



Ernst & Young Capital Advisors, LLC
One Kennedy Square
777 Woodward Avenue
Suite 1000
Detroit, MI 48226

Tel: +1 313-628-7100
ey.com

Member of FINRA. www.finra.org

April 28, 2014

BY E-MAIL (pubcom@finra.org)

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

Re: Proposed Rule Set for Limited Corporate Financing Brokers

Dear Ms. Asquith:

We appreciate this opportunity to comment on the proposed rule set for limited corporate finance brokers (“LCFBs”) described in Financial Industry Regulatory Authority (“FINRA”) Regulatory Notice 14-09 (the “LCFB Rules”). Ernst & Young Capital Advisors, LLC (“EYCA”) is a broker-dealer registered with the U.S. Securities and Exchange Commission (“SEC”) and has been a member of FINRA since 2010. EYCA is also registered in fifty-three U.S. states and territories. EYCA’s primary business activities consist of (1) advising public and private institutional clients regarding mergers and acquisitions, corporate restructuring, and capital raising activities, including securities offerings and debt refinancing, and (2) identifying and soliciting investors in private placements.

We commend FINRA for proposing that broker-dealers like EYCA be subject to a limited rule set in lieu of the full panoply of FINRA rules to which they currently are subject. The LCFB Rules, for instance, include streamlined requirements regarding communications with the public, supervision, and continuing education that are appropriate for broker-dealers that do not handle customer funds or securities or communicate with or execute trades for retail customers. For such broker-dealers, the LCFB Rules provide welcome relief from requirements that are unnecessary and costly. Although EYCA has not yet determined whether it would opt for registration as an LCFB if the LCFB Rules were adopted, we submit this letter to highlight two modifications to, or clarifications of, the LCFB Rules that, if adopted, would enhance the potential utility of the LCFB registration category for EYCA and similarly situated member firms. In particular, we believe FINRA should (1) permit LCFBs to solicit institutional accredited investors when participating in the private placement of securities, and (2) permit LCFBs to maintain licenses that are not referenced in LCFB Rule 123 for representatives and principals.

I. Soliciting Institutional Accredited Investors

Under LCFB Rule 016(h)(1), only broker-dealers that qualify, identify, or solicit “institutional investors” as defined in LCFB Rule 016(g) would be eligible to register as LCFBs. As FINRA acknowledged in Regulatory Notice 14-09, the definition of “institutional investor” in LCFB Rule 016(g) is more restrictive than the definition of “accredited investor” in Regulation D under the

Securities Act of 1933. For instance, and most significantly from EYCA's perspective, whereas broker-dealers that participate in private placements pursuant to Rule 506 of Regulation D are currently permitted to solicit institutions with total assets in excess of \$5,000,000, LCFBs generally would be prohibited under LCFB Rules from soliciting institutions with total assets of less than \$50,000,000 (unless they fell into one of only a few categories of entities enumerated in the LCFB Rules, such as banks or registered investment companies). Thus, broker-dealers that otherwise would be eligible to register as LCFBs would be prohibited from doing so if they solicited institutions with total assets of between \$5,000,000 and \$50,000,000. We urge FINRA to permit broker-dealers that solicit such institutions to register as LCFBs.

FINRA justifies this gap in LCFB eligibility by noting that “[a]pplication of the LCFB Rules to firms that market and sell private placements to accredited investors would require FINRA to expand the applicable conduct rules and other provisions.”¹ It is not clear which requirements FINRA has in mind, particularly if the accredited investors in question are institutions.² Moreover, the overriding differences between potential LCFBs and broker-dealers ineligible for registration as LCFBs is – and so the key consideration when determining whether existing FINRA rules should apply to LCFBs should be – that potential LCFBs do not handle customer funds or securities and do not interact with retail customers. These differences exist irrespective of whether potential LCFBs solicit institutional accredited investors with total assets of between \$5,000,000 and \$50,000,000, or institutional accredited investors with total assets of greater than \$50,000,000.

In addition, the SEC has determined that accredited investors are “those persons whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the Securities Act’s registration process unnecessary.”³ If institutional accredited investors with total assets of between \$5,000,000 and \$50,000,000 are sufficiently sophisticated that *offerings* to such investors are not subject to additional requirements under the Securities Act relative to offerings to other accredited investors, there is no reason that the *broker-dealers participating in offerings* to institutional accredited investors with total assets of between \$5,000,000 and \$50,000,000 should be subject to additional requirements under FINRA rules relative to broker-dealers participating in offerings to other accredited investors.

¹ FINRA Regulatory Notice 14-09, note 3.

² For instance, if, as a consequence of permitting LCFBs to solicit accredited investors, FINRA elected to incorporate into the LCFB Rules FINRA Rule 5123 (Private Placements of Securities), which imposes a filing requirement on broker-dealers that sell securities in private placements, doing so would have no effect on LCFBs that solicit *institutional* accredited investors because broker-dealers that solicit such investors are exempt from the requirements of the rule. FINRA Rule 5123(b)(1)(J) exempts offerings sold to accredited investors described in Securities Act Rule 501(a)(1), (2), (3), or (7) – *i.e.*, institutional accredited investors.

³ SEC Securities Act Release No. 6683 (Jan. 16, 1987) (proposing, among other things, to include corporations and partnerships with total assets in excess of \$5,000,000 within the scope of the definition of “accredited investors” for purposes of Regulation D).

II. Maintaining Registration Licenses Not Referenced in Rule Set

LCFB representatives and principals should be permitted to retain licenses that are not referenced in LCFB Rule 123. As discussed below, the potentially transient nature of the LCFB registration category may cause representatives and principals of an LCFB to become associated with a non-LCFB broker-dealer within a short period of time. Consequently, representatives and principals may hesitate to associate with an LCFB unless they are permitted to retain licenses that are not referenced in LCFB Rule 123.

Several aspects of the LCFB registration category could dissuade representatives and principals from associating with an LCFB unless they are permitted to retain non-required registrations. First, under LCFB Rule 240, FINRA may require an LCFB to register as a non-LCFB broker-dealer if FINRA determines that the LCFB “has engaged in activities that require the firm to register as a broker or dealer under the Exchange Act, and that are inconsistent with the limitations imposed on limited corporate financing brokers under Limited Corporate Financing Rule 016(h).” Second, under LCFB Rule 116(c), an LCFB may become a non-LCFB broker-dealer by filing an application for approval of a material change in business operations and amending its FINRA membership agreement. In each of the above scenarios, an LCFB representative or principal who relinquished a registration in order to associate with the LCFB may find that he or she needs that registration in order to associate with a non-LCFB broker-dealer.

We urge FINRA to permit principals and representatives associated with LCFBs to retain licenses that are not referenced in LCFB Rule 123. Specifically, LCFB Rule 121(c)-(d) should permit LCFBs to maintain a registration for a representative or principal so long as the representative or principal is active in the broker-dealer’s “investment banking or securities business” as a representative or principal, respectively. For instance, an LCFB should be permitted to maintain a Series 22 license (Limited Representative—Direct Participation Program) for a representative who actively sells corporate securities on behalf of the LCFB pursuant to the representative’s Series 62 license (Limited Representative—Corporate Securities).⁴

We appreciate this opportunity to comment on the proposed LCFB Rules. Please do not hesitate to contact me at 313.628.8690 if you would like to discuss any of the topics addressed in this letter or any other aspect of the proposal.

Sincerely,



James W. Carter
Chief Executive Officer

⁴ We note in this regard that FINRA’s proposed Rule 1210 would permit FINRA members to maintain a non-required registration for a representative or principal “provided that such person is engaged in a bona fide business purpose of the member.” FINRA Regulatory Notice 09-70.