



**George K. Baum & Company**

INVESTMENT BANKERS SINCE 1928

**Office of the Corporate Secretary-Admin.**

June 3, 2008

**JUN - 6 2008**

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**FINRA  
Notice to Members**

Re: Proposed Consolidated FINRA Rules Governing Financial Responsibility  
Regulatory Notice 08-23

Dear Ms. Asquith,

George K. Baum & Company (the "Company") appreciates the opportunity to comment on the Proposed Consolidated FINRA Rules Governing Financial Responsibility (the "Rules") as described in FINRA Regulatory Notice 08-23.

#### Background

The Company was a member of NASD prior to the consolidation of NASD and the NYSE regulatory functions. As such, it is currently governed by the NASD Rule Book. The Company is a self-clearing firm engaged primarily in municipal fixed income underwriting, sales and trading with institutional clients. It also conducts a taxable fixed income business. Our comments on the Rules are from the perspective of a regional broker dealer.

#### Comments

##### **Proposed Rule 4110 Capital Compliance**

###### *Section (c)(2) - Limitation on Withdrawals, Dividends or Similar Distributions*

This proposed rule creates a prohibition, without prior written approval of FINRA, against withdrawals or dividends of more than 10% of Excess Net Capital ("ENC") over any rolling 35 day period. Current SEC and NASD rules do not require any prior approval of dividends or withdrawals – only post- or pre-notification if the amounts exceed 20% and 30% of ENC, respectively. We believe this Proposed Rule is substantially more restrictive than the existing requirements of SEA 15c3-1(e), and is more burdensome for smaller firms than for larger firms, particularly S Corporations and Limited Liability Companies that make regular dividends and distributions for income tax purposes. Also, the proposed rule does not provide a *de minimis* exception as provided for in SEA 15c3-1(e)(1)(iii)(B). The process of submitting information and receiving approvals for normal ordinary dividends and distributions will add time and uncertainty for smaller firms. For smaller firms (less than \$50 million in capital), we believe that the higher standards of the limitations put forth by the proposed rule should be based on a post-notification basis up to 20% of ENC and on a pre-notification basis only up to 30%. Dividends or withdrawals in excess of 30% could require prior written approval of FINRA. We believe this

will not detract from the financial security or responsibility of firms, but will allow both firms and FINRA to operate with more flexibility and responsiveness.


If the proposed rule is enacted as drafted, we would want to know on what basis will FINRA make a decision to approve distributions or dividends in excess of 10% of ENC? Will there be any safe harbors or parameters within which firms can operate and make capital decisions with more certainty? How long will FINRA take to provide approval? Is FINRA capable of always administering requests on a timely basis?

*Section (d)(4)* - This proposed rule requires that "any agreement relating to a determination of a 'ready market' for securities based upon the securities being accepted as collateral for a loan by a bank" be submitted and acceptable to FINRA before securities may be deemed to have a 'ready market'. Currently, there is no NASD rule which requires pre-approval of loan documentation. To avoid uncertainty or doubt, we believe that there should be an exemption from pre-approval if loan documentation is a standard secured loan with industry standard advanced rates and terms, such terms to be published by FINRA to ensure that broker-dealers know in advance whether their loan documentation is adequate.

If the proposed rule is adopted, we would want to know the particular terms and specific parameters that FINRA would require to determine acceptability, how often FINRA would require that loan documentation be submitted for review, and how long FINRA would take to determine acceptability. We believe that clarity of the rules and timeliness of their application is very important for all firms.

Thank you for giving us the opportunity to comment on the proposed rule changes. If you have any questions on this comment letter, I can be contacted at 816-283-5240 or by email at [bjornson@gkbaum.com](mailto:bjornson@gkbaum.com).

Sincerely,



Dana L. Bjornson  
EVP & Chief Financial Officer