MONUMENT GROUP

Electronic Submission

July 2, 2025

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington DC 20006-1506

Re: Regulatory Notice 25-04 – Request for Comments on Modernization of Rules Regarding Member Firms and Associated Persons; Regulatory Notice 25-06 – Request for Comments on Modernizing FINRA Rules, Guidance and Processes to Facilitate Capital Formation

Dear Ms. Mitchell:

This letter is submitted in response to the request for public comments by the Financial Industry Regulatory Authority, Inc. ("**FINRA**") in Regulatory Notices 25-04 (Request for Comments on Modernization of Rules Regarding Member Firms and Associated Persons ("**RN 25-04**")); and Regulatory Notice 25-06 (Request for Comments on Modernizing FINRA Rules, Guidance and Processes to Facilitate Capital Formation ("**RN 25-06**" and, collectively with RN 25-04, the "**Rule Modernization Comment Requests**")).

We appreciate FINRA's efforts to modernize and adapt its existing rules and regulations in light of ever-changing business and market practices by issuing its recent Rule Modernization Comment Requests. To summarize, we strongly advocate for FINRA, in connection with the SEC, to revisit certain of their rules and regulations that disparately impact Monument Group Inc. ("Monument Group") and other FINRA-regulated independent third-party placement agents for private funds in ways that are inconsistent with rules affecting such placement agents' own clients (fund managers), that result in a strong anticompetitive effect on these agents' ability to continue to provide their services to clients, and that impose burdensome operational requirements inconsistent with the risk profile of their more limited regulated services.

I. Background on Monument Group/Third Party Placement Agents

Monument Group is an independent broker-dealer registered with the Securities and Exchange Commission ("SEC") and a member of FINRA. Our principal business is to act as placement agent in primary offerings and secondary sales of interests in private funds, such as private equity, venture capital, real estate and energy funds. We raise capital solely from institutional investors services and provide our placement services *only* for issuers of private funds – *i.e.*, for funds that are exempt from registration under 3(c)(7) of the Investment Company Act of 1940 (the "Company Act"). As such, all institutional investors we approach must be both "accredited investors" ***and*** "qualified purchasers" for purpose of the Company Act exemptions.

The help that Monument Group, as an independent placement agent, provides to private fund advisers includes: (i) providing advice on building a compelling investment case to prospective investors; (ii) preparing presentation and offering materials as well as detailed due diligence information; (iii) identifying and targeting potential investors based on Monument Group's knowledge of their investment allocations, preferences and anticipated investment activity levels; (iv) introducing private investment funds managed by investment adviser clients to investors; (v) arranging roadshows of investor meetings; (vi) coordinating follow-up meetings between investment advisers and investors; (vii) coordinating investors' due diligence requests; (viii) intermediating in terms negotiations; and (ix) providing post-closing updates to clients and to investors.

Independent placement agents such as Monument Group not only help the private fund advisers find the market for their funds, but also provide significant benefits to investors in these private funds, including: (i) "quality screening" of funds prior to their introduction to investors (investors have come to value Monument Group's expertise and successful track record in identifying good investment opportunities); (ii) the compilation and provision of extensive due diligence packages – e.g., references, historical track record analysis, models for testing market variables (leverage, P/E or EBITDA multiples, etc.) and independent macroeconomic data useful to provide context to the market opportunity (to often understaffed and overwhelmed in-house investment staffs); and (iii) providing a conduit for feedback — i.e., experienced and knowledgeable placement agents such as Monument Group assist both large and smaller institutional investors in getting their voices heard by investment advisers on topics ranging from strategy to fees and governance terms.

While some of the better-known placement agents are departments of major Wall Street firms, the vast majority of independent placement agents are smaller businesses. They operate with a focused staff and with no revenues from other lines of business such as trading, mergers and acquisitions, or other banking/brokerage services. Accordingly, of utmost importance to independent placement agents is the

ability to successfully market their clients' funds – and, in doing so, to be able to use the same relevant and material information in their marketing materials that their own clients would be able to use under applicable SEC rules.

II. SEC/FINRA Rules that Should be Reviewed and Reconsidered in Light of their Unnecessarily Burdensome and Anticompetitive Effects on Independent Placement Agents

A. FINRA's prohibition on the Use of projections in marketing materials with respect to institutional investors should be revisited in its entirety.

i. The prohibition on the use of projections by FINRA-registered placement agents is highly anticompetitive.

Monument Group has previously commented at length on the anticompetitive effects of FINRA's continued prohibition on the use of projections by its members, especially in light of the SEC's Marketing Rule amendments (*See,* Monument Group letters to FINRA/the SEC dated, respectively, August 30, 2023, January 31, 2024 and March 29, 2024) and, in those prior comment letters, has made the following points (among others):

- The prohibition on the use of forecasts and projections, including but not limited to targeted returns, (to the extent that FINRA considers such targets to be projections/forecasts (See Section 2(iii), below), inhibits the ability of placement agents to prepare and distribute the most effective marketing materials on behalf of their clients (private fund managers).

- The Marketing Rule expressly permits registered investment advisers to use key projections and estimates in their marketing materials. Accordingly, the mere hiring of a placement agent by a manager may result in the production of less effective marketing communications (or the use of different versions by the manager and placement agent respectively). The perceived detriment such a prohibition may pose to a successful fundraise could easily influence a fund manager ***not to hire an agent that is a member firm in the first instance.***

ii. *FINRA has previously acknowledged that use by members of projected performance may be acceptable in connection with marketing to institutional/sophisticated investors.*

While FINRA permits the use of some related performance information in offerings to institutional customers only, FINRA has not permitted information prohibited for use with retail customers to be provided to institutional customers in

offerings to both institutional and retail customers.[1] If FINRA is concerned about the use of projected performance in sales material prepared by brokers (as distinguished from material prepared by issuers) in offerings in which retail customers may participate, FINRA should, at a minimum, permit the use of reasonable-basis projected performance in broker material distributed in securities offerings made exclusively to Rule 016(i) institutional investors. This would include all offerings of private funds exempt under Section 3(c)(7) of the Investment Company Act.[2]

iii. Targeted Returns should not be viewed as a type of "projection" or "forecast" that FINRA Rule 2210 would prohibit.

In the context of private funds, institutional investors view targeted return information not as a projection as to how a fund's investments will perform, but as the fund's targeted risk/return profile – a critical component to an institutional investor's investment decision and essential to proper underwriting, allocation decisions and portfolio management by any institutional investor. Accordingly, the prohibition from using targeted returns actually results in a ***material omission from the offering materials and other information received by institutional investors working with member placement agents*** – especially in light of the fact that investors communicating directly with a private fund manager receive targeted return information in the manager-prepared marketing materials.

B. The CAB Rules Should Be Further Adapted to Facilitate Broker-Dealers Focusing Solely on Sales and Resales of Unregistered Securities.

We also appreciate FINRA's requests for comments on the separate dedicated rule set for Capital Acquisition Brokers (CABs) (the "**CAB Rules**") and we wholeheartedly support the recently proposed amendments to the CAB rules (SR-FINRA-2025-005), subject to the below suggestions.

(i) We laud FINRA's intent to include secondary transactions within the definition of a CAB for purposes of the proposed CAB Rule Amendments and we believe this change will significantly increase the number of independent placement agents like Monument Group who avail themselves of this less prescriptive set of rules. We would, however, also suggest that FINRA clarify that the advisory and placement services provided by placement agents in connection with manager-led secondary and restructuring transactions is ***already covered*** by the existing CAB rules for which no further amendment would, in fact, be necessary. (*See*, existing CAB Rule 016(c)(1)(a), (b) and (f).)

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1 Letter to Collins/Bay Island Securities (Sept. 14, 2004).

(ii) The CAB Rules should create a subset of rules (or parallel set) to accommodate independent placement agents or limited purpose broker-dealers ("**LPBDs**") that do not carry customer accounts (or the need for a corresponding clearing arrangement) and which focus on facilitating Reg D exempt offerings, as full compliance with certain existing operational rules is by these placement agents and LPBDs is both unnecessary and overly burdensome. In particular, broker-dealers holding no customer assets should be exempt from full compliance with 15c3-1 net capital obligations which, as they stand now, tie up capital amounts for these smaller firms on a scale entirely unrelated to the minimal risk they pose to any investors' assets. While we do not suggest that all placement agents be exempt from the SEC's net capital requirements, a much lower net capital requirement for such placement agents and LPBDs would allow them to operate in a cost-effective manner while still maintaining investor protection.

(iii) We also suggest that a broker-dealer already registered with FINRA/the SEC who chooses to avail itself of the less restrictive CAB Rules (particularly as they may be amended) be permitted to follow an expedited FINRA re-registration process in the event that a firm's business evolves to later require the full FINRA registration once again. The need for a full Rule 1017 re-application process in such instances would seem almost punitive to currently registered broker-dealers who would otherwise convert to CABs and would act as a deterrent for such registered broker-dealers to convert to CAB status.

C. Pay-to-Play Rules Adopted under State and Other Local Laws that Prohibit Both Marketing By, and Payment of Commissions to, FINRA-Registered Placement Agents Should Be Preempted.

We believe that, under the National Securities Markets Improvement Act of 1996 (NSMIA), no state, county or municipality should have jurisdiction relating to the oversight of regulated broker-dealers.[3] Since the initial "Quadrant" pay-to-play matter arose in 2009, both FINRA and the SEC have adopted their own rules prohibiting fraudulent payments by brokers/advisers to state pension personnel. (*See*, FINRA Rule 2030, Advisers Act Rule 206(4)-5.) Yet, at the same time, laws and rules addressing the same issue – i.e., the deterrence of kickbacks and improper influence by fund managers and their placement agents – have proliferated at the state, county and municipality levels, often via amendment to existing lobbying laws and often prohibiting the payment of any compensation to a placement agent. Federally registered broker-dealers should not need to bear the compliance burden of monitoring/adhering to this patchwork of state and local laws – and in certain

[3] We also agree with other commenters who have noted that the federal pay-to-play laws are themselves too restrictive and may violate the First Amendment rights of firms and their employees by limiting political contributions.

cases to forego fees to which they would otherwise be entitled – ***especially where they are already in full compliance with the SEC and FINRA pay-to-play rules***.[4]

CONCLUSION

We truly appreciate FINRA's outreach to Members in its efforts to modernize and adapt its existing rules by issuing its recent Rule Modernization Comment Requests. To summarize, we strongly advocate for FINRA, in connection with the SEC, to revisit certain of their rules and regulations that disparately impact Monument Group Inc. ("Monument Group") and other FINRA-regulated independent third-party placement agents for private funds in ways that are inconsistent with rules affecting such placement agents' own clients (fund managers), that result in a strong anticompetitive effect on these agents' ability to continue to provide their services to clients, and that impose burdensome operational requirements inconsistent with the risk profile of their more limited regulated services.

We would be happy to discuss these comments with you or the use of projected performance generally, at your request.[5]

Very truly yours,

Molly M. Diggins

Monument Group, Inc.

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[4] ***Private*** pensions/endowments would not be considered government actors to which the NSMIA preemption applies. Accordingly, we believe that those should still be afforded the right to adopt more restrictive pay-to-play policies as they see fit.

[5] As General Counsel for Monument Group, I serve as a member of an industry placement agent group – the Independent Placement Agent Compliance Committee (IPACC). While I know that many (if not most) members of IPACC support the arguments articulated herein, this letter is not submitted on the behalf of IPACC and does not represent the group's collective view or the view of any of its other members. Various other IPACC members would, however, also be happy to join any discussion in which you may wish to engage concerning the positions contained in this letter.