



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

*Via Electronic Submission to [comments@sec.gov](mailto:comments@sec.gov)*

April 23, 2012

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

**Re: Private Placements - Partial Amendment of SR FINRA 2011-057  
Release No. 34-66203, January 19, 2012**

Dear Ms. Murphy:

The North American Securities Administrators Association, Inc. (“NASAA”)<sup>1</sup> appreciates the opportunity to comment on the above-referenced proposal. NASAA filed its first comment letter on the original proposal on November 17, 2011 and now submits the following comments on the Partial Amendment.

NASAA generally supports FINRA’s efforts to increase disclosures of information to investors in private placements through the proposed Rule 5123. NASAA also believes that providing information to FINRA will give it useful tools for identifying high-risk activities by its member firms. However, NASAA believes that the following concerns, initially raised in its November 17, 2012 letter, have not been adequately addressed by the Partial Amendment:

- The lack of substantive review of private placements by any regulator;
- The retreat from the requirement that 85% of the proceeds be used for the business purposes disclosed in the offering document;
- That persons acting as finders may still be subject to state registration requirements;
- The rule does not require firms to disclose the risks associated with private placements;
- The exemptions to the proposed rule are too extensive; and
- The confidentiality provisions should not outweigh investor protection and should not be used to prohibit information sharing with the states.

---

<sup>1</sup> 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.

Dear Ms. Murphy:  
Release No. 34-66203  
Page 2 of 2

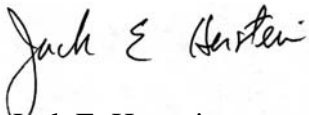
In the letter to the Securities & Exchange Commission dated January 19, 2012, FINRA acknowledged that there are significant concerns about private placements. FINRA stated that it received over 1100 complaints in 2011 concerning private placements, and that it had over 250 open investigations of these matters. FINRA also noted that in 2010, state regulators brought over 250 actions involving Rule 506 or Regulation D offerings.

It is disappointing, therefore, to see that although FINRA acknowledges the problems and potential for fraudulent activity involving private placements, the proposed Rule 5123 has been significantly weakened through the Partial Amendment instead of strengthened for protection of investors. NASAA believes that the changes proposed in the Partial Amendment of January 19, 2012 do not provide material gains in the area of protecting investors who are offered and sold private placements through brokers and dealers and are insufficient to promote confidence in the markets. Although FINRA's original rule proposal from March 2011 contained more significant steps towards investor protection, NASAA views the Partial Amendment as highly watered down and a step in the wrong direction towards dealing with fraud in Regulation D and other private placements.

NASAA believes that improving investor protections and preventing fraud promotes confidence in the market, which in turn creates the foundation for improving capital formation. Therefore, NASAA is disappointed that the Proposed Amendment does not address the concerns raised in its November 17, 2011 comment letter and does not take a strong stand to improve investor protections.

Please do not hesitate to contact the undersigned regarding this matter.

Sincerely,



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