March 14, 2011

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

Reference: Notice to Members 11-04

Dear Ms. Asquith:

This letter is in response to the request for comments in Notice to Members 11-04 in general and specifically to the questions you mention in the Request for Comment section.

FINRA's stated purpose for the potential expansion of this rule is to provide additional protection to investors by requiring members to submit to FINRA for review certain documents at or prior to the time offering documents are provided to prospective investors. In our opinion, the unintended and practical impact is likely to be to regulate pricing for such services not to increase investor protection.

We do not believe that it is appropriate for FINRA to institute such a rule for the following reasons:

1) This limitation directly impacts how capital raising services are priced in the market. Pricing of such services should be market driven not regulated.
2) Offering cost includes cost and expenses charged by non FINRA members including legal and professional fees. FINRA is indirectly attempting to regulate non FINRA members.
3) The impact on small offerings could be significant. For example, a $500,000 offering could have as much as $50,000 in legal, third party due diligence and other professional fees associated with it, leaving only 5% of the offering total available for sales concession. Many firms would decline to take on such offerings.
4) The unforeseen impact on offerings that fail to meet their capital raising goals or when expense of the offering exceed expectation might be that a FINRA member has to reduce its fee, or cancel the offering altogether because as a percentage of the total offering expenses may exceed 15% of the actual offering proceeds. A FINRA member may find himself in the position of telling his client that although a substantial amount of capital is setting in escrow, the offering has to be canceled and the capital returned to the investors because the cost associated with the offering will exceed 15% of the actual proceeds. Since all of the offering expenses incurred to date still have to be paid by the client, such a result may jeopardize its financial position and expose the FINRA member to liability.

5) Many offerings are structured to have multiple closes. The first close might have to be delayed to ensure the 85% test will be met because the FINRA member cannot be certain a second close will occur.

6) Included in the 85% test is all non-cash sales incentives. Many offerings contain equity warrants of the company. Such warrants are generally very difficult if not impossible to value at the time of the offering making it potentially difficult for the FINRA member and FINRA staff to determine if the 85% test is being met.

In general we believe the impact of the expansion of this rule to be:

- Regarding Small Offerings - In is our opinion the unintended consequence of this rule will be to actually increase the risk to investors in small offerings by pushing such offerings to parties that are not FINRA members. In the current regulatory environment our firm generally will not consider taking on engagements where the offering size and the associated revenues we can expect to earn from such engagement does not warrant the due diligence and other work required to adequately satisfy our obligations to our potential investors and to otherwise fully comply with the regulatory requirements. This results in many such engagements being completed by unlicensed "finders" or by the client's legal, accounting or other professional advisors on a simple referral basis. Such offerings may not satisfy the disclosure requirements of the state and federal securities laws and therefore negatively impact the ability of the company to raise capital in subsequent rounds. This is turn impacts current and future potential investors in the company. We believe this rule expansion will result in FINRA members withdrawing from the market for small and modest size offerings, driving more offerings to other less regulated methods of raising capital.

- Regarding Larger Offerings – We see no reason this rule expansion will meaningfully increase investor protection for larger offerings. It will however increase the cost of such offerings. FINRA member firms that engage in Reg D private placements should already be well aware of their investor disclosure obligations. FINRA has adequate means through the FOCUS reporting process to identify member firms that engage in such activities. Through FINRA's routine audit process and other means it uses to supervise members it can evaluate if investors are being provided adequate disclosures of the cost associated with offerings. In addition the proposed rule expansion will slow down the process of completing offerings. Although the rule will not require members to obtain FINRA response before proceeding with a offering, as a matter of practice at least for some period most members would be well advised to try to obtain some indication from FINRA staff as to any issues they might see rather than risk a problem being raised by FINRA after the offering is closed. As a minimum we would expect this proposed rule expansion to add 30 days to the offering process.

We also believe this rule expansion will place additional costs and burdens on FINRA to support in a timely manner. Such additional costs ultimately are financed by increasing membership fees with no commensurate improvement in investor protection.

In summary, the proposed rule ignores the regulatory framework, with extensive case law development, of the federal and state anti-fraud disclosure rules already in place. The proposed rule does create a defacto delay of the private offering process because no broker-dealer or issuer will close an offering with the possibility that FINRA may after the fact criticize some aspect of the offering—thus granting the investor a put with the investment. In addition, FINRA does not currently have the expertise for the function required by the proposed rule. The rule proposal takes a step backward to the days of "merit" review by state regulators, which has been out of existence for years with little or no harmful result. Finally, although the proposal is well intended, the practical result is to make it more difficult for issuers to raise needed capital, a result contrary to bringing business and the economy out of the current crisis.

We appreciate this opportunity to comment on Notice to Members 11-04.

Regards,

Richard Griffard
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CRD 115547