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VIA E-MAIL (pubcom@finra.org)

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

Re: Comments on Regulatory Notice 13-29: Membership Application Proceedings

Dear Ms. Asquith:

We are pleased to have the opportunity to comment on the proposed FINRA Rule 1100 Series (the "Rules") as described in Regulatory Notice 13-29, Membership Application Proceedings (the "RN"). In general we commend FINRA for a thoughtful and constructive update of the membership and continuing membership rules, that now corresponds more closely to the practices that have evolved as a result of unwritten policy changes over the years. Our specific comments on the proposed revised Rules follow the order presented in the RN.

A. Proposed FINRA Rule 1111 (Definitions)

2. Proposed FINRA Rule 1111(c) ("Associated Person")

We believe that refining the definition of Associated Person was needed and that the proposed change is a good one, especially the exclusion from the definition for of this term for persons with less than a 10% direct or indirect ownership interest in the member firm. This will help set boundaries for FINRA staff in their review of new and continuing membership applications as to individuals or entities that do not have control of the applicant by virtue of their small (usually indirect) ownership in the applicant. This will enable FINRA to expend less time and effort on the source-of-funding documentation and entity organizational documents from non-Associated Persons. However, to avoid confusion, simultaneously with implementation of this change, FINRA should amend the definition of "person associated with a member" or "associated person of a member" in FINRA Bylaws Article I Definitions, section (rr), to match.

C. Proposed FINRA Rule 1121 (New Membership Application, Interview and Department Decision)

6. Proposed FINRA Rule 1121(c) through (h): Procedures Applicable to the Decision to Grant or Deny an NMA

Our only comment with respect to the this section of the rule relates to the process by which an extension is requested beyond the 180-day deadline for delivery of a decision by FINRA staff. In those instances where the need for an extension is that FINRA, and not the applicant, needs additional time, it seems that FINRA, not the applicant, should send the letter informing the applicant of the need to extend the time frame of review. Many applicants perceive the request for an extension as a sign that they have done something wrong that will negatively impact their application, even though the delay may be solely due to FINRA's workload.

D. Proposed FINRA Rule 1130 (Basis for Department Decision)

We would like to commend the staff on streamlining and consolidating the standards from 14 down to 11.

4. Proposed FINRA Rule 1130(c): Direct and Indirect Funding Sources

We believe that this new application evaluation standard requiring an applicant to "fully disclose and establish through documentation satisfactory to FINRA all direct and indirect sources of its funding" makes sense in the context of the examples provided in the RN. However, we believe that the language "through documentation satisfactory to FINRA" is still overly broad and has unintended consequences in certain scenarios. For example, in recent years we have handled NMAs for several start-up broker-dealer applicants that were funded indirectly through Series A rounds or other types of financing, including convertible notes. These investors received *de minimis* passive indirect ownership interests in the broker-dealer that certainly would not make them "Associated Persons" under proposed Rule 1111(c). The names, date-of-birth, social security numbers or EIN of these individuals or entities and any ownership interests, including the documents governing these interests, were requested and provided to FINRA. However, we believe where there are no indicia that an investor is linked to any regulatory concern, including a statutory disqualification, FINRA should explicitly exclude any need to submit highly confidential bank statements or organizational documents for these individuals or entities that are not Associated Persons. (Incidentally, we have been informed on more than one occasion that FINRA cannot guarantee the confidentiality of this type of information in the hands of FINRA staff.) Rather, we believe FINRA can attain its legitimate goals for information about such funding sources through the use of attestations that meet the content requested by FINRA on a case-by-case basis. The challenge in these instances is that these investors, most of whom are not a regulatory concern or subject to a statutory disqualification, have no expectation that by investing in the parent of a broker-dealer applicant, they are agreeing to turn over their private records to FINRA staff for review. Perhaps this is something that can be best

explicitly addressed via a Membership Application Proceedings FAQ (the "FAQ") published at the same time these rules become operative.

7. Proposed FINRA Rule 1130(h): Financial and Operational Controls

Our only comment on this rule is related to the retention of the part of Rule 1014(a)(7) that directs FINRA to consider the amount of capital necessary for the applicant to meet its expenses net of revenue for the first 12 months, based on reasonably reliable projections agreed to by the applicant and FINRA. We agree that this is a good standard for review and should remain in place. However, for the past few years FINRA Membership Department staff have effectively ignored this provision, and instead adopted an unofficial and unannounced policy which requires applicants to maintain enough capital to cover 12 months of projected fixed expenses, plus 120% of its minimum net capital requirement. We believe that FINRA should make it clear that this unofficial, informal policy is not the test of adequate capitalization or, if it is deemed absolutely necessary to use it, to make it a formal rule subject to the due process of notice and comment.

G. Proposed FINRA Rule 1160 (Application for Approval of Change in Ownership, Control, or Business Operations Pursuant to Continuation of or Withdrawal from Membership) and Related Supplementary Material

1. Proposed Rule 1160(a) (Events Requiring Application)

(e) Material Change in Business Operations

We think FINRA has done a commendable job expanding the categories that are *per se* material changes in business operations, as this adds clarity to an area of concern and confusion of members. However, we also think this can go further to clarifying other areas that either are or are not material. For example, FINRA typically takes the position that a firm wanting to commence business in options or municipal securities must file a CMA because the supervisor of this activity requires separate principal registration and exams (Series 4 or 53). Accordingly, the supervisor of this new activity needs to be vetted by FINRA for his credentials and requisite experience in performing and supervising these lines of business.

On the other hand, we think that the section of the rule that states that it would always constitute a material change for a member to "engag[e], for the first time, in...(iii) acting as a dealer" should be clarified to exclude the situation where a broker-dealer that already is subject to a minimum net capital requirement of $100,000 wishes to effect more than 10 transactions a year for its own proprietary account as a "customer" of another broker-dealer. Frequently this type of change is simply to maximize the return on a firm's otherwise idle capital, or to dispose of securities received as compensation for investment banking services to the broker-dealer's clients. This is another item that can be explicitly excluded by the rule or covered in the suggested FAQ.

2. Proposed FINRA Rule 1160(b) (Filing and Content of Application) and Related Supplementary Material

(b) CMA Waiver Request Process

We commend FINRA on the proposal to permit the staff to waive the requirement of a CMA when a member will cease operations after the transaction or an ownership or control change will not result in a "day-to-day" change of the broker-dealer. In instances such as an asset sale where the seller will cease operations as a broker-dealer, and file Form BDW, and it is not the subject of an unpaid arbitration or similar claims, there appears to be no need for FINRA to require the formality of a CMA from the selling party. FINRA's primary focus and all of the core information needed for review will be related to how the seller's business, personnel, etc., are integrated with the business of the acquirer. The examples of changes and circumstances in which FINRA would generally permit a waiver of the CMA are substantially similar to the types of changes listed in *Regulatory Notice 13-11* that qualified for a waiver of the CMA fee, yet still required filing of a CMA. This is a very significant and wise change and will be cost effective for both FINRA and the member firms. We believe FINRA should provide a method for members to electronically submit waiver requests via the FINRA Gateway, similar to how Materiality Consultations are now filed. We also believe that based on this change permitting CMA waivers, the recent amendments to Section 4(i) of Schedule A of the FINRA By-Laws relating to a fee waiver for a CMA involving the same activity, will no longer be applicable. FINRA should address this inconsistency.

9. Proposed FINRA Rule 1160.01 (Safe Harbor from Application in Limited Circumstances)

We applaud FINRA's decision to reverse the initial proposal presented in Regulatory Notice 10-01 so as to permit a member firm to rely on the safe harbor for all business expansions from which it is not restricted. This is consistent with the intent of the drafters of the safe harbor and serves to change FINRA's erroneous existing practice prohibiting expansion in any safe harbor area where one type of expansion was restricted.

H. Proposed FINRA Rule 1170 (Notice of Certain Member Changes)

We also commend FINRA on scaling back the number of events that would require prior written notice, as previously listed in *Regulatory Notice 10-01*. We understand FINRA's reasons for wanting to receive notice of these expected changes, but it is unclear why FINRA needs prior notice since these events will not trigger the need for a CMA. We also think that FINRA should better delineate the information it expects to receive in such notice and the means by which such notice should be delivered to FINRA, e.g. to the member's Regulatory Coordinator, to the MAP staff, someone else? We would recommend the ability for this information to be filed electronically through the FINRA Gateway, similar to how Materiality Consultations are currently filed.

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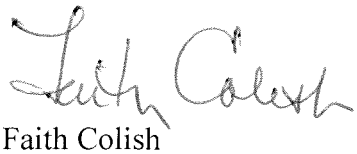
We appreciate the opportunity to share our views on the proposed membership rules.

Respectfully submitted,

Ethan L. Silver



Faith Colish