HighBank SECURITIES

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VIA Email (pubcom@finra.org)

April 28, 2014

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

Re: Limited Corporate Financing Brokers (NTM 14-09)

Dear Ms. Asquith,

HighBank Securities, LLC (CRD 153796) welcomes the opportunity to comment about the proposed rule set for Limited Corporate Financing Brokers. Our business consists mainly of investment banking advisory services, namely mergers & acquisition advisory services as well as assisting clients in raising capital, mainly from parties that qualify as institutional investors. It is our view that our firm would fit within the proposed definition of an LCFB.

Through the creation of the Series 79 (Limited Representative – Investment Banking) in 2009 and now this proposed rule, it appears that FINRA is seeking to tailor its regulatory requirements to fit the activities performed by firms like ours. We welcome this movement. That said, we believe that the proposed rules do not go far enough and still result in a level of regulation and oversight that remains onerous and contains specific requirements that are unnecessarily burdensome to our business. Furthermore, the recent SEC Staff no-action letter issued to Faith Colish, et al., threatens to undermine FINRA's efforts to encourage registration by firms that conduct corporate finance business.

While the proposed LCFB rules eliminate a few of the regulatory burdens imposed upon firms like ours, it is our view that the rules do not go far enough. Specifically:

- LCFB's would still be required to participate as members of SIPC, whose specific mission is to protect clients assets held by broker-dealers. LCFB's are not permitted to hold client funds or securities and, accordingly, maintaining the requirement of SIPC participation makes little sense.[1]

[1] Indeed, it is senseless that the SIPC applies to our firm presently as our firm holds no customer funds or securities and, accordingly, there is no scenario in which customers of our firm – the contingent that SIPC is chartered to protect – would benefit from SIPC's existence. Compulsory membership in SIPC results in a tariff on our firm's revenues that is patently unfair. This unfairness would be continued under the proposed LCFB framework.

- The requirement of an annual audit by an independent accountant and bi-annual AML independent reviews are of negligible value but material cost. Firms like ours expend considerable time, effort and expense to comply with the requirements of these annual reviews. These audits provide the investing public with no identifiable benefit.
- The rules would continue to require LCFB's to maintain a fidelity bond with coverage of at least $100,000, again at significant annual cost to the firm. For the reasons mentioned above – we hold no customer funds – the fidelity bond requirement makes little sense and we would request a reconsideration of its need.

For these reasons and others, the LCFB proposed rules do not represent a meaningful reduction in our regulatory burden and, accordingly, it is doubtful whether we would elect into the LCFB category, especially as the LCFB precludes raising capital from accredited investors. While the vast majority of our targeted investors qualify as institutional investors, we sometimes reach out to a network of high-net worth accredited investors, an action that would be prohibited by the LCFB proposal.

FINRA requested comments on certain specific issues. Our view on the most relevant issues for us is below:

- *Does the proposed rule set provide sufficient protections to customers of an LCFB? If not, what additional protections are warranted and why?*

  Our view is that the proposed rule set continues to provide sufficient protections for customers of an LCFB. In fact, there are many rules and regulations that would unnecessarily apply to an LCFB that provide no meaningful protection to LCFB's customers (SIPC, fidelity bond, annual audit).

- *Does the proposed rule set appropriately accommodate the scope of LCFB business models? If not, what other accommodations are necessary and how would customers be protected?*

  The proposed rule set allows LCFBs to solicit institutional investors but not investors that meet the definition of accredited investors. This is a distinction that should be reconsidered, as accredited investors are deemed to have a level of sophistication that allows them to sufficiently analyze the risks associated with investing.

- *Are there firms that would qualify for the proposed rule set but that would choose not to be treated as an LCFB? If so, what are the reasons for this choice?*

  Yes! One of our great frustrations is that our firm has elected to formally register as a broker-dealer, at significant cost and burden, while other firms with whom we directly compete have not properly registered as broker-dealers (with no negative consequences). It is our opinion that these firms will continue to operate without proper registration despite the LCFB proposed rule set.

- *What is the likely economic impact to an LCFB, other broker-dealers and their competitors of adoption of the LCFB rules?*

  We don't see any significant economic impact to an LCFB. The costs associated with being an LCFB are marginally lower than the costs of being a broker-dealer today, but, as mentioned, the proposed on-going costs are still significant.

- *Should principals and representatives that hold registration categories not included within LCFB 123 be permitted to retain these registrations?*

  Yes. We believe that representatives of an existing broker dealer that elects LCFB status should be allowed to continue to hold all of the registrations categories that they held prior to the election. This protection seems justified in that future rule changes could occur or the firm could decide the election was not worthwhile and desire to convert back to a full broker-dealer without the "penalty" of having to re-certify.

- *Does an LCFB normally make recommendations to customers to purchase or sell securities? Should an LCFB be subject to rules requiring firms to know their customers (LCFB Rule 209) and imposing suitability obligations (LCFB Rule 211) to an LCFB?*

  Aside from advice provided to our buy-side and sell-side merger and acquisition clients, our firm does not make recommendations to clients or customers to purchase or sell securities and, in fact, that activity (aside from in the merger and acquisition context) does not in our opinion seem appropriate for an LCFB.

- *Does the SEC staff no-action letter issued to Faith Colish, et al., dated January 31, 2014, impact the analysis of whether a firm would become an LCFB? Is it likely that some limited corporate financing firms will not register as a broker consistent with the fact pattern set forth in the no-action letter, or will they register as an LCFB?*

  The no-action letter represents a shift in regulation that is significantly more meaningful than the incremental changes made in the LCFB proposed rule set. Our firm derives the majority of its revenue from activities consistent with those set forth in the no-action letter. We are currently analyzing the no-action letter in detail, but our preliminary conclusion is that the majority of our business would no longer be subject to FINRA regulation as a result of the no-action letter. Although this would represent welcome financial relief, we believe this is a significant step backward in ensuring the quality of advice and protection provided by existing regulations and as such encourage FINRA and our membership to work hard to have the ruling reversed.

  Some might argue that unlicensed "M&A brokers" cause no harm and therefore they should not be subject to regulation. We disagree and provide two real examples.

First, assume a John owns a business worth $10 million and the vast majority of his net worth and life's earnings are tied up in the business. John, despite his significant net worth, is unsophisticated with all matters financial. John hires an unlicensed M&A broker who due to poor advice and shoddy execution proceeds to sell his business for half of what it is truly worth. John has lost $5mm and is by our way of thinking significantly "harmed."

Second, under the same fact pattern John's consideration for the sale of his business is stock in the acquirer and not cash. The stock is subject to a lock-up and other liquidity limitations that require John to hold the stock for 24 months post-closing. The M&A broker advises John that there is no real risk to holding the stock and is not able to even quote appropriate studies and current market data regarding the liquidity discount John should assume if he decides to take the stock as consideration. During the 24 month period the acquirers stock drops 50%. John is certainly harmed by having hired the unlicensed, unregulated M&A broker.

It is our opinion that the proposed rule set will <u>not</u> encourage firms like ours to register as an LCFB. In fact, the proposed rule set, coupled with the no-action letter, makes it even more likely that many firms will continue to "roll-the-dice" and perform their services illicitly outside voluntary FINRA and SEC oversight, risking the livelihoods of countless, financially unsophisticated business owners.

Thank you for allowing us to provide our comments. Please don't hesitate to contact us if you have questions concerning our response.

Very truly yours,

Stephen A. Gaines
Managing Director/CEO

Dennis W. O'Neill
Managing Director/CCO