



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street N.E., Suite 1140

Washington, D.C. 20002

202/737-0900

Fax: 202/783-3571

www.nasaa.org

November 17, 2011

Via Electronic Submission to comments@sec.gov

Elizabeth M. Murphy, Secretary
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number: SR-FINRA-2011-057; Private Placements of Securities.

Dear Ms. Murphy:

The North American Securities Administrators Association, Inc. (“NASAA”)¹ submits the following comments in response to FINRA’s above referenced proposal to adopt new FINRA Rule 5123 to require members and associated persons that offer or sell certain private placements to provide relevant disclosure to each investor prior to sale. (“the Proposal”). NASAA generally supports FINRA’s efforts to increase the disclosure of information pertinent to the offer and sale of private placements. However, NASAA also continues to support a requirement that these securities be subject to substantive regulatory review. NASAA believes that this Proposal, although a good start, stops short of addressing the issues inherent in unreviewed private placements. Below we set forth several ways to further enhance investor protection both within the context of the above referenced proposal and in future rulemakings.

Investor protection. Despite the increased level of disclosure mandated by this Proposal, investors in private placements will still be investing in securities that have not been substantively reviewed by any regulator. NASAA remains concerned about the regulatory gaps that exist in the current federal laws governing private placements. Thus, while applauding this initial step by FINRA, NASAA urges the Commission and FINRA to consider more substantive steps to increase investor protections with respect to private placements, including instituting a system for pre-offer and pre-sale review.

¹ NASAA is the association of all state, provincial, and territorial securities regulators in North America. Its membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Their core mission is protecting investors from fraud and abuse in the offer and sale of securities. Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

The use of offering proceeds. FINRA Rule 5122 contains a requirement that at least 85 percent of the offering proceeds of a “Member Private Offering”² may not be used to pay for offering costs and compensation, and must be used for business purposes disclosed in the offering document. (“the 85 percent rule”). In Regulatory Notice 11-04, FINRA proposed to expand this provision to cover all private placements in a revised Rule 5122.

In the current proposal, FINRA, responding to public comment, has retreated from its efforts to expand this important provision. Although the Proposal as drafted facilitates more disclosure, it lacks the substantive regulation provided by the previously proposed expansion of the 85 percent rule. In the interest of investor protection, NASAA strongly urges FINRA to reconsider this decision.

Use of finders. Insofar as the Proposal requires compensation disclosure for funds provided to finders and solicitors, NASAA applauds FINRA’s efforts. However, NASAA stresses that such disclosure does not replace or supplant the need for a licensing registration of finders and solicitors by FINRA. In fact, under state law individuals or firms providing such services may be required to register as a broker-dealer and/or agent.

No disclosure of risks required. The Proposal would require member firms to disclose the anticipated use of offering proceeds, expenses, and compensation. However, NASAA notes that the Proposal does not require member firms to disclose the risks associated with the private placement. Knowledge of potential risks, such as liquidity issues or lack of operating history, is fundamental to a potential investor’s evaluation of a private placement and the decision of whether to invest.

The exemptions almost subsume the Proposal. NASAA believes that the specific carve outs in this Proposal are too extensive. For instance the proposal excludes modified insurance contracts, short term promissory notes, limited partnership shares, direct participation programs, commodity pools, and credit and derivative products, all of which have extensive negative regulatory histories. We suggest that strengthening the Proposal by limiting these exemptions would better fight investor fraud.

NASAA is also concerned that FINRA’s Proposal could potentially be read by member firms to exclude structured products as “credit and derivative” securities. FINRA and the SEC have both issued notices and studies regarding the extreme risks of investing in structured products and NASAA firmly believes that structured products should not be exempt from this Proposal.

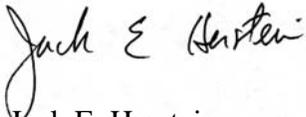
Clarification is necessary for secondary transactions of private placements. NASAA suggests that further clarification be offered by FINRA as to whether and when this Proposal would affect secondary transactions of private placements through broker- dealers.

² See FINRA Rule 5122(a)(1) (“A ‘member private offering’ means a private placement of unregistered securities issued by a member or a control entity.”).

Confidentiality exemption. The reasoning offered by commenters concerning the need for confidentiality as to the proposed filings is highly concerning to NASAA. Concerns about civil litigation discovery should not outweigh investor protection. If an investor cannot compare what the broker-dealer filed with what was actually distributed to him or her, how can we claim that the Proposal will protect investors? Investors and their counsel have a right to have easy access to filings made with FINRA. Moreover, the “confidentiality” language in the Proposal must not be used as a shield prohibiting regulators from obtaining those filings. NASAA believes that, in the interest of maximizing inter-agency investor protection efforts, any and all filings should be provided to other regulators, including the state securities regulators, upon request.

Thank you for considering our comments. Should you have any questions regarding the comments in this letter, please do not hesitate to contact John Cronin, NASAA Broker-Dealer Section Chair, at John.Cronin@state.vt.us or 802-828-4857. Alternatively, you may contact Joseph Brady, NASAA General Counsel, at jb@nasaa.org or 202-737-0900.

Sincerely,

A handwritten signature in black ink that reads "Jack E. Herstein". The signature is written in a cursive style with a large initial "J".

Jack E. Herstein
NASAA President and
Assistant Director, Nebraska Department of Banking and Finance Bureau of Securities