

CENTER FOR CAPITAL MARKETS COMPETITIVENESS

OF THE

UNITED STATES CHAMBER OF COMMERCE

DAVID T. HIRSCHMANN
PRESIDENT AND CHIEF EXECUTIVE OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062-2000
202/463-5609 • 202/955-1152 FAX
david.hirschmann@uschamber.com

November 11, 2011

Ms. Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc
1735 K Street NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice to Members 11-44; Proposed Amendment to NASD Rule 2340 to Address Values of Unlisted Direct Participation Programs and Real Estate Investment Trusts in Customer Account Statements

Dear Ms. Asquith:

The U.S. Chamber of Commerce (“Chamber”) is the world’s largest business federation representing the interests of over three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. To achieve this objective it is an important priority of the CCMC to advance an effective and transparent system for capital formation. The CCMC welcomes the opportunity to comment on Regulatory Notice 11-44 published by the Financial Industry Regulatory Authority, Inc. (FINRA) on September 29, 2011 regarding amendments to NASD Rule 2340 to address how firms report the per share estimated value of unlisted Direct Participation Programs (DPP) and unlisted Real Estate Investment Trusts (REITs) on customer account statements.

The CCMC supports the efforts of FINRA to provide protections and greater transparency to investors through amendments to NASD Rule 2340. We believe it is appropriate to require the use of appraisal value for the unlisted DPP or unlisted REIT’s assets, liabilities, and operations at the end of the initial offering period as the basis for a per share estimated value on a customer account statement. We also believe that a member firm should remove or amend a per share estimated value if it “knows or has reason to know the value is unreliable.”

Ms. Marcia E. Asquith
November 11, 2011
Page 2

However, we have serious concerns with the proposal 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. We believe that adopting the proposed amendment with this mandate will have serious repercussions to the commercial real estate market and the broader U.S. economy without any commensurate benefits, and therefore, we recommend that FINRA withdraw its proposal to mandate that all organization and offering expenses be deducted for purposes of providing per share estimated values during the offering period. This concern is more fully discussed below.

Arbitrary Price Less Organizational and Offering Expenses Does Not Equal Intrinsic Value

Historically, unlisted DPPs and unlisted REITs have used an arbitrary \$10.00 per share price during the offering period because it allows for ease and simplicity in determining the number of shares to be issued. This offering price, however, does not represent the book or net asset value of a share in the unlisted DPP or unlisted REIT, the amount of proceeds an investor would receive in the event of liquidation, or the price at which the shares would be traded if they were listed on an exchange. These factors are all clearly disclosed in the unlisted DPP or unlisted REIT's prospectus. Because the \$10.00 offering price does not reflect actual value, deducting organization, and offering expenses from the offering price will do nothing to change the arbitrary nature of the price or bring it to a closer approximation of intrinsic value.

The value of an investment in an unlisted DPP or unlisted REIT is based on a variety of factors, including the DPP or REIT's ability to manage assets and implement the entity's business plan effectively and efficiently over a long holding period. During the offering period, such execution cannot be readily quantified and translated into the intrinsic value during such an early stage of the investment. Therefore, deducting organization and offering expenses from an arbitrary starting price that does not reflect intrinsic value will leave investors confused, as the net amount is a misrepresentation of what investors may believe is an intrinsic value.

Proposed Amendment Could Have Adverse Impact on Commercial Real Estate Market and the Broader Economy

Like many other financial/commercial sectors in the U.S. economy, the unlisted DPP and unlisted REIT markets experienced tremendous turmoil over the past three years. As the industry recovers from the economic downturn and commercial real estate activity picks up again, financial regulators should use caution when considering rules that could hamper capital formation. If investors conclude that the value of their unlisted DPP or unlisted REIT investment has experienced an immediate loss because the amount listed on the customer account statement is the offering price less all organizational and offering expenses, it could deter future potential investors from considering unlisted REITs and unlisted DPPs as a viable investment alternative. The effects of such actions could be devastating to capital formation in the commercial real estate market as well as the diversification profiles for investors.

Moreover, the lack of capital flowing into the unlisted DPP and unlisted REIT markets will have repercussions for the broader economy. These products have played a key role in the recovery of distressed markets since the economic collapse, providing tens of thousands of Americans with employment directly and indirectly through the development, management, and maintenance of assets held by these unlisted DPPs and unlisted REITs. Only by FINRA and other regulators proceeding judiciously in a manner that promotes transparency without unduly inhibiting growth and capital formation will the U.S. economy return to its former vibrancy.

Conclusion

To summarize, we believe that, given the nature of these products as long term investments, the mandate to deduct organization and offering expenses from the offering price as the basis for an estimated value during the initial offering period is not reflective of the investment's actual value. This requirement may place significant difficulties on the ability of unlisted DPPs and unlisted REITs to raise capital, thus restricting liquidity in the commercial real estate market. Therefore, we believe that FINRA should modify its proposed amendment accordingly. If FINRA chooses to move forward with the proposal as presented, at a minimum it should conduct a cost

Ms. Marcia E. Asquith
November 11, 2011
Page 4

– benefit analysis, subject to public comment, and proceed with the proposal only if there is a significant net benefit for implementing such an amendment.

We appreciate the opportunity to submit these comments and would be happy to discuss these issues with you or your staff.

Sincerely,

A handwritten signature in black ink that reads "David Hirschmann". The signature is written in a cursive style with a large, sweeping initial "D".

David Hirschmann