



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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April 11, 2012

Via electronic submission to pubcom@finra.org

Ms. Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington DC 20006-1506

RE: Comments in Response to Regulatory Notice 12-14

Dear Ms. Asquith:

NASAA Jurisdictions review unlisted DPP and REIT offerings to assess whether disclosure is adequate and the terms are fair to investors. NASAA is concerned about inconsistent and inaccurate valuation methods presently utilized by issuers and member firms to present investment values on customer account statements. We support the efforts of FINRA in Regulatory Notice 12-14 and the proposed amendments to NASD Rule 2340, which we believe will improve customer comprehension of the value of investments held in their accounts. We are confident that a more uniform and accurate valuation method proposed by FINRA will inure to the benefit of issuers, FINRA member firms, and investors. NASAA respectfully offers the following comments and suggestions to further enhance the transparency and accuracy of customer account statement reporting.

NASAA understands that Regulatory Notice 12-14 is an extension of Regulatory Notice 11-44, for which we previously wrote a letter of support. We also understand that Notice 12-14 makes a number of modifications to Notice 11-44, which we would like to address in turn:

1. NASAA continues to support Regulatory Notice 11-44's proposed limit on the period during which a per share estimated value based on the net offering price may be included on a customer account statement to the Initial Offering Period. We also continue to support the proposal in Notice 11-44 that following the Initial Offering Period, a per share estimated value included on a customer account statement must be based on an appraisal of a DPP's or REIT's assets, liabilities and operations. NASAA suggests that FINRA add a requirement that such appraisals must be conducted by qualified independent appraisers, using Rule 2-01 of Regulation S-X, or a similar rule, as guidance. NASAA also suggests that the selection criteria for those portfolio assets to be appraised

be set by rule in order to help alleviate any conflicts of interest the appraiser and the issuer may have in manipulating its net offering price or NAV in future periods.

2. Regulatory Notice 11-44 defined “net offering price” as the gross offering price less “all organization and offering expenses,” which include “(1) issuer expenses that are reimbursed or paid for with offering proceeds, (2) underwriting compensation, and (3) due diligence expenses.” Regulatory Notice 12-14 redefines “net offering price” as “gross offering price less any front-end underwriting compensation expenses.”

NASAA understands, as some commenters argued in response to Notice 11-44, that subtracting fees and expenses from an already arbitrary price simply yields a different arbitrary price. While this may be true, what these commenters did not acknowledge is that since front-end fees and expenses are not made available for investment by DPP and REIT programs, deducting them from the gross offering price results in a more accurate, albeit arbitrary, estimated per share value. If accuracy of the per share estimated price is the goal, then NASAA suggests that other standard costs incurred during the Initial Offering Period should also be deducted, such as acquisition fees and expenses, incurred advisory fees, and other incurred fees and expenses, as such costs continue to erode the value of a customer’s initial investment. NASAA does not agree that accounting for fees and expenses as incurred, and reflecting this activity on customer account statements on a per share basis, places an unreasonable burden on issuers, as they are already required to report such information to the SEC.

3. Regulatory Notice 12-14 proposes that “[d]uring the period in which the issuer has not provided an appraised value (but extending no longer than the second quarterly filing after the initial offering period) a member may present a modified version of net offering price or list the securities as ‘not priced.’” NASAA supports this proposal. As discussed in comment 2 above, “net offering price,” while an improvement over gross offering price, is still an arbitrary number that may not accurately reflect the intrinsic or market value of the customer’s shares. Because no ready market exists for shares of non-traded DPP and REIT offerings, the price a customer would receive if it were able to find buyers for its shares would likely represent a significant discount to even the “net offering price.” Therefore, “net offering price” may still be misleading to investors. Presenting such shares as “not priced” on customer account statements, while not providing much information to customers about the current value of their investments, is less likely to confuse them as to the liquidation value of their accounts.
4. NASAA does not support FINRA’s withdrawal of its proposed requirement concerning the reliability of appraised values. Regulatory Notice 11-44 proposed a requirement that

would prohibit a member firm from using a per share estimated value “if it knows or has reason to know that the value is unreliable.” Regulatory Notice 12-14 withdraws this proposal, stating that “[u]nder the revised proposal, we anticipate that per share estimated values will be almost exclusively derived from values based on appraisals obtained by issuers and included either in the issuer’s periodic or current reports or a daily NAV calculation. As such, firms typically will have no reason to question their reliability, and the proposed requirement should not be necessary.” While it may be true that appraisal or daily NAV based valuations may be more reliable, the policy behind prohibiting a firm from presenting a per share estimated value that it knows or has reason to know is unreliable is no less compelling. Member firms have a role to play as gatekeepers. Prohibiting member firms from reporting valuations that they have reason to know are unreliable is central to maintaining customer and market confidence in the integrity of reported valuations of securities. Removing the proposed requirement tacitly permits member firms to report unreliable information that could undermine such customer and market confidence. NASAA strongly urges reinstatement of the withdrawn proposed requirement.

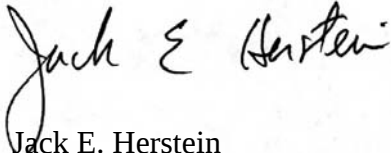
If the proposed rule is reinstated, NASAA also encourages FINRA to provide additional guidance to help member firms comply with this provision. This would include a review of the financial statements and a U.S. GAAP or IFRS (as allowed by law) analysis in assessing the appropriate valuation. If adopted, the FASB proposal, *Proposed Accounting Standards Update 2011-210 Real Estate-Investment Property Entities* (Topic 973), would require a fair market value for certain real estate holdings in financial reporting. This would further support the obligation of member firms to exercise appropriate due diligence in reviewing the financial statements under the originally proposed Rule 2340(c)(2).

5. For unlisted DPPs and REITs using daily NAV pricing, Regulatory Notice 12-14 would require such firms to publish their per share daily estimated NAV as of the end of the statement period. NASAA suggests that daily NAV be calculated using fair value pricing under acceptable methods detailed under the FASB Accounting Standards Codification Topic 820. Additionally, it is important for NAV to not be presented as an on-the-market price unless liquidity and risk adjustments are made to NAV since, if the issuer were to sell its real estate assets, it would incur exit and carrying costs and face potential liquidity issues. Using gross on-the-market pricing for NAV, especially if used in determining compensation elements and various other expenses, will likely cause such elements and expenses to be unnecessarily higher than if determined on a fair value GAAP pricing, liquidation pricing, or Investment Company pricing model.

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NASAA continues to support FINRA's efforts to enhance the accuracy and integrity of investment valuations reported on customer account statements, and believes that the proposals offered in Regulatory Notices 11-44 and 12-14 represent meaningful improvements over current practices. NASAA thanks FINRA for the opportunity to comment on this process.

Sincerely,

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

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