December 22, 2014

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

RE: FINRA Requests Comment on a Proposal to Establish "Pay-to-Play" Rule
Regulatory Notice 14-50

Dear Ms. Asquith:

The Third Party Marketers Association ("3PM") supports FINRA's initiative to implement a "Pay-to-Play" and related rules that would regulate the activities of member firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers that provide or are seeking to provide investment advisory services to such government entities; specifically through the following three new proposed rules:

- Rule 2271: Disclosure Requirement for Government Distribution and Solicitation Activities
- Rule 2390: Engaging in Distribution and Solicitation Activities with Government Entities
- Rule 4580: Books and Records Requirements for Government Distribution and Solicitation Activities

3PM acknowledges that the SEC adopted the Advisers Act Rule 206(4)-5 in July 2010 addressing pay-to-play practices by investment advisers (the SEC Pay-to-Play Rule), and the framework of this Rule was purposeful and impactful to the specific constituency of the marketplace to which it was directed: investment advisers. 3PM also acknowledges that other market practitioners, namely FINRA members firms and their registered representatives, should be addressed by specific rules, and this comment letter will address the proposed rules as well as FINRA's specific questions.

1. ***The proposed pay-to-play rule is modeled on the SEC Pay-to-Play Rule. Is this approach appropriate or are there alternative models that FINRA should consider that would be as or more effective in deterring pay-to-play practices and also meet the requirement in the SEC Pay-to-Play Rule that FINRA's rules impose substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to Play Rule imposes on investment advisers?***

3PM believes that FINRA's goal should be to harmonize its rules regarding pay-to-play with those of the SEC and the MSRB and implement equivalent restrictions on member firms to those imposed on investment advisers by the SEC. Given the overlapping regulatory oversight that exists in today's investment industry, 3PM believes that in order for firms to participate in a fair and competitive marketplace participants should not be disadvantaged relative to their competitors because their business model falls under one regulatory scheme rather than another. We believe that FINRA members will in fact be disadvantaged should FINRA move forward with its proposal to impart more stringent restrictions on member firms. FINRA members are already subjected to more regulatory rules and requirements than either investment or municipal advisers. As proposed, this rule would only serve to further shift the playing field in favor of these advisers at the expense of FINRA Members.

2. ***The proposed pay-to-play rule applies to covered members that engage in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser that provides or is seeking to provide investment advisory services to such government entity. Could member firms engage in activities with government entities that are not covered by this rule that should be covered? If so, what are those activities and how should FINRA design a pay-to-play rule to cover such activities?***

   3PM believes that there are in fact a number of activities that may trigger compliance outside the proposed scope of the rule; however that meaningful regulation cannot be accomplished without placing substantial burden for compliance on the government entity. Recognizing that governmental entities are outside the jurisdiction of FINRA, 3PM urges FINRA to exercise caution so that it does not create a 'check' without 'balance.'

3. FINRA is proposing to interpret and apply the terms in its proposed pay-to-play rule consistent with how the SEC has interpreted the terms in the SEC Pay-to-Play Rule. Is this approach appropriate? Are there terms that require additional clarification or that should be interpreted or applied differently? Are there differences between broker-dealers and investment advisers that would warrant a different interpretation or application of terms in the proposed rule?

   In order to further protect investors, 3PM believes that the definition of an investment adviser in Rule 2390 should be expanded to include not only SEC registered investment advisers, but also State registered investment advisers. Investment advisers who are not registered with the SEC due to their size or by choice should not have an advantage over firms that are not subject to federal regulatory oversight. 3PM believes that state regulators should be drawn into the regulatory dialogue on this issue to ensure that future state lawmaking will not further complicate or contradict the direction FINRA is taking with its BD constituents.

4. How prevalent are pay-to-play practices by member firms? What are the effects of such pay-to-play practices on the ability to obtain business from government entities?

The results of past unscrupulous activities are still being deeply felt by firms who distribute product or solicit investments from government entities. These activities have tarnished the credibility of an entire industry which for the most part is comprised of highly ethical and properly regulated firms. While some government entities have realized that these pay-to-play activities could not have occurred without some "loopholes" in the processes utilizes by these government entities many still believe the problem to be one-sided. As a result there are a number of states which have made our jobs nearly impossible by either banning our activities, prohibiting payment on any investments we were involved in, by requiring us to register as lobbyists or by enacting such overreaching and onerous disclosure and reporting requirements.

While 3PM recognizes that pay-to-play 'bad actors' still exist, despite increased awareness and regulation we believe that this problem is two-sided. As such, 3PM encourages FINRA to coordinate its efforts as much as possible with other regulators including NASAA (state BD and IA regulators), to close the gaps that seem to be the primary source of violations in the pay-to-play arena. We also believe that FINRA should increase awareness among its examiners, in its regional and district offices and others among its ranks wherever possible as a meaningful alternative to more stringent rulemaking initiatives.

5. ***How prevalent are pay-to-play practices in connection with member firms engaging in distribution or solicitation activities with government entities on behalf of investment advisers that provide or are seeking to provide investment advisory services to the government entity? Would the proposed rules be effective at deterring such practices?***

3PM believes that unscrupulous pay-to-play activities are not as common as they once were however; we believe that any industry that offers the opportunity to make large sums of money will always attract bad actors. As such, we believe that the answer is not in more stringent rulemaking, but rather in closing the gap between regulated and unregulated entities. We believe that a harmonized rule making effort will make it easier for firms to comply with the rules and at the same time make it easier for the regulatory authorities to identify who is operating within the confines of the law and who is not. This is also why we believe that the definition of an investment adviser in Rule 2390 should be expanded to include all investment advisers not just federally registered ones.

6. ***Are the proposed recordkeeping requirements appropriately tailored to obtain information that would be relevant for purposes of monitoring for compliance with the proposed rule?***

3PM does not believe that the recordkeeping requirements are appropriately tailored to obtain information that would be relevant for purposes of monitoring compliance with the proposed rule. While monitoring the direct political contributions is an important way to curb pay-to-play activities, requiring firms to also track and monitor indirect contributions could become extremely time consuming and costly for firms. As such we believe that the indirect compensation recordkeeping requirement should be eliminated.

7. ***Are the proposed disclosure requirements appropriately tailored to provide government entities with the information necessary for the government entity to determine if there are potential conflicts of interest that could influence the selection process by the government entity?***

   3PM believes that a written disclosure is an extremely important and necessary part of the investment industry and helps to alert investors to information that they may have not been previously aware of. In this case we are not adverse to providing investors with most of the information outlined in Rule 2271 and appreciate that we would be permitted to do so electronically. We believe that investors have the right to know information that could impact their investment decision.

   3PM further believes that the requirement to update any disclosure within 10 days is not a reasonable length of time and is inconsistent with other FINRA requirements which allow firms 30 days to update important firm information on filings such as Form BD, BR, U4s and U5s. We believe this time frame should be extended to be consistent with other regulatory filing requirements.

   We also ask FINRA for some clarification regarding some of the disclosure items required under Rule 2271. It appears that these requirements incorporate most of the components of the Solicitor Disclosure Rule (Rule 206(4)-3 under the Investment Advisers Act of 1940) disclosure. In an interpretive letter dated July 28, 2008, the SEC Office of Chief Counsel, Division of Investment Management replied to Mayer Brown's inquiry to clarify that Rule 206(4)-3 does not apply to cash payments by registered advisers to persons who solicit investors to invest in investment pools managed by the adviser. Given that most of FINRA's members who solicit for investment advisers are soliciting for pools of funds, ie Hedge Funds, Private Equity and Real Estate Funds, as well as other types of commingled LPs, we believe that there is a disconnect between the SEC's interpretation and FINRA's proposed rule. We respectfully request that you address how FINRA's proposed rule would reconcile with the SEC's interpretive letter.

8. ***What would be the likely effects on competition, efficiency and capital formation of the proposed pay-to-play rule?***

   3PM believes that the proposed pay-to-play rule in its current form would disadvantage FINRA members by imposing a more stringent rule set on its constituents without adding any new investor protections. By adding more onerous requirements, the rule would also disadvantage members who would compete with firms not subject to the same requirements.

   The rule would also add a new and significant burden on small firms in terms of disclosure and recordkeeping requirements. Not only would small firms be impacted by cost, but also by their limited personnel resources who would now have to take on additional responsibilities to comply with this rule.

9. ***How many member firms are expected to be impacted by the proposed pay-to-play rule? What is the estimated number of covered associates per member firm?***

The information below is based in information obtained in early 2013. While the data may not be as current as we would like we believe numbers reflect a viable estimate of the firms that would be impacted by the proposed pay-to-play rule.

FINRA, defines a small firm is any firm with 150 or fewer licensees, or registered representatives. FINRA is comprised of approximately 4400 firms of which 85% are categorized as small firms. A significant percentage of small broker-dealers that have only 2 or fewer business lines, have less than $1mm in annual revenue, and/or engage in business lines such as private placements, mergers and acquisitions, and other such business lines which would fall under the category of LCFB.

These types of small broker-dealers are readily identifiable using BrokerCheck, FINRA's public resource for broker-dealer background reviews, or through its central data depository (CRD) with the following acronyms:

- Other
- PLA – Private Placement
- PLA and Other

Of the 4400 FINRA broker-dealers registered, the statistics reveal the following:

- 191 broker-dealers report that private placement activity is their only business line;
- 174 broker-dealers do not fall into any of the customary FINRA business lines and disclose "Other" as their only line of business. Most of these describe their business as mergers and acquisitions;
- 541 broker-dealers disclose that they engage solely in private placement agent and "other" activity, again describing the other activity as mergers, acquisitions and placement agent or third party marketing services.

Cumulatively, these 906 firms represent a class of broker-dealer that does not open securities or investment accounts, does not carry or introduce assets or securities, and which does not have customers in the retail sense. The business activities of these firms are governed by contract, and are not 'transactional.'

It is important to note that the majority of these firms are also very small firms, and many have revenue of less than $1mm/year. Of the 457 firms reporting only one line of business (private placements or "other") all but 13 are small firms (fewer than 50 employees). Of those reporting two business lines (Private placements and "other"), 98% have fewer than 50 employees.

Attributes	# Firms	# with Fewer than 50 RRs	As %
PLA	191	188	98%
Other	174	164	94%
PLA and Other	541	528	98%
Total or Average	**906**	**880**	**97%**

10. ***What are the sources and estimates of benefits associated with the proposed pay-to-play rule, proposed disclosure requirements and proposed recordkeeping requirements?***

    While we understand the importance and timing of FINRA's rulemaking in support of the continued activities of placement agents currently engaged in covered activities, however we believe that the desired result can only occur if FINRA makes a commitment to carefully coordinate its rules with those already in place, and in the context of the size and variety of firms in its jurisdiction. We support the pay-to-play rulemaking to the extent that FINRA is committed to ongoing dialogues with state and federal regulators with both the IA and BD jurisdiction to ensure consolidation and coordination of rules and associated examination initiatives.

    We do not believe there to be a measurable benefit in any disclosure requirements that would exceed those already required under SEC rules. Disclosure of the existence of written policies and procedures, for instance, is unlikely to serve any real benefit to the recipient of the disclosure.

    We believe the proposed record keeping requirements go beyond what would be necessary to facilitate ease of review by FINRA examiners and should be expressly limited to meaningful activities. For instance, record keeping related to attempted solicitations and/or to non-clients should be eliminated as should indirect contributions that may be extremely difficult to monitor and track.

11. ***What are the sources and estimates of compliance costs associated with the proposed pay-to-play rule, proposed disclosure requirements and proposed recordkeeping requirements? Would the proposed rules impose different costs based on the size or the business model of the member firm?***

    As discussed briefly above, to the extent that FINRA rules for BDs exceed those established rules for SEC or state investment advisers, municipal advisers or others operating in this space, the costs of compliance are proportionately unfair. Particularly burdensome are disclosure requirements, especially in the context of the proposed 10-day window for updates, and the record keeping requirements related to solicitations and/or to non-clients.

12. ***How many member firms would engage outside legal services to assist in drafting policies and procedures to comply with the proposed rules? What are the estimated costs?***

    3PM estimates that the majority of its members will spend between $1,500 and $2,500 or approximately 5 to 10 hours of a professional consultant's time to draft and implement effective pay-to-play procedures. In addition, 3 PM estimates that a BD in compliance with rulemaking will exert approximately 10-20 additional hours of compliance oversight in connection with the proposed rules each year. While 3PM believes this investment will not be overly burdensome, it encourages FINRA to be sensitive to the costs and burdens. Particularly, 3 PM requests that FINRA dedicate its resources to incorporating instructive guidance wherever possible in its implementing release (if any) and to create and publish forms, checklists and model procedures and disclosure language to assist BDs in achieving compliance.

13. ***How many member firms that would be impacted by the proposed pay-to-play rule are subject to (or are affiliated with entities subject to) the SEC Pay-to-Play Rule or MSRB pay-to-play rules? Would the compliance costs associated with the proposed rule be lower for these member firms? What are the estimates of compliance costs?***

    3PM believes that there would be some substantial overlap in the requirements in certain circumstances relating to the different regulatory bodies governing the specific market practitioners, therefore it makes sense for these regulatory bodies, namely the SEC, FINRA, NASAA and the MSRB, to open and maintain specific channels of communication between themselves to make the process more efficient.

    The regulatory bodies could increase efficiency further by providing a standardized format by which market practitioners could share relevant information and document this information accordingly. 3PM would be interested in giving its initial and ongoing input in a joint regulatory committee, to the extent such a body is formed.

14. ***The proposed pay-to-play rule does not cover member firms that are SEC-registered municipal advisors subject to MSRB pay-to-play rules. FINRA recognizes that both its and the MSRB's proposed rules are still undergoing the public comment process and subject to modifications. Would the applicability of the two sets of rules on member firms create any competitive imbalances? What are they? How substantial are they?***

    When the regulators themselves cannot coordinate the release and implementation of what should be substantially similar rule-making, BDs, and especially small BDs are significantly disadvantaged. Juggling pending internal compliance initiatives, including timing the drafting and implementation of new policies, gauging whether or not disclosures are advisable in the context of one jurisdiction or the other, and even making hiring decisions are substantial and costly considerations in the context of pending rulemaking. Structuring a business plan, licensing, registration, training and other business considerations border on impossible. Unless

and until the regulators come together to create a meaningful landscape for all market participants, bad actors will continue to engage in regulatory arbitrage to the detriment of those firms trying to do it right.

15. ***Would the proposed pay-to-play rule create any competitive imbalances among member firms because some dually registered investment advisers would be subject to the SEC Pay-to-Play Rule while others would be subject to the proposed rule?***

    The answer to the question is yes, to the extent that substantially similar rules are not applied evenly across all firms engaging in the business of placing business with government entities. To be effective, the rules must take into account all relevant factors and all relevant jurisdictions. 3PM recognizes that the regulatory scheme will not be changed with this one area of rulemaking. Nonetheless, we see no reason why FINRA's rules regarding pay-to-play should be any different for BDs than the existing rules for SEC registrants.

16. ***Are there any other expected economic impacts associated with the proposed rules? What are they, what entities would be impacted, and what are the estimates of those impacts?***

    3PM believes that the potential for substantial economic impact exists, based on the substantial size of some of the government entities involved. Headline events surrounding the bad actors reveal the potential for abuse. Importantly, these same events highlight the involvement of unregulated individuals and/or the government entities themselves, in the violations of laws, rules regulations and trust. It is imperative that FINRA's rulemaking does not disadvantage its compliant members. 3PM believes FINRA should do what is minimally necessary to address the present regulatory gap rather than go overboard by implementing more stringent regulation that will offer no added benefits or protections.

If you have any questions or comments regarding any of the information contained in this letter or would like to discuss any of these comments in further detail, please feel free to contact me directly by phone at (212) 209-3822 or by email at donna.dimaria@tesseracapital.com.

Thank you in advance for your consideration.

Regards,

Donna DiMaria
Chairman of the Board of Directors
3PM Association

Appendix

3PM is an association of independent, outsourced sales and marketing firms that support the investment management industry worldwide.

3PM Members are properly registered and licensed organizations consisting of experienced sales and marketing professionals who come together to establish and encourage best practices, share knowledge and resources, enhance professional standards, build industry awareness and generally support the growth and development of professional outsourced investment management marketing.

Members of 3PM benefit from:

- Regulatory Advocacy
- Best Practices and Compliance
- Industry Recognition and Awareness
- Manager Introductions
- Educational Programs
- Online Presence
- Conferences and Networking
- Service Provider Discounts

3PM began in 1998 with seven member-firms. Today, the Association has more than 35 member organizations, as well as significant number of prominent firms that support 3PMs and participate in the Association as 3PPs, Industry Associates, Member Benefit Providers, Media Partners and Association Partners.

A typical 3PM member-firm consists of two to five highly experienced investment management marketing executives with, on-average, more than 10 years' experience selling financial products in the institutional and/or retail distribution channels. The Association's members run the gamut in products they represent. Members work with traditional separate account managers covering strategies such as domestic and international equity, as well as fixed income. In the alternative arena, members represent fund products such as mutual funds, hedge funds, private equity, fund of funds and real estate. Some firms' business is comprised of both types of product offerings. The majority of 3PM's members are currently registered with FINRA or affiliated with a broker-dealer that is a member of FINRA.

For more information on 3PM or its members, please visit www.3pm.org