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Accenture LLP
161 North Clark Street • Chicago, IL 60601-3200
accenture.com

May 13, 2011

VIA EMAIL:
Pubcom@finra.org

Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington DC 20006-1500

Re: FINRA Regulatory Notice 11-14 – FINRA Request for Comment on Proposed New FINRA Rule 3190 to clarify the Scope of a Firm's Obligations and Supervisory Responsibilities for Functions or Activities Outsourced to a Third-Party Service Provider

Dear Mrs. Asquith:

Accenture LLP ("Accenture") appreciates the opportunity to comment on the New Proposed Rule 3190. We have reviewed the Regulatory Notice 11-14 containing the New Proposed Rule 3190 (the "Regulatory Notice") and wish to comment and raise questions with respect to a few areas. Accenture, in its role as a provider of outsourcing services, has an interest in clarifying how certain elements of the New Proposed Rule 3190 (the "Proposed Rule") would affect the scope of services that it provides to FINRA member firms regulated under the Proposed Rule. As such, Accenture hereby provides comments on the Proposed Rule for the purpose of clarifying the scope of such rule in relation to Third Party Service Providers.

Comments and Questions:

1. To the extent certain functions or activities are not clearly specified within published rules, Third Party Service Providers often struggle to clearly identify which functions or activities are eligible or permitted for outsourcing.

   A. With respect to non-Clearing or non-Carrying member firms, will FINRA provide an enumerated listing or category of activities which are ineligible for outsourcing to third party service providers?

   B. If the answer is yes, when will such a list be made available for review and public comment?

   C. If no listing of functions or activities will be provided by FINRA, how will member firms or third party service providers seek clarity as to which functions or activities are appropriate for outsourcing under Rule 3190? We are concerned that

examiners will not take a uniform view of what is permissible in the absence of such a listing.

2. In order to ensure that Third Party Service Providers operate consistent with applicable rules and regulations, it is critical that service providers have a definitive list of activities which are not eligible for outsourcing. With respect to Clearing or Carrying Member firms, Section 3190 (c) provides a list of certain activities over which Associated Persons must be vested with authority and responsibility. Please clarify whether the defined list of three enumerated activities in this section is the exhaustive list of activities which require an Associated Person in relation to an outsourcing arrangement. In addition, subject to such vesting of authority and responsibility, what scope is available for non-associated persons to participate in these functions subject the direct oversight of the designated associated persons? In addition, does this provision apply only to full clearing or carrying firms that hold customer property, or is it also applicable to firms that rely on the exemption for DVP/RVP transactions found in paragraph (k)(2)(i) of Rule 15c3-3 and that do not generally hold customer property. We believe, that the latter case involves significantly less regulatory sensitivity and the case for the application of this rule is not compelling.

3. With respect to a member firm's supervisory responsibility in relation to its third party service provider, the Proposed Rule obligates member firms to exercise a continuing responsibility to oversee, supervise, and monitor the third party service provider's performance of outsourced activities. Additionally, the member firm is to ensure that FINRA and all other applicable regulators have the same complete access to the Third Party Service Provider's work product for the member firm as would be the case if the activities had been performed directly by the member firm. Accenture understands the need for this requirement in relation to activities or functions that are regulated by FINRA. However, this provision appears to reach functions or activities which generally would not be regulated by FINRA, even though FINRA regulates the member firm.

   A. Please clarify whether this rule would apply to ministerial activities (or other non-FINRA regulated activities, i.e. activities which in themselves do not require registration with the SEC or qualification with FINRA) which are outsourced from a member firm (including broker-dealers) to Third Party Service Providers even if such activities are 'related' to regulated-activities. We believe that such an assertion of jurisdiction over such activities is unwarranted and FINRA's focus should be functions that comprise regulated activities.

   B. Further, please clarify the extent of any audit rights FINRA would have in relation to ministerial activities related to regulated-activities, if it intends to assert such jurisdiction.

4. Section 3190 (b) of the new rule requires that member firms conduct a due diligence analysis for the purpose of determining whether the Third Party Service Provider is capable of performing the activities being outsourced. In our experience, if member firms have no road map or objective criteria to use when making this assessment, there is likely to be no uniformity in approach from member firms. What objective measures will FINRA provide to its member firms for use when making this assessment in relation to the third party service providers?

5. Section 3190 (c) proposes additional restrictions for Clearing or Carrying Member firms in relation to outsourced activities. FINRA cites that certain concerns can be mitigated by requiring a Clearing or Carrying member firm to limit responsibility and authority over certain enumerated activities to an Associated Person subject to the control and supervision of the member firm. In most outsourcing arrangements, a Third Party Service Provider will either use its own employees or will hire individuals from the client for the purpose of providing services back to the client. Many of these new employees hired from the client (or possibly existing employees) may have the necessary registrations and qualifications to be an Associated Person for the member firm. Third Party Service Providers and member firms could benefit from arrangements which allow Third Party Service Provider employees to act as an Associated Person to member firms. Accenture would appreciate clarification with respect to the questions below.

   A. Are Associated Person's required to be employees of the member firm or affiliates, or can they be employed by arm's length service providers?

   B. If Associated Person's are not required to be employees of the member firm or an affiliate, could an employee of a third party service provider who has the necessary registrations and qualifications, yet is under the control and supervision of the member firm via a staff augment or other arrangement reflected in a service agreement between the firm and service provider for a period of time, perform certain of the enumerated activities as an Associated Person?

   C. Can the Clearing or Carrying Member firm sponsor an employee of a third party service provider as an Associated Person for the purpose of providing outsourcing services to the member firm?

6. Section 3190 (e) of the Proposed Rule requires Clearing and Carrying member firms to notify FINRA within 30 calendar days after entering into any outsourcing agreement with a Third Party Service Provider to perform any functions or activities related to the firm's business as a regulated broker-dealer that is permitted to be outsourced pursuant to the Proposed Rule. The notification requirement identifies the specific elements to include in

the firm's notification. Although the rule was not explicit on this point, we would like to understand whether the outsourcing Agreement negotiated by the parties is required to be submitted or filed with FINRA. Such a requirement could pose a competitive disadvantage and could subject confidential or proprietary information to public scrutiny. Please clarify whether the negotiated outsourcing agreement between the firm and Third Party Service Provider is required to be forwarded and made available for public inspection. We assume FINRA would maintain strict confidentiality concerning these arrangements and use them only for regulatory purposes of the particular firms involved.

7. The definition of Third Party Service Provider includes any person controlling, controlled by, or under common control with a member, unless otherwise determined by FINRA. Since many Third Party Service Providers would not control a FINRA member, be controlled by or under common control with a FINRA member, are Third Party Service Providers that do not meet this definition excluded from the requirements of the Proposed Rule? We assume that the definition is inclusive so that this language regarding affiliates was only meant for greater certainty that affiliates providing covered services would be included, and not for the purpose of excluding other entities. Please confirm.

We appreciate the opportunity to submit this letter to you and we would be pleased to discuss this matter further. Please feel free to direct any questions you may have to the undersigned at 312-693-6816 (melvin.flowers@accenture.com) or to Michael Cammarota 203-312-0544 (michael.j.cammarota@accenture.com).

Sincerely,

Melvin Flowers
Senior Legal Counsel
Accenture LLP

Cc: Mr. Michael Cammarota