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Via email – pubcom@finra.org

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 17-15

Dear Ms. Mitchell:

Thank you for the opportunity to comment on the proposed revisions to Rule 5110 in FINRA Regulatory Notice 17-15. We agree with and appreciate many of the changes FINRA has put forth. There is one significant issue we call to your attention and a couple of other comments we present for your consideration below.

Revisions to the valuation method for options, warrants and other convertible securities

We encourage FINRA to reconsider the change to the valuation method presented in Supplementary Material .02 to Rule 5110 for options, warrants and other convertible securities received as underwriting compensation to entertain “alternate securities valuation method[s] that [are] commercially available and appropriate for the type of securities to be valued”. FINRA should continue to use a single valuation method applied to all transactions in order to process filings in a consistent, predictable and efficient manner. Our concerns are twofold:

1. Varying methods will yield inconsistent results from dealer to dealer and deal to deal.
2. Assessment of a new valuation method during the pendency of a Public Offering System filing will delay resolution of that filing and will divert Department staff time and attention from other filings.

In lieu of the proposed revision to Rule 5110, we encourage the Department to consider issuing an invitation for filers to submit alternative valuation methods with a discussion of the advantages and disadvantages of each. The Department can consider and test the options presented and select one as the new standard or determine to continue with the method currently in place. We note that the Black-Sholes method requires a volatility component of the stock in its calculation. This element could drastically change as the review process moves forward, especially an S-1 offering that could take a couple of months to clear. Any factor that could potentially overvalue the worth of the warrants would limit the

ability of the member firms to include warrants as an Item of Value for compensation. Please bear in mind that a method prone to overvaluing warrants would have a significant and disproportionate negative impact on member firms that work with smaller issuers because these companies have often have limited cash resources and rely more heavily on granting non-cash fees.

We urge FINRA to retain the current formula pending selection of a new valuation method, so that filers and member firms have certainty that filings will be processed in accordance with long-established expectations. In the absence of any demonstrated abuses (and we note that none were cited in the proposed revision), there is no impetus to change the formula for the sake of change.

Additional suggestions/requests

Corporate Financing Department Guidance

We request FINRA to enhance its Rule 5110 FAQs and publish informal interpretations to more broadly and frequently circulate guidance provided to counsel and members. Some of the Corporate Financing Department's prior informal guidance has been reflected in the proposed revisions to Rule 5110, but future policy changes or guidance will not be and should be uniformly available to all filers and member firms.

Compensation Guidelines

We respectfully request FINRA to revisit general guidelines on what constitutes "unreasonable" compensation. Particularly for smaller offerings, this standard is a source of confusion, delay and tension between the Department, members and counsel. As demonstrated by FINRA's elimination of the 8% cap on shelf takedowns, not all offerings will migrate to the greatest compensation value for a given offering size, type and level of risk for the member firm. Most offerings will be driven by market conditions. The current presumption in favor of an 8% cap on shelf takedowns provides a useful measure for firms and still affords both FINRA and member firms leeway to address the factors present for a given offering. We encourage FINRA to consider updating the information in Notice to Members 92-53 to provide current guidelines.

Thank you again for the opportunity to submit comments. If you have any questions, please contact Joan Adler at 212-370-1300.

Sincerely,

Ellenoff Grossman & Schole LLP