December 15, 2014

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

Re: Regulatory Notice 14-50: Political Contributions

Dear Ms. Asquith:

We appreciate the opportunity to comment on the proposal in FINRA's Regulatory Notice 14-50 ("Notice") to adopt three new related pay-to-play rules: 2271 (Disclosure Requirement for Government Distributions and Solicitation Activities); Rule 2390 (Engaging in Distribution and Solicitation Activities with Government Entities); and Rule 4580 (Books and Records Requirements for Government Distributions and Solicitation Activities) (each a "Proposed Rule" and collectively the "Proposed Rules"). While we appreciate that the SEC has required FINRA to adopt a pay-to-play rule in order for broker-dealers, like ours, to continue to solicit investments from certain government entities, we wish to voice our concerns that the rule could have unnecessary negative consequences for Monument Group Inc. ("Monument Group") and other similar FINRA-regulated independent third-party placement agents for private funds.

1. Background on Monument Group/Independent Placement Agents for Private Funds

Monument Group is an independent broker-dealer registered with the Commission and a member of FINRA. Its primary business is helping investment advisers that manage private investment funds to raise capital from institutional investors. The firm is independently owned and currently employs a total of 21 employees with 12 FINRA licensed registered representatives who, collectively, have over 200 years of experience in the investment business with an average of approximately 17 years. The business and educational credentials of the firm's principals and employees are those of investment professionals - CFAs, MBAs, investment analysts and consultants. The firm helps investment advisers that manage private investment funds, such as private equity, venture capital, real estate and energy funds, raise capital from institutional investors. Monument Group provides placement agency services *only* for issuers of private funds – *i.e.*, generally, for funds that are exempt from registration under Sections 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (the "Investment Company Act").

The help that Monument Group, as an independent placement agent, provides to private fund advisers includes: (i) providing advice on building a compelling investment case to prospective investors; (ii) preparing presentation and offering materials as well as detailed due diligence information; (iii) identifying and targeting potential investors (including public pension plans) based on Monument Group's knowledge of their investment allocations, preferences and anticipated investment activity levels; (iv) introducing private investment funds managed by investment adviser clients to investors; (v) arranging roadshows of investor meetings; (vi)

coordinating follow-up meetings between investment advisers and investors; (vii) coordinating investors' due diligence requests; (viii) intermediating in terms negotiations; and (ix) providing post-closing updates to clients and to investors.

Independent placement agents, such as Monument Group, not only help the private fund advisers find the market for their funds, but also provide significant benefits to *investors* in these private funds, including: (i) "quality screening" of funds prior to their introduction to investors -- investors have come to rely on Monument Group's expertise and successful track record in identifying good investment opportunities; (ii) the compilation and provision of extensive due diligence packages – *e.g.*, references, historical track record verification and analysis, models for testing market variables (leverage, P/E or EBITDA multiples, etc.) and independent macroeconomic data useful to provide context to the market opportunity – to often understaffed and overwhelmed in-house investment staffs; and (iii) providing a conduit for feedback –experienced and knowledgeable placement agents such as Monument Group assist both large and small investors in getting their voices heard by investment advisers on topics ranging from fees to governance terms.

While some of the better known placement agents are departments of major Wall Street firms, the vast majority of independent placement agents are small businesses. In addition, many independently owned placement agents, including Monument Group, are minority- or women-owned businesses. They operate with a focused staff and with no revenues from other lines of business such as trading, mergers and acquisitions, or other banking/brokerage services. Accordingly, incremental regulatory requirements that have little impact on larger firms, can create significant resource and cost issues for independent agents such as Monument Group.

2. FINRA's Proposed Rules

a. Background

As FINRA notes in its Notice, the principle motivation for its adoption of pay-to-play rules is a requirement in Investment Advisers Act of 1940 ("IAA") Rule 206(4)-5 that prohibits investment advisers from providing "payment to any person to solicit a government entity for investment advisory services on behalf of such investment adviser unless such person is . . . [a] regulated person." "Regulated persons" include brokers or dealers, as defined in Sections 3(a)(4) and (5) of the Securities Exchange Act of 1934 that are registered with the Commission and are members of a national securities association, "provided that (A) the rules of the association prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made; and (B) The Commission, by order, finds that such rules impose substantially equivalent or more stringent restrictions on broker-dealers" than those Rule 206(4)-5 imposes on investment advisers.[1]

[1] Regulated persons also include other registered investment advisers that have not and whose covered persons have not, in the preceding two years, made or coordinated contributions to the government entity being solicited and municipal advisors, provided that the MSRB's rules require municipal advisers to comply with pay-to-play rules that are at least substantially equivalent to Rule 206(4)-5. The MSRB is in the process of amending Rule G-37 to apply to municipal advisers. *See* Request for Comment on Draft Amendments to MSRB Rule G-37 to Extend Provisions to Municipal Advisors, MSRB Regulatory Notice 2014-15 (Aug. 18, 2014).

Rule 206(4)-5 prohibits advisers from receiving compensation from a government entity for two years after they or their covered persons have made a contribution to "an official of the government entity." FINRA currently does not have the necessary rules in place and, if it fails to have rules approved before April 1, 2015, member firms (that are not required to register as a municipal adviser) will no longer be permitted to be compensated to solicit government entities on behalf of investment advisers.

In its Notice, FINRA proposes the adoption of three rules. Proposed Rule 2390 prohibits broker-dealers and certain of their associated persons ("covered associates"), in the two years before soliciting a government entity, from making contributions to officials of the government entity. The Proposed Rule also prohibits the broker-dealers and covered associates from soliciting or coordinating contributions that the member or covered associate could not themselves make. Proposed Rule 2390 -- with the exception of section (b) -- compliments the requirements in Rule 206(4)-5. Proposed Rule 2271 requires all broker-dealers engaged by investment advisers to solicit government entities to make certain mandatory disclosures to the government entity. Proposed Rule 4580 requires broker-dealers that solicit government entities to keep certain records of their solicitation activities and political contributions.

Monument Group supports FINRA's effort to adopt pay-to-play rules. Indeed, FINRA's adoption of a pay-to-play rule is critical to Monument Group being able to continue its current business model. For the most part, the Proposed Rules accomplish the goal of adopting rules that are substantially equivalent to 206(4)-5. As noted, Proposed Rule 2390 should satisfy the SEC's requirement that FINRA pass a rule substantially equivalent or more stringent than 206(4)-5. Proposed Rule 4580, similarly, imposes recordkeeping requirements that are reasonable for a firm to demonstrate and monitor compliance and for FINRA to adequately review compliance with the Proposed Rules.

FINRA's inclusion of Proposed Rules 2271, however, goes beyond what is necessary to satisfy the requirements in Rule 206(4)-5. In addition, the Proposed Rule would place significant and unique burdens on Monument Group and other independent third-party private fund placement agents[2] that threaten their ability to continue to provide valuable services to both advisers and investors.[3]

[2] Although Monument Group seeks investors in private funds, not investment advisory clients for registered advisers, its activity is covered by Proposed Rule 2390(e) since the funds are "covered investment pools" as defined in Proposed Rule 2390(h)(3).

[3] The SEC, in adopting Rule 206(4)-5, recognized the legitimate and valuable role placement agents play in the process of marketing private funds to public pension plans. In particular, the SEC created this registered solicitor exception based on numerous concerns raised by commenters, including that a full ban on the use of third-party solicitors for government business would be particularly harmful to smaller advisers and government plans with limited resources that often rely on legitimate research, marketing and similar services of solicitors/placement agents in gathering information about and assessing investment opportunities. *See* Political Contributions by Certain Investment Advisers ("Adopting Release") 17 FR 41018, 41036 – 41042 (July 14, 2010).

b. Proposed Rule 2271: Disclosure Requirements

As currently drafted, the disclosure requirements in proposed rule 2271 would require a "covered member[4] engaging in distribution or solicitation activities for compensation with a government entity on behalf of one or more investment advisers" to make certain written disclosures "at the time of the initial distribution or solicitation" "to such government entity." Adoption of this requirement is unnecessary and adds substantially to the similar disclosure and other compliance burdens already borne by firms like Monument Group in connection with existing pay-to-play laws and regulations.

i. Proposed Rule 2271 Is Not Necessary to Satisfy the Requirements in Rule 206(4)-5

As noted above, Monument Group supports the adoption of Proposed Rules 2390 and 4580. Proposed Rule 2390 contains the limitations on political contributions that are at the heart of the pay-to-play rules and tracks the SEC's Rule 206(4)-5. Monument Group also does not doubt the importance of making and keeping records -- as proposed in Rule 4580 -- to demonstrate and monitor compliance with Proposed Rule 2390. The adoption of Proposed Rule 2271, by contrast, is unnecessary to comply with the SEC's mandate that FINRA establish a rule substantially equivalent to Rule 206(4)-5.

The need to provide the proposed disclosures to government entities is not entirely apparent. As discussed below,[5] many government entities already mandate that funds, advisers and placement agents make certain disclosures and periodic reports. It is not clear why FINRA believes the benefits of the disclosures mandated by the Proposed Rule outweigh their costs, particularly where the government entities receiving the Proposed Rule 2271 disclosures have independently determined, and mandated, the information they consider to be relevant be provided. Indeed Proposed Rule 2271 seems aimed at solving an entirely different problem -- conflicts of interest -- than the pay-to-play rule, which is focused specifically on the issue of political contributions.

As drafted,[6] and as addressed further below, the disclosure requirements are, furthermore, overly burdensome and create difficult compliance challenges for firms like Monument Group. In light of the importance of timely adoption of a pay-to-play rule in the relatively short time left before the SEC's compliance date, Monument Group urges FINRA not to include Proposed Rule 2271 in its proposed rules.

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[4] "Covered members" are all FINRA members that are not required to register as municipal advisors. *See* Proposed Rule 2390(h)(4).

[5] *See, infra,* at 2.c.

[6] *See, infra,* at 2.b.ii.

ii. Proposed Rule 2271 Is Substantially More Burdensome Than Similar Disclosure Requirements Applicable to Broker-Dealers Soliciting Investors on behalf of Registered Investment Advisers

Proposed Rule 2271 will impose a substantial burden on Monument Group and other similar firms. The disclosures mandated by Proposed Rule 2271 generally parallel the requirements in IAA Rule 206(4)-3 that solicitors that are paid to solicit advisory services on behalf of registered investment advisors make a series of disclosures regarding their solicitation arrangement with the advisor. Although Rule 206(4)-3 does not apply in the context of the solicitation of private fund investors,[7] that rule provides a benchmark for the type and scope of investor disclosure by those soliciting on behalf of investment advisers that the SEC considers relevant and reasonable.[8] Notably, there are three material differences between the Proposed Rule and Rule 206(4)-3 that substantially increase the burden these proposed disclosures will impose on third party placement agents.

First, the Proposed Rule requires that the member disclose "the existence and details of pecuniary, employment, business or other relationships between the covered member or any covered associate and any person affiliated with the government entity that has influence in the decision-making process in choosing an investment adviser," a requirement that is not included in Rule 206(4)-3. Whereas to comply with Rule 206(4)-3 a solicitor may need a different disclosure document for each advisor for whom it solicits, Proposed Rule 2271 will require covered members to prepare a different disclosure document for *each government entity* it solicits. Moreover, the scope of the inquiry to prepare the required disclosure is impossibly broad.

From outside of the government entity, it is virtually impossible to determine the universe of persons affiliated with the entity that have influence in the decision-making process. Each entity is structured differently, and each may look to a variety of people in making decisions. This may include certain obvious persons -- a chief investment officer, certain other executives, board members, or members of an investment committee -- but could also include attorneys (in-house or outside), investment advisers, analysts, or even an intern who contributes research on certain investment opportunities. Covered members will have no reliable way to know, for each government entity with which they interact, that they have identified all the relevant affiliated persons.

Even if the covered member successfully identified the universe of affiliated persons, they must then determine whether there is any pecuniary, employment, business or *other relationships* between the firms and its covered associates on the one hand, and "any person affiliated with the government entity that has influence in the decision-making process" on the other. Pecuniary, employment and business are not defined in the Proposed Rule. "Other relationships," moreover, is a broad and vague term. It could encompass hundreds of possible connections including, for

[7] Rule 206(4)-3 does not apply to broker-dealers, like Monument Group, who solicit investments only in private funds. *See*, Mayer Brown LLP, No Action Letter (July 15, 2008).

[8] Monument Group acknowledges that the two rules would apply in different contexts – e.g., government entities (such as public pension plans) versus private investors -- and that certain disclosures that may be important in the context of an investment of public funds may not be relevant to a private investor. However, the differences identified herein demonstrate that the FINRA Proposed Rule – as compared to the SEC's Cash Solicitation rule – imposes burdens that lack proportion to the Proposed Rule's stated intent.

example, membership in the same local, regional or national philanthropic or trade organizations, a school attended in common by a covered associate and an affiliated person of the government entity or by their spouses, domestic partners or children, or even attendance at the same conferences. Would a covered member have to disclose that the same law firm represented them and the government entity in unrelated matters? Tracking and researching all of these relationships for dozens of government entities from whom a covered member solicits business will impose substantial administrative costs on the firm.

Second, while Rule 206(4)-3 requires the disclosure to be made before the client enters into "any written or oral investment advisory contract," Proposed Rule 2271 requires the disclosure to be made "at the time of the *initial* distribution or solicitation." "Solicit" is defined in the Proposed Rules as "to communicate directly or indirectly for the purposes of obtaining or retaining a client for or referring a client to an investment adviser."[9] Given the broad scope of "solicit" virtually any activity -- making a call to a prospective investor, arranging a meeting, sending a letter -- could trigger the disclosure obligations in Rule 2271. This requirement, which is absent from Rule 206(4)-3, means that before a covered member initiates any contact with a public entity, and before it has any idea whether the government entity has any interest in or present ability to make an investment, the firm will be required to undertake the substantial investigation and analysis described above.

Finally, the Proposed Rule requires that the member update the disclosure "during any period in which [the member] is engaged in distribution or solicitation activities for compensation" with "any material changes to the information previously provided" within ten days of the change.[10] In Monument Group's business model, this requirement may apply to all investors with whom it has a relationship at all times. Monument Group's success stems from the long term relationships it develops with, on the one hand, the investment advisers forming and managing the funds, and on the other, with the investors in those funds. At any given time, Monument Group may be marketing one or more funds to existing investors. And even when Monument Group is not actively soliciting investors for a new investment, it will be in regular contact with them to provide updates on prior investments. The substantial task described above to identify relationships, is compounded by the need to constantly monitor each of those relationships for any changes that may occur and immediately send an update to the government entity.

iii. Disclosure of Compensation Puts Firms at a Competitive Disadvantage.

Proposed Rule 2271(a)(4) requires covered members to disclose the "terms of [the] compensation agreement [with the adviser], including a description of the compensation paid or to be paid to the covered member." Proposed Rule 2271(a)(5) requires disclosure of "[a]ny incremental charges or fees that may be imposed on the government entity as result of the distribution or solicitation activities engaged in by the covered member." Making these disclosures to government entities puts firms, like Monument Group, at a substantial competitive disadvantage with respect to other investors it may solicit and other advisers it may represent. Records provided to government entities are often discoverable by any member of the public through a state's equivalent of a

[9] Proposed Rule 2390(h)(10).

[10] Proposed Rule 2271(b).

Freedom of Information Act ("FOIA") request. Any member of the public, including Monument Group's competitors and other investors, may have the legal right to receive copies of the disclosure statements, regardless of whether the government entity itself ever invested in the securities at issue. This may severely disadvantage Monument Group in competing for business with advisers and investors, limiting its ability to either raise or lower its rates if circumstances demand an adjustment. Moreover, these disclosures are likely to harm the government entities. Full transparency on costs and prices may stifle price competition between fund advisers and placement agents, in favor of a common fee accepted and publicized across the market. Finally, the fund advisers have their own substantial disclosure requirements under the IAA, including disclosures regarding fees and conflicts of interest. Requiring this additional disclosure is both burdensome and unnecessary.

c. Cost of Compliance

The Notice describes the Proposed Rules as a "comprehensive regime to regulate the activities of member firms that engage in the distribution or solicitation activities with government entities on behalf of investment advisers." In fact, while the Proposed Rules may be comprehensive in their approach, they do not account for the entire regulatory burden and cost firms like Monument Group face when they engage in distribution or solicitation activities with government entities.

Beyond the SEC's rule, FINRA's proposal, and the MSRB's rules applicable to municipal advisors, "pay-to-play" regulations now in place in many states require placement agents to register as lobbyists at state, county *and* municipal levels in order to receive any payment from funds for legitimate placement agent activities. Some state or local laws ban receipt of contingency fees by placement agents (even by those registered as lobbyists). Still others ban the participation of third party placement agent activities entirely. Even where compensation is permitted, placement agents are required by most of the local lobbyist laws to submit to onerous registration, reporting and annual compliance requirements (again, at many different state and local levels).[11] Many of these lobbyist regulations and placement agent policies also require fund issuers to register at these various state and local levels as "lobbyist employers" and to submit onerous disclosures to the investing plans *simply as a result of engaging a third party placement agent.*[12]

The cost of implementing the Proposed Rules, while substantial (and, as noted above, potentially difficult to manage in some respects), would have a less significant impact on the viability of firms like Monument Group if they truly were comprehensive – i.e., in preempting the thousands of different state and local requirements that the industry already faces. ***The Proposed Rules are not being built on an empty field, but rather are being layered on top of an existing collection of unwieldy state and local laws and regulations.*** Firms already spend substantial sums to track and comply with these various requirements. A single regime mandating uniform national eligibility

[11] *See* Adopting Release at n. 262 (collecting examples of state action to regulate solicitation of government entities). Indeed, as noted above, government entities' own disclosure and reporting requirements call into question the need for FINRA's mandated disclosures.

[12] Many public pension plans have recently adopted "placement agent policies" requiring investment managers who use independent placement agents to file and update periodic reports disclosing compensation paid, *etc.*, on a regular basis.

requirements, disqualifications, disclosures and reporting would be more effective, easier to administer and less expensive than the current patchwork of state, county and local requirements. Adding unnecessarily burdensome requirements within the FINRA Proposed Rules to an already burdensome structure may ultimately jeopardize the ability of placement agents like Monument Group to remain in business.

As these sorts of compliance costs rise, firms will inevitably be forced to consider whether they can continue their relationships with significant numbers of government entities, and they may conclude they have to limit their exposure in this area. Such decisions could limit the investment opportunities presented to government entities, and would adversely affect the financial viability of independent placement agents and the funds and advisers to whom they provide services, ultimately impeding capital formation and investment.

3. Conclusions and Recommendations

Monument Group supports FINRA's proposal to adopt a pay-to-play rule and encourages FINRA to seek quick approval so as to not jeopardize the ability of independent third-party placement agents, like Monument Group, to continue solicitation activity after April 1, 2015.

To that end, Monument Group suggests that FINRA streamline its proposal, bringing it more into line with the SEC's pay-to-play rule. Monument Group recommends that FINRA eliminate Proposed Rule 2271 as it is not necessary to meet FINRA's primary objective of enacting a rule substantially equivalent to the IAA rule. If Proposed Rule 2271 is to be included, the provision in Proposed Rule 2271(a)(6) should be eliminated, allowing firms to create a single disclosure document for each adviser for which they solicit, rather than dozens of specially customized disclosures for each government entity. If FINRA continues to require some customized disclosure in the final rule, the timing of that disclosure should be moved to much later in the investment process, such as at the signing of a subscription agreement or the closing of a transaction. Forcing firms to undertake substantial due diligence and create customized disclosures at a very early stage is likely to chill firm's interest in approaching government entities with investment opportunities.

Similarly, FINRA should eliminate the update requirement in Proposed Rule 2271(b). In particular, the requirement that updates be provided within 10 days of a change presents a substantial administrative burden. Indeed the advisers for whom the covered members are soliciting do not generally update their client disclosures as often or as quickly as is mandated by Rule 2271(b). If FINRA believes updates are necessary, it should adopt a requirement that they be made annually.

Finally, Monument Group encourages FINRA to consider the already existing state, municipal and local lobbyist registration, disclosure and reporting requirements and pay-to-play regimes in connection with calculating cost and competitive impact of the Proposed Rules. The Proposed Rules disproportionately affect FINRA-registered placement agents (as compared with other broker-dealers) and have the largest economic and anti-competitive effect on small independent

firms, like Monument Group, who – as the SEC has itself recognized – add legitimate value to the private fund marketplace.[13]

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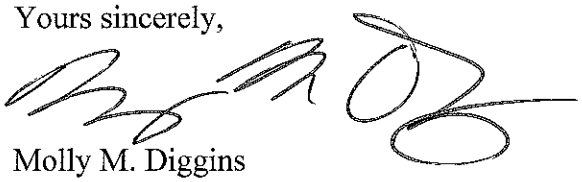
Thank you in advance for considering these comments. I am available for and would welcome further discussion.

Yours sincerely,



Molly M. Diggins
General Counsel

cc: Robert L. D. Colby Chief Legal Officer, FINRA

[13] Monument Group does not doubt the importance that states place on being able to regulate and oversee those who market investments to entities investing public fund. We would, however, encourage FINRA to partner with the state and local governments to develop a truly comprehensive set of pay-to-play regulations that might mitigate the unintended and burdensome consequences, particularly on independent placement agents, of having to track and comply with several dozen different regulatory schemes.