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Integrated Management Solutions USA Inc. ("IMS") is pleased to have the opportunity to comment on FINRA Regulatory Notice 10-01, Membership Application Proceedings.

By way of background, IMS is one of the largest providers of financial accounting and compliance consultants to the financial services industry. Our clients engage us to assist them in meeting various FINRA filing deadlines and registration obligations, including new member and continuing membership applications.

Our comments are listed below.

Proposed FINRA Rule 1111 (Definitions)

We have difficulty with Rule 1111's definition of "control." The definition includes new wording describing "control" as "a person or entity entitled to receive 25% or more of the net profits." We think that this concept of "control" must be clarified.

The intention is clear – FINRA wants to categorize, as control persons or entities, those that are entitled by contract or other legal agreement to 25% or more of a firm's net profits. The problems arise when we consider obligations to associated persons that just happen to constitute 25% of more of the firm's net profits.

As FINRA knows, a firm's bottom line can swing widely from period to period. A one-time event can affect results and can even result in a firm posting a loss. Is "net profits" to be viewed quarterly as a stand-alone figure, or does FINRA intend to allow a sort of smoothing of interim results? If every quarter or even every month is to be used as the benchmark, it is conceivable that certain persons or entities will be owed more than 25% of a broker dealer's net profits one period and then not owed that percentage the next. Are they in control positions, then not in control, and then potentially in control again?

Consider the common situation where a broker dealer has a commitment with a certain trader to pay him 10% of the revenue he generates for the firm. The payment is to be made in the quarter following the one in which the trading revenue is booked. Let's say that the trader generates $1 million in revenue in a particular quarter. In the following quarter, he is therefore owed $100,000. Now let's assume that the firm is engaged in other activities that have shown losses for the same quarter and that the firm as a whole shows net income of only $300,000. Does the compensation owed to the trader in the following quarter make him, by definition, a control person?

What if an associated person has become a control person only through the underperforming nature of other persons or divisions of the firm? The letter of the rule would have Schedule A of Form BD constantly adjusted according to the good fortune of one person or entity in relation to what might be the temporary bad fortune of others.

In an attempt to allow waivers, Rule 1111 states that "any presumption may be rebutted by evidence, but will continue until a determination to the contrary has been made..." We wonder if FINRA is equipped to handle the multitude of control-categorization reviews that will arise as a result of the new wording.

To us, it is clear that the definition of control must be clarified to clearly omit persons who just happen to receive 25% or more of a firm's net profits, but really don't control the member. It may very well be preferable to eliminate this parameter as a determinant of control.

Proposed FINRA Rule 1112 (General Procedures)

IMS enthusiastically applauds FINRA's position that an applicant's delivery of an application and supporting documents by email is acceptable. We believe that FINRA's responses should also be delivered electronically and that snail mail should no longer be utilized, so long as FINRA has an applicant's electronic contact information.

We are in agreement with the proposed reduction from 60 days to 30 days in the time allowed for an applicant to respond to FINRA's first request for additional information or documentation. A firm should be able to respond within that shorter time frame if its business plan is sufficient to have filed the application in the first place. For the same reason, we are in agreement with the new requirement that all required qualifying examinations be scheduled within 30 days of filing a new member application and be completed within 120 days of the filing, except in extenuating circumstances. Our support for this last clause is based on FINRA's recognition that in certain circumstances such examinations cannot be scheduled at such an early date -- for instance, in the case of a currently employed person who has not notified his employing firm of his planned departure and does not wish to adversely affect his relationship with that firm.

Proposed FINRA Rule 1121 (New Member Application, Interview, and Department Decision)

We are in disagreement with the requirement that FINRA members retain an independent audit firm that is registered with the Public Company Accounting Oversight Board ("PCAOB"). Our belief is that small-firm FINRA members that do not maintain customer accounts or handle customer funds or securities should be allowed to engage non-PCAOB auditors, as this would pose no threat to the safety of customer assets.

It is bad enough that the SEC did not recognize this and has rescinded the exemption from the requirement to have a PCAOB-registered auditor. We see no reason for FINRA to further perpetuate this decision, which the SEC may very well change in the future.

This proposed rule also requires that the applicant provide FINRA with the anticipated annual audit schedule. We don't know what this means, but we think FINRA means the proposed annual audit month.

We are strongly in favor of changing the scheduling of a membership interview that currently must take place within 60 days after the filing of all information requested by FINRA. The proposed change would reduce this to 30 days, and we see no reason why FINRA could not work within the shorter time frame.

Proposed FINRA Rule 1160 (Continuing Membership Application for Approval of Change in Ownership, Control, or Business Ownership)

Procedural Amendments Relating to Continuing Membership Applications

While we applaud the new provision allowing FINRA to permit the filing of a single application by one party in certain circumstances where two or more applications would generally be required, we are adamantly opposed to the extension from 30 days to 45 days of the time for FINRA to issue a decision on a continuing membership application. The 45-day time frame would begin after the conclusion of the final CMA interview or the applicant's final filing of additional information or documents, whichever is later. In our opinion, FINRA should be able to render a decision within the 30-day period and the length should not be changed. Indeed, if anything, it should be shortened. In our experience, the current time frames have proven to be very costly to many applicants.

Amendments to Business Operation Changes Requiring an Application

We are very pleased to see that this proposal would allow FINRA to waive a CMA when the change in ownership or control would not result in any practical change in the member's business activities, management, supervision, assets, liabilities or ultimate ownership or control. We hope that this provision is enacted and that FINRA encourages its staff to always carefully consider the ultimate effect (or non-effect) of such changes. In our experience, there has been too much reliance on a de facto checklist to determine the need for a CMA. It will be to the industry's benefit if FINRA allows its staff to engage in more subjective thinking. Furthermore, in many instances changes of ownership occur at so many levels above the member that the changes happen without the member even being aware of their occurrence.

Safe Harbor Amendments

Members have relied upon the so-called Safe Harbor for Business Expansion for guidance as to permissible expansions in numbers of markets made, branches opened, and sales associates retained. The Safe Harbor, which is in NASD IM-1011-1, states quite explicitly the limitations as to its application. Currently, the Safe Harbor is not available to a member that has a disciplinary history in certain matters. The wording in this regard is quite specific. The Safe Harbor is also not available to firms with membership agreement restrictions related to market making, if those firms want to make more markets; branch ownership, if those firms want to open additional branches; or the number of sales associates, if those firms want to add more sales associates.

Of grave concern is that the broad nature of the new wording results in an absolute prohibition of expansion for those firms that have any membership restriction – in any area. The wording is as follows:

> "This safe harbor is not available to a member that has a membership agreement that contains a specific restriction or to any member that has disciplinary history."

This must be revised so that firms are able to continue to rely on the clear guidance of the Safe Harbor for Business Expansion, as they do today. A restriction in any one of the areas should not affect the availability of the Safe Harbor in any other area.

Proposed FINRA Rule 1170 (Notice of Certain Member Changes and Continuous Access to Affiliate Information)

FINRA is proposing that members provide 30-days' prior written notice of certain significant changes in business plans. The rule describes some events that would require such notification.

We have the following comments:

Direct or indirect acquisitions or divestitures of 10% or more of the member's assets or any asset, business or line of operation generating revenues comprising 10% of more in the aggregate of the member's revenues. We note that the rule gives guidance that the related calculations of revenue be done over a rolling 36-month basis. We feel, however, that 10% is too low of a figure and suggest that 20% is more practicable.

Direct or indirect acquisitions or divestitures of 10% or more of the member's shares, partnership interests or other ownership interests by any one person or by a control group. Again, we feel that 10% is too low and suggest 20% as a more practicable figure.

The listing of the member firm (on an identified or anonymous basis) on any facility or medium that is designed to solicit offers or inquiry with respect to the possible purchase of the member in whole or in part, or the transfer of some or all of the member's assets. The requirement to report such activity is silly. We know of numerous member firms that are available for sale at any time – at the right price. There is nothing wrong with testing the waters. FINRA should allow a firm to know the value of its enterprise in the current marketplace.

Publicly held members have their value determined constantly. Is FINRA trying to say that a firm cannot be marketed through its attorney or other representative on an anonymous basis without prior notice? There is no way that FINRA could enforce such a prohibition.

The discovery of any existing or impending conditions that the member firm reasonably believes could lead to capital, liquidity or operational problems…
FINRA is leaning toward micro-management here. Should a firm report, on a daily basis, that a drop in the stock market could lead to problems? Does FINRA really expect

compliance with this provision as it is written? We believe that the terms of this provision should be somewhat more specific.

On a separate note, we wish to emphasize that the time frames in the proposed rules represent outside limitations. For example, a simple change at a member should not take 30 days just because that is the maximum time allotted. In the past, FINRA's slow approval process has caused many members to miss good business opportunities inappropriately.

Very truly yours,

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