the Broker-Dealer may be incorrect. Finally, you have described certain facts and conditions that you believe must be present in these arrangements in order for the Broker-Dealer to be able to classify such persons as owners

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1 As used in this letter, the term "customer" shall have the meaning set forth in paragraph (a)(1) of Exchange Act Rule 15c3-3. See 17 CFR 240.15c3-3(a)(1).

2 For purposes of this letter, "persons" having such ownership includes natural persons and entities.

(and not customers) for purposes of Rule 15c3-3, and their contributions in the firm as equity capital for purposes of Rules 15c3-1.[3]

After considering your letter, the Division would not recommend enforcement action to the Commission if the Broker-Dealer were to classify a person in one or more classes of ownership of the Broker-Dealer as an owner of the firm (and not a customer) for purposes of Rule 15c3-3, and such person's contributions in the firm as equity capital for purposes of Rule 15c3-1, based on the facts and representations in your letter, set forth below:

1. The Broker-Dealer obtains an opinion of independent legal counsel that:

    a. it is duly formed, validly existing, and in good standing; and

    b. its governing documents, such as its Articles of Formation, By-Laws, Operating Agreement or Partnership Agreement, as the case may be, are enforceable in accordance with their terms, each in the jurisdiction in which the Broker-Dealer was formed, organized or incorporated.

2. Upon request by the SEC or FINRA, the Broker-Dealer must be able to establish that the person is an equity participant in the firm under applicable law in the jurisdiction in which the Broker-Dealer was formed, organized, or incorporated.

3. The relationship between the person and the Broker-Dealer, and all applicable conditions of the arrangement, must be documented in an executed writing wherein the parties agree and acknowledge that:

    a. the person is not a customer of the Broker-Dealer with respect to any such contributions, any subsequent contributions, as well as any profits with respect thereto, and, such contributions, any subsequent contributions, as well as any profits with respect thereto:

        i. are not protected under Exchange Act Rule 15c3-3; and

        ii. will not be protected by the Securities Investor Protection Act of 1970;

    b. the person's contributions in the Broker-Dealer, any subsequent contributions, as well as any profits with respect thereto are subject to all risks of the Broker-Dealer's business;

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[3] Whether a person is a customer or an owner might also have implications under the margin rules of the Board of Governors of the Federal Reserve System. See Regulation T, 12 CFR 220 (2010).

c. the person's contributions in the Broker-Dealer, and any subsequent contributions:

i. may not be withdrawn for a period of one year from the time such contributions are made, unless permitted in writing by the Broker-Dealer's designated examining authority; and

ii. any withdrawal shall be subject to all regulatory restrictions and requirements to which the Broker-Dealer may be subject;

d. the written agreement between the parties represents the entire agreement with respect to these matters.

4. The person annually thereafter re-affirms in writing his/her understanding of, and agreement with, the terms and conditions of the executed agreement as referenced in Item 3 above.[4]

5. The Broker-Dealer ensures that the person is appropriately registered with its designated examining authority for any activity performed by the person for which registration is required (for example, Equity Trader (Series 55) registration). If the person is not a natural person, each person authorized to perform any activity for which registration is required on behalf of that person must be so registered. Further, the Broker-Dealer has implemented a system of supervisory compliance and controls that applies to such activities of the person and all others authorized to perform such activities on behalf of that person.

This letter does not address whether the arrangements contemplated herein would constitute an offering, or whether such offering would need to be registered, for the purposes of the Securities Act of 1933. The Division notes that the Broker-Dealer must at all times be in compliance with all applicable Commission and self-regulatory organization laws, rules, and regulations, including net capital, books and records, and early warning provisions. The Division's position that it would not recommend enforcement action to the Commission is confined to the facts and representations contained in your letter.[5] Any material change in circumstances may warrant a different

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[4] The Broker-Dealer must retain original copies of all agreements and acknowledgements between the Broker-Dealer and each person, and annual confirmations by each person, in accordance with applicable Commission and self-regulatory organization books and records requirements. See, e.g., 17 CFR 240.17a-3 and 17a-4.

[5] Different facts and representations (for example, if the person's contributions were at risk only with respect to trading losses incurred by that person; if such contributions could not be used by the Broker-Dealer for general business purposes; or if the person's contributions were not subject to firm-wide risks, including the risk of trading losses incurred by other equity participants or

conclusion and should be brought immediately to the Division's attention. Furthermore, this response expresses the Division's position on enforcement action only, and does not purport to express any legal conclusions on the question presented.

Sincerely yours,

Michael A. Macchiaroli
Associate Director

other persons associated with the firm) would raise serious concerns and could lead the staff to reach a different conclusion with respect to recommending enforcement action.

Financial Industry Regulatory Authority

December 10, 2012

Mr. Michael A. Macchiaroli
Associate Director
The Securities and Exchange Commission
The Division of Trading and Markets
100 F Street, North East
Washington, D.C. 20549

Re: Request for No-Action Relief with Respect to Classification of Certain Persons as Owners of Broker-Dealers for Purposes of Exchange Act Rules 15c3-1 and 15c3-3

Dear Mr. Macchiaroli:

The staff of the Financial Industry Regulatory Authority, Inc. ("FINRA") respectfully requests that the staff of the Division of Trading and Markets (the "Division") of the Securities and Exchange Commission ("Commission" or "SEC") provide assurances that it would not recommend enforcement action to the Commission if a broker-dealer ("Broker-Dealer") registered with the Commission pursuant to Section 15 of the Securities Exchange Act of 1934 ("Exchange Act") were to classify certain persons as its owners (and not customers[1]) for purposes of Exchange Act Rule 15c3-3, and their respective contributions in the firm as equity capital for purposes of Exchange Act Rule 15c3-1, if such Broker-Dealer satisfies the conditions set forth below.

Specifically, in the course of surveillance and examination activities, FINRA staff has observed situations in which a Broker-Dealer establishes one or more classes of ownership, whereby the relationship between the Broker-Dealer and the persons that fall within such classes of ownership[2] resembles the relationship between a Broker-Dealer and a customer. FINRA staff is concerned that, absent the existence of specific written agreements between the Broker-Dealer and such persons, outlining the nature of the relationship and other applicable conditions of the arrangement, the treatment of such persons' contributions in the Broker-Dealer as equity capital of the Broker-Dealer may be incorrect. FINRA staff has identified certain facts and conditions that FINRA staff believes must be present in these arrangements in order for the Broker-Dealer to be able to classify such persons as owners (and not customers) for purposes of Rule 15c3-3, and

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1 For purposes of this letter, the term "customer" has the meaning set forth in paragraph (a)(1) of Exchange Act Rule 15c3-3. See 17 CFR 240.15c3-3(a)(1).

2 For purposes of this letter, "persons" having such ownership includes natural persons and entities.

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their contributions in the firm as equity capital for purposes of Rule 15c3-1.[3] The facts and conditions that FINRA staff has so identified are as follows:

1. The Broker-Dealer obtains an opinion of independent legal counsel that:

    a. it is duly formed, validly existing, and in good standing; and

    b. its governing documents, such as its Articles of Formation, By-Laws, Operating Agreement or Partnership Agreement, as the case may be, are enforceable in accordance with their terms, each in the jurisdiction in which the Broker-Dealer was formed, organized or incorporated.

2. Upon request by the SEC or FINRA, the Broker-Dealer must be able to establish that the person is an equity participant in the firm under applicable law in the jurisdiction in which the Broker-Dealer was formed, organized, or incorporated.

3. The relationship between the person and the Broker-Dealer, and all applicable conditions of the arrangement, must be documented in an executed writing wherein the parties agree and acknowledge that:

    a. the person is not a customer of the Broker-Dealer with respect to any such contributions, any subsequent contributions, as well as any profits with respect thereto, and, such contributions, any subsequent contributions, as well as any profits with respect thereto:

        i. are not protected under Exchange Act Rule 15c3-3; and

        ii. will not be protected by the Securities Investor Protection Act of 1970;

    b. the person's contributions in the Broker-Dealer, any subsequent contributions, as well as any profits with respect thereto are subject to all risks of the Broker-Dealer's business;

    c. the person's contributions in the Broker-Dealer, and any subsequent contributions:

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[3] FINRA staff notes that whether a person is a customer or an owner might also have implications under the margin rules of the Board of Governors of the Federal Reserve System. See Regulation T, 12 CFR 220 (2010).

i. may not be withdrawn for a period of one year from the time such contributions are made, unless permitted in writing by the Broker-Dealer's designated examining authority; and

ii. any withdrawal shall be subject to all regulatory restrictions and requirements to which the Broker-Dealer may be subject;

d. the written agreement between the parties represents the entire agreement with respect to these matters.

4. The person annually thereafter re-affirms in writing his/her understanding of, and agreement with, the terms and conditions of the executed agreement as referenced in Item 3 above.[4]

5. The Broker-Dealer ensures that the person is appropriately registered with its designated examining authority for any activity performed by the person for which registration is required (for example, Equity Trader (Series 55) registration). If the person is not a natural person, each person authorized to perform any activity for which registration is required on behalf of that person must be so registered. Further, the Broker-Dealer has implemented a system of supervisory compliance and controls that applies to such activities of the person and all others authorized to perform such activities on behalf of that person.

We appreciate the Division's consideration of this request. If you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Sincerely,

Krisoula Dailey
Vice President
Member Regulation, Risk Oversight & Operational Regulation

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[4] The Broker-Dealer must retain original copies of all agreements and acknowledgements between the Broker-Dealer and each person, and annual confirmations by each person, in accordance with applicable Commission and self-regulatory organization books and records requirements. See, e.g., 17 CFR 240.17a-3 and 17a-4.