November 11, 2011

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
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Via email: pubcom@finra.org

Ms. Asquith:

We are submitting this letter of comment to voice our concerns of the proposed changes as noted in the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 11-44 ("11-44"). The changes to FINRA Rule 2340 attempts to address the values of unlisted Direct Participation Programs ("DPPs") and Real Estate Investment Trusts ("REITs") as they are to be reported on customer account statements.

As stated in 11-44, *"FINRA proposes to permit valuations based on the offering price during the Initial Offering Period when the program is acquiring assets and firms are selling shares at a stable value on a best-efforts basis. However, FINRA proposes to amend the rule to require that all per share estimated values, including those that are based on the offering price, reflect a deduction of all organization and offering expenses (net value)."* It appears 11-44 and the changes proposed in Rule 2340 do not take into consideration key elements such as the Financial Accounting Standards Boards ("FASB") and Accounting Standards Codification ("ASC") 820.

It is our understanding that the FASB partnered with the Securities and Exchange Commission ("SEC") in their construction of the "Fair Value" rules as it pertains to ASC 820. However, this should not be confused with "Fair Market Value" in the Internal Revenue Service's ("IRS") Revenue Ruling 59-60 as described below.

Pursuant to Generally Accepted Accounting Principles (GAAP) and FASB, once a method of valuing assets has been selected, firms are required to continue to utilize that same method for the life of the asset. ASC 825 (formerly FAS 159) specifies that the choice of valuation method is up to the reporting entity. In order to determine "fair value" ASC 820 (formerly FAS 157 "Fair Value Measurements and Disclosures") specifies three levels in which a determination may be made. They are as follows:

Level 1: prices for the same asset from an active market. (If a stock trades on an exchange, then the trade price is the fair value.)

Level 2: observable inputs, such as the active market price for similar assets, or a redemption price for the subject asset. (If the client holds a note, then it would seem that the principal redemption price is an observable input and the interest is to compensate the note holder for the time value of money.)

Level 3: unobservable inputs, such as an income approach or a market data approach or a cost approach.

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Therefore, once a method for valuing the assets has been chosen, it must continue to provide a value within those standards identified above until the asset is sold, paid off or becomes impaired. Furthermore, FASB ASC 820 requires firms to independently evaluate the fair value measurement process utilized by the fund managers to accurately calculate the NAV.

As referenced above, another key factor that appears to not be taken into consideration is the IRS Revenue Ruling 59-60. In Section 1 of 59-60 it states, "The purpose of this Revenue Ruling is to outline and review in general the approach, methods and factors to be considered in valuing shares of the capital stock of closely held corporations for estate tax and gift tax purposes. The methods discussed herein will apply likewise to the valuation of corporate stocks on which market quotations are either unavailable or are of such scarcity that they do not reflect the fair market value."

According to 59-60 there are eight components which must be taken into consideration when arriving at a fair market value.

1. The nature of the business and the history of the enterprise from its inception.

2. The economic outlook in general and the condition and outlook of the specific industry in particular.

3. The book value of the stock and the financial condition of the business.

4. The earning capacity of the company.

5. The dividend-paying capacity.

6. Whether or not the enterprise has goodwill or other intangible value.

7. Sales of the stock and the size of the block of stock to be valued.

8. The market price of stocks of corporations engaged in the same or a similar line of business having their stocks actively traded in a free and open market, either on an exchange or over-the-counter.

When taking ASC 820 and IRS Rev Ruling 59-60 into consideration, it appears the proposed changes to FINRA Rule 2340 may inherently cause potentially serious tax problems to owners of alternative investments. The proposed changes identified in 11-44 also do not address redemption prices and secondary market trades. Rule 2340 does not address the concerns of giving considerations to changes in asset values with respect to valuations. So our primary concern is whether there is empirical evidence to support FINRA 11-44 (Rule 2340) over ASC 820 or Rev Ruling 59-60. As such, the question as to whether the IRS would accept the changes with respect to Rule 2340 approach over 59-60 for estate valuations remains to be answered.

With that said we have used a similar method if the valuation date is during the offering period and if the offering period is relatively short and other indicators are not available. However, once the redemption price kicks in, the method prescribed by Rule 2340 will essentially become meaningless, so the proposed changes will cause confusion for multiple-year offerings.

We would be open to discuss this matter and our thoughts as to what we believe would be the most appropriate and prudent methods and solutions to address the concerns described above.

About Prodigious

Prodigious has been providing pricing and valuation services as well as transfer services for alternative investment securities on behalf of the financial services industry since the 1990s. It has a strong knowledge and intimate understanding of these securities and it is our desire to ensure the integrity of the marketplace is maintained while providing complete transparency for both the industry participant firms and the general public.

Respectfully,

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