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April 25, 2014

Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington DC 20006-1500

Re: Regulatory Notice 14-09

Dear Ms. Asquith:

We appreciate the opportunity to comment on Regulatory Notice 14-09, in which the Financial Industry Regulatory Authority ("FINRA") proposes a new set of rules for firms that meet the definition of a limited corporate financing broker ("LCFB"). Ernst & Young Corporate Finance (Canada) Inc. ("EYCF(C)") is a broker-dealer registered with the SEC and is a member of FINRA. Among other things, EYCF(C) primarily provides advisory services to its clients with respect to equity and debt financing, corporate restructuring and divestitures and mergers and acquisitions. All of EYCF(C)'s clients are institutional in nature and EYCF(C) does not carry or maintain customer accounts, handle customers' funds or securities, accept customers' trading orders, or engage in proprietary trading or market-making.

Since much of EYCF(C)'s business appears to be encompassed by FINRA's proposed LCFB registration category, EYCF(C) is interested in fully understanding the proposed parameters of the registration category so that it can determine whether it should change its broker-dealer registration to that of an LCFB, if such registration category is adopted. EYCF(C) is greatly appreciative that FINRA has recognized through its LCFB proposal that firms providing advisory services such as EYCF(C), do not engage in many of the activities typically associated with traditional broker-dealers. Therefore, such firms should not be required to comply with those FINRA rules that are not actually relevant to their business.

While EYCF(C) is excited by the concept of a new limited registration category, EYCF(C) would like to confirm its understanding of certain aspects of the proposal, as well as suggest possible modifications to ensure that EYCF(C) and similarly situated broker-dealers will be able to rely on the LCFB registration category if the proposal is adopted.

1. Non-Registerable Activity.

EYCF(C) seeks to confirm that if a registered representative of an LCFB engages in activities that do not require broker-dealer registration, such activity will not be required to take place under the LCFB. This issue arises in the context of the SEC's recent series of no-action letters involving broker-dealer registration relief for merger and acquisition advisory firms. EYCF(C) is interested in understanding how this no-action relief impacts the LCFB registration category.

Most recently, on January 31, 2014 the SEC staff issued a no-action letter that provides limited broker-dealer registration relief for firms that engage in merger and acquisition advisory activities (the "January 31 No-Action Letter").¹ Specifically, the January 31 No-Action Letter provides that M&A Brokers,² subject to certain conditions, may effect transactions in connection with the transfer of ownership of privately-held companies³ without being subject to the broker-dealer registration requirements under Section 15(a) of the Exchange Act. The conditions on which the no-action position is based, include, among other things, the M&A Broker not having the ability to bind a party to a transaction or to provide financing for a transaction. The M&A Broker must also not have custody, control or possession of funds or securities in connection with the transaction and the transaction cannot involve a public offering. In addition, the issued securities in the transaction must be "restricted securities" under the Securities Act of 1933 (the "Securities Act").

EYCF(C) assumes that activities that do not require broker-dealer registration, either because such activities fit within the parameters of an SEC staff no-action position, or some other exemptive relief, will not be required to be conducted through an LCFB. However, EYCF(C) seeks confirmation that if a registered representative of an LCFB engages in non-registerable activities, such as those contemplated in the January 31 No-Action Letter, the registered representative will not be required to engage in these activities under the LCFB. Rather, these activities will be treated as "outside business activities" pursuant to proposed Rule 327 and will not need to be recorded on the books and records of the LCFB or be subject to FINRA rules governing the LCFB.

2. Rule 15a-6 under the Exchange Act.

In addition, a core part of EYCF(C)'s advisory functions involves EYCF(C) acting as a "chaperone" for non-U.S. brokers dealers from the Ernst & Young network. EYCF(C) typically chaperones the non-U.S. broker-dealers in cross-border merger and acquisition transactions, that in the absence of an exemption, would require the non-U.S. broker-dealers to register with the SEC as broker-dealers under Section 15(a)(1) of the Exchange Act. As this concept is not addressed in FINRA's proposal, EYCF(C) would like to confirm that chaperoning activities pursuant to Rule 15a-6(a)(3) under the Exchange Act (and related no-action letters) would be permissible for LCFBs in cases in which the foreign broker-dealers' activities are limited to those that could be effected by an LCFB, including activities otherwise permitted under the M&A No-Action Letters. Under the Rule 15a-6 chaperoning arrangements, EYCF(C) is responsible for, among other things, participating in communications, obtaining consents to service of process, and maintaining required books and records. EYCF(C) does not know of any reason why an

¹ See *Faith Colish, Esq., Carter Ledyard & Milburn LLP, et al.*, SEC No-Action Letter (Jan. 31, 2014). See also *Roland Berger Strategy Consultants*, SEC No-Action Letter (May 28, 2013) and *Ernst & Young Corporate Finance (Canada) Inc.*, SEC No-Action Letter (July 12, 2012). Together, these three SEC No-Action Letters, and any subsequent No-Action Letters addressing this subject matter, shall be referred to as the "M&A No-Action Letters."

² An "M&A Broker" is defined in the January 31 No-Action Letter as an entity whose business of effecting securities transactions is "solely in connection with the transfer of ownership and control of a privately-held company... to a buyer that will actively operate the company or the business conducted with the assets of the company."

³ A "privately-held company" is defined as an operating company that is not a reporting company under the Securities Exchange Act of 1934 (the "Exchange Act").

LCFB would not be permitted to chaperone a foreign broker-dealer in the same manner that traditional broker-dealers can, however, EYCF(C) would like confirmation of this. EYCF(C) would also like to confirm with FINRA that there will be no additional restrictions or limitations placed on chaperoning LCFBs that are not currently in place on traditional chaperoning broker-dealers.

3. Public Company Transactions.

EYCF(C) notes that there is no restriction on LCFBs engaging in public company transactions in connection with their advisory work. EYCF(C) believes that this is particularly important in light of the limitation on the scope of the January 31 No-Action Letter to private company transactions. EYCF(C) occasionally provides public company M&A advisory services. EYCF(C) wishes to confirm that these services will be able to be conducted by LCFBs. This will encourage firms to utilize this new registration category in lieu of reliance on the M&A No-Action Letters.

4. Required Documentation for Institutional Investor Status.

As currently proposed, Rule 016(g) defines an "institutional investor" to include among other entities, a person (whether a natural person, corporation, partnership, trust, family office or otherwise) with total assets of at least \$50 million. EYCF(C) seeks to understand whether LCFBs will be required to obtain any particular documentation to substantiate the value of an investor's total assets. EYCF(C) believes that LCFBs should be able to make their own determinations as to whether an investor meets the "institutional investor" threshold based on the receipt of documentation that the LCFB considers to be reasonably appropriate. Currently, EYCF(C) will qualify an investor by information provided by the investor, including representations or by publicly available information concerning the investor. The status of the investor is also the subject of representations and warranties in the engagement materials. Personnel of the firm are alert to circumstances arising during their research prior to a mandate arising or learned during the course of their mandate suggesting that the information obtained to date is inaccurate. EYCF(C) believes that its current practices have served as an effective means for determining an investor's status and should be sufficient to determine "institutional investor" status in connection with LCFB requirements as well.

5. State Registration Issues.

One of the potential benefits of LCFB registration is that it will afford an exemption from certain state business broker registration requirements that are available for federally registered broker-dealers, as well as state broker-dealer registration requirements in cases in which the institutional buyer exemption is predicated on federal broker-dealer registration. For example, the Illinois Business Brokers Act of 1995 requires that any person domiciled in Illinois, receiving compensation from another person to procure a business or assist in the procurement of a business, must be registered as a business broker with the Illinois Secretary of State Securities Department, unless, among other exemptions, he or she is registered as a dealer in the state of Illinois or he or she is exempt from registration as a dealer in Illinois but registered pursuant to federal securities laws. Those firms that choose to rely on the M&A Letters, rather than registering as a broker-dealer, may be in the position of being required to register as a business broker or broker-dealer with state securities commissions notwithstanding that they are not



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required to register with the SEC or become members of FINRA. We urge FINRA to ensure that this new category is fully recognized by the states as a basis for the exemptions noted above notwithstanding the more limited requirements applicable to the LCFB category.

Thank you for providing us with the opportunity to provide comments on FINRA's proposed rules for LCFBs. We would be pleased to discuss any comments herein, or provide FINRA with any additional assistance as it proceeds with the proposal. Please do not hesitate to contact me at 416-943-3476 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tony Ianni', written over a vertical line that extends from the 'Very truly yours,' text.

Tony Ianni
President, Ernst & Young Corporate Finance (Canada) Inc