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Via email: pubcom@finra.org

November 4, 2013

RE: Regulatory Notice 13-29:
Membership Application Proceedings

Integrated Management Solutions USA LLC ("IMS") is pleased to comment on Regulatory Notice 13-29 ("RN 13-29"), Revised Proposal Regarding the Consolidated FINRA Rules Governing FINRA's Membership Application Proceedings ("MAP"). These have been proposed by FINRA as part of its process of developing a new consolidated rulebook and "…to address regulatory issues identified by FINRA staff and codify existing membership-related interpretations and practices."[1] This Regulatory Notice also incorporates comments received to FINRA's prior proposal on these topics in Regulatory Notice 10-01 ("RN 10-01").

IMS is one of the largest providers of financial accounting and compliance consulting services to the financial services industry, providing such services to about 100 FINRA members, among others types of financial services firms.[2] At any one time, we have several NMAs or CMAs submitted to FINRA on behalf of clients. We believe that our regular, daily experience with FINRA's MAP rules and how they are used by FINRA itself enables us to assess

[1] RN 13-29, cover page.

[2] The statements in this comment letter incorporate the views of IMS, not those of our clients. The authors wish to thank Patricia Occhiogrossi of our offices for her contributions to this letter.

the impact of RN 13-29 on FINRA members from both a regulatory and business perspective.

Much has improved since RN 10-01 was sent out to comment. We commend FINRA for responding carefully to commenters' concerns, including specifically permitting electronic communications between FINRA and new Applicants and members filing a continuing member application, as well as the inclusion of limited liability companies and their members as recognized entities and associated persons, respectively, in FINRA rules. On the other hand, we recommend that FINRA also include trusts as recognized entities since trustees often have roles similar to those of general partners of a partnership or LLC managing members. In our role as business experts, however, we are also conscious of the damage that elements of RN 13-29 will likely cause to a significant number of member firms.

Overall Concern

FINRA requests comments on the economic consequences of RN 13-39 and its proposed rules. We have one major concern about the MAP process that perpetuates seriously adverse economic consequences to members and Applicants alike, but is not addressed in RN 13-29 at all: namely, FINRA's "one-size-fits-all" approach to regulation, in general, and the MAP process, in particular. Instead of using the Rules Consolidation process as an opportunity to address the needs of, and burdens on, small- and medium-sized firms, FINRA blithely continues to promulgate rules as if all members and prospective members are equally affected by the same issues in the same way. It's an archaic, procrustean – and expensive - approach to regulation. As we explain below, perhaps the MAP Group should learn from FINRA's response to the mandate of the JOBS Act with respect to funding portals.

The MAP Process through the Lens of Funding Portals

In October, 2013, FINRA issued Regulatory Notice 13-34, "FINRA Requests Comment on Proposed Funding Portal Rules and Related Forms." RN 13-34 followed closely on the heels of the SEC's Release[3] on "Crowdfunding" (the "SEC Release"), addressing many of the same issues. Although this Comment Letter is not the appropriate "venue" in which to provide detailed comments on funding portals, we noted with great interest FINRA's relaxation of the rules for the membership process applicable to funding portals.

It is time for FINRA to make rules that demonstrate sophisticated analysis based on economic realities and financial and functional distinctions. Paying lip service to addressing economic concerns in the rule-making process has not, in our view, resulted in more practical and efficient rules. Our position is that FINRA's MAP process for firms with, say, 10 or fewer Associated Persons should follow registration rules somewhat similar to those applicable to funding portals when they engage in one to three functionally-related limited business lines; generally, in our experience, those activities are private placements, advisory services and referrals. A comparable situation applies to firms that specialize in oil & gas placements only, or the sale of research only or the receipt of transaction-based compensation for what is essentially the sale of trading platform or algorithmic trading services but for which the applicant itself does not conduct securities transaction executions directly. We think that small- and medium-sized firms that also only engage in limited business (the proverbial "nickel BDs") should benefit from these less burdensome rules, too. Paramount is the speed of the funding portal approval process. As Benjamin Franklin said in Advice to a Young Tradesman, Written by an Old One, "time is money." In particular, why is the proposed time frame for funding portal approval 60 days or

[3] Release Nos. 33-9470; 34-70741; File Number S7-09-13.

less while that for broker-dealer members can be as much as 180 days? We recognize that broker-dealers are held to a higher set of standards but one wonders why too many broker-dealer applications grind through the process so slowly.

Of course, some adaptations will have to be made. Most FINRA members should remain subject to the requirement of purchasing fidelity bonds, not the error and omission bonds applicable to funding portals. The FINRA licensing and continuing education requirements should remain in place. There are other differences that warrant detailed analysis. Likewise, many of FINRA's MAP Rules and standards should be preserved, but they should be based on economically-driven criteria, not a one-size-fits-all approach. Adhering to the same approach each time a new rule or set of rules is proposed for comment simply perpetuates the same inequities with respect to small- and medium-sized firms.

The registration of funding portals, consistent with the JOBS Act and the SEC Release mandates, is quicker, clearer, cheaper and with far fewer details and requirements than the MAP process. We think that many of FINRA's funding portal proposed rules also provide an appropriate set of rules for small- and medium-sized firms that engage only in a few functionally-related limited business lines.

Among other distinctions, we were amused to discover that nowhere in RN 13-34 is there a requirement that FINRA be presented with "a description of the business facilities and a copy of any proposed or final lease"[4] so that it can review the premises lease of a funding portal. Currently, we spend endless hours reviewing ridiculously long leases to determine whether the lease allows a sublease to an affiliated entity or whether a small broker-dealer operating from

[4] NASD Rule 1013(a)(1)(E)(vii).

someone's apartment can actually do so if the premises lease prohibits commercial activity.[5] If it doesn't, then FINRA requires landlord consent and the Applicant spends a lot of time, and, often, counsel fees, negotiating and/or obtaining such consent. When a member or prospective member has 10 or fewer Associated Persons, what difference does a lease make? Often, the Associated Persons at many smaller firms with limited business models are rarely found in their offices. They are traveling to identify deals and connect the parties. Their primary means of conducting business, and storing records, are electronic: computers, e-mails, cell phones, etc. A physical space apparently satisfies FINRA, but if there is no customer physical contact expected at that space, it is simply a wasteful, non-critical business expense. These days, there are many reputable options for obtaining meeting space. Anyone can walk into a business center and lease space for meetings for however long needed.

Membership Interview

During the review process, particularly after the initial comment letter from FINRA is received, it is typical for the FINRA examiner and the Applicant's representative(s) to communicate with each other informally, either by phone or e-mail. As part of the initial review process, under NASD Rule 1013(a)(4) [Proposed Rule 1121(a)(4)], FINRA routinely requests additional documents and information from the Applicant's representative(s). Our concern is with the raising of new issues at the membership interview without prior notice to the Applicant's representative(s).

As currently drafted, the Proposed Rule 1121(b)(7) largely continues FINRA's practice under the current NASD Rule 1013(b)(7) of waiting until the membership interview

[5] This is so even if there are no customers who ever enter the premises of said apartment. We have never understood what purpose is served by forcing a person whose business is conducted primarily on the telephone to obtain a separate office facility just to satisfy an archaic NASD requirement.

> …to provide the Applicant's representative any information or document that the [MAP] Department has obtained from a source other than the Applicant and upon which the Department intends to base its [membership] decisions….[6]

We respectfully request that FINRA reconsider this approach, despite the fact that it is in current use. FINRA is a regulator and its MAP review process is more in the nature of an administrative review. We strongly suspect that most membership applications are approved and once registered, most members do what is necessary and prudent to maintain their membership status. When FINRA waits until the membership interview to present adversarial information and/or documents for the first time, that meeting can turn into an amateur Perry Mason scenario generating hostility on both sides. It may be melodramatic, but we strongly question whether it is effective or necessary. By way of illustration, a simple example follows.

At the membership interview, FINRA presented information concerning a dispute that a principal of the Applicant had with the landlord for his personal residence involving a fairly small amount and with zero impact on the Applicant's business. Instead of asking for an explanation during the review process, FINRA waited until the membership interview. Once the issue was raised, the Applicant was able to provide information and documents that fully resolved FINRA's concerns. But all that could have been done far more quickly earlier in the review process, without the theatrics of introducing this issue at the membership interview.

We are baffled as to the benefit of dragging the review process out when issues are raised, for the first time, at the membership interview.[7] This is a waste of the time and resources of all sides; after all, it is called a "membership" interview. It is also expensive, needlessly so. The membership interview should be a time for FINRA to meet the principals of a new or

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[6] Proposed Rule 1121(b)(7).

[7] We understand that, in rare circumstances, the information and/or documents may not be available to FINRA prior to the membership interview.

continuing member and resolve any loose ends, not raise new issues by ambush. Doing this deprives the Applicant of a reasonable opportunity to address FINRA's concerns as part of the ongoing review process and creates an adversarial situation that generates hostility long after the application is approved. We understand that, occasionally, membership applications are denied, but that should be based on the ongoing review and a determination that certain adverse facts cannot be overcome. In those few situations, the Applicant would know that it was attending a membership interview where FINRA would state the basis for its rejection. That procedure is already in place for when FINRA "…receives such [adverse] information or document after the membership interview or decides to base its decision on such information after the membership interview…."[8] In those post-membership interview situations, FINRA "…shall promptly serve the information or document and an explanation thereof on the Applicant."[9]

Proposed Rule 1130 – flexibility

We applaud the fact that, as proposed, FINRA will allow an Applicant to provide a written explanation regarding any standard that it believes is not applicable Heretofore, too many of the standards, as written, were applied as if they could not be bypassed at all. For example, a person who worked for an institution as a securities trader with supervisory experience for many years could not easily overcome the presumption that such experience was insufficient as applied to a FINRA member because that person hadn't been recently registered with FINRA. We hope that upon adoption of the proposed rules that FINRA will be open-minded in its evaluations of applications where the standards should not necessarily apply literally.

[8] Proposed Rule 1121(b)(7) [NASD Rule 1013(b)(7)].

[9] Id.

Proposed FINRA Rule 1170 – Notice of Certain Changes

We recognize that, by its very language, an act as simple as accruing or paying year-end bonuses or distributing assets that are not treated as allowable assets for net capital purposes trigger a requirement to notify FINRA that such an event may occur even though they are somewhat normal as a matter of business practice. As proposed, even paying a maturing subordinated liability, or eliminating any other liability, could be a triggering event. Already in place, however, are many notification protocols that provide FINRA with sufficient information, but do not necessarily require 30 days advance notice. For example, SEA Rule 15c3-1(e) provides for prior notification for many significant equity capital withdrawals and FOCUS Reports filed under SEA Rule 17a-5 similarly provide for disclosure of future economic events. Certainly, FINRA should expect that subordinated liabilities or other obligations will be paid at maturity in the ordinary course.

We understand that FINRA would like to be kept informed about major economic events that will affect its members but believe that the 10% standard, as proposed, is far too strict and impractical.[10] Even FINRA's largest members might have difficulty in conforming to such notice requirements. Interestingly, FINRA provides "wiggle room" in its proposal based on whether notice given less than 30 days in advance would have been impracticable. From our vantage point, we submit that existing rules are sufficient to cover most of the notifications that FINRA needs and, in a practical sense, FINRA's wiggle room substantially nullifies the requirement anyway. Alternatively, we suspect that, under the proposed rules, many members would simply notify FINRA of proposed changes even if those plans are more uncertain than the

[10] Effectively, this misguided proposal not only ignores the relationship each member firm has, or should have, with its Regulatory Coordinator, but also marginalizes that relationship because the listed triggering events should be known to FINRA through regular contact by the Regulatory Coordinator with the member.

notice would suggest and/or the firm changes its mind. We prefer that FINRA rely on existing rules and not micro-manage its members.

Exigent circumstances

Over the past few years we have seen situations where FINRA had to act extremely swiftly to preserve market integrity and customer protection. Sometimes, the rules as written, and if construed literally, would not allow for immediate action when any reasonable business person would act without necessarily conforming to all of the provisions of these rules so long as FINRA staff could clearly ascertain that such action was necessary. We hope that senior officials at FINRA consider when they can waive various requirements when such waivers are deemed to be in the public interest. Examples of such circumstances abound and include computer glitches, fat-finger errors, instances of gross malfeasance, Ponzi schemes and the like. FINRA should not write rules to accommodate circumstances that might not yet be defined. On the other hand, FINRA rules should be flexible enough to provide for regulatory discretion, at times.

Kudos to FINRA

Anyone who reads Regulatory Notice 13-29 would see language that references comments made in response to Regulatory Notice 10-01, which covered much of the same subject matter. In many instances, FINRA agreed with the remarks made by the commenters, which were contained in but nine comment letters.[11] Obviously, there are many ways to interact with FINRA to ensure that rule changes it suggests are reasonable and benefit the marketplace and investor protection without unduly adversely impacting the members to the point of creating unintended negative consequences. Indeed, whether we agree with everything proposed or not, FINRA staff listened and actually deleted or modified many possible provisions to which the

[11] IMS was one of the nine comment contributors.

commenters objected or proposed better solutions. By speaking out, the commenters fulfilled their responsibility to make our FINRA-regulated industry a better place. Those who do not speak out when asked to do so shouldn't complain later if they don't like what FINRA adopts, with SEC approval. The process of influencing legislation or rule promulgation is vitally important. Those who are most affected should speak out.

FINRA Staff did a wonderful job in considering the comments to Regulatory Notice 10-01. We hope that our comments above are also given appropriate consideration.

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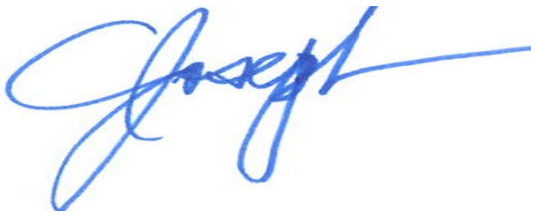
Thank you for the opportunity to comment on RN 13-29. Should you have any further questions, please feel free to call Howard Spindel at 212-897-1688 or Cassondra Joseph at 212-897-1687, or contact us by e-mail at **hspindel@intman.com** or **cjoseph@intman.com**, respectively.

Very truly yours,



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