To Whom this May Concern:

This response is in regard to the proposed consolidated FINRA rule governing fidelity bonds (Regulatory Notice 09-44). While I concur that the current rules require updating, I do have some concerns with the proposed rule. Specifically, please consider the following:

1. It appears that all firms subject to the proposed rule are required to purchase the "Securities Dealer Blanket Bond" unless the firm is unable to obtain this coverage. The rule, however, does not define a "Securities Dealer Blanket Bond". Presumably, it is referencing the bond offered by Seabury and Smith as part of the FINRA sponsored program.

First, I believe the rule needs to specifically define "Securities Dealer Blanket Bond". Second, while some firms may find the Seabury and Smith program the "easiest" route to this compliance obligation, the fact that it must be purchased through Seabury (unless "unable to obtain this coverage" – another undefined term) is unreasonable and not in the best interest of the insurance marketplace or the member firms. Under the current program, a member firm has no choice as to the underwriting paper. It is my understanding that Seabury continues to use National Union as the insurer. National Union, as part of the AIG family, is currently A rated by AM Best with a negative outlook. As the purchase of the Bond is to protect the balance sheet of the member firm, flexibility should be given to purchase a bond from an insurer of their choice. There are numerous companies providing this coverage (not necessarily on a per event basis, but with multiple aggregates effectively accomplishing the same thing) on a broader overall basis, including potentially broader coverage on bonds issued by Insurers that are A+ or even A++ rated.

The member firm should have a choice as to its compliance product. Under the proposed rule, the program administrator/insurer could increase pricing (due to adverse experience or otherwise) or change coverage terms and member firms would have no choice but to accept them. Additionally, the program administrator in its own "Transparency and Disclosure" information statement on the current Application states that it is an agent of National Union and not the member firms insurance broker. They also note that they receive commission in the amount of 23% of the premium (this is more than two times industry norms). Given the unique nature of this coverage type as well as the complexities often associated with settling claims under these policies, member firms should be allowed their choice of intermediary (notably a broker that will act in their best interest, have an understanding of the product, market alternatives and have expertise in settling claims of this type) without the need to pay the administrative fees of Seabury who is an agent of the Insurer and providing no "value added" services to the member firm.

2. The proposed wording requires that the member firm must purchase fidelity bond coverage for any person associated with the member, except certain directors or trustees. The rule should define "associated with the member". While it is reasonable to

assume that this includes the traditional definition of “employee” under a policy of this type as well as “registered representatives”, there are others that may need to be covered (or not covered). Today, it is not unusual to have the mail room outsourced to a third party. This third party has potential access to all of the firms assets. Are they to be covered ? What about a janitorial firm ? What about an outside investment consultant ? These classes of individuals are not typically covered (and in fact are expressly excluded) under a bond of this type. It seems that the “associated” definition should specifically state who must be covered under the bond and as respects their own firm, it could be part of the member's annual review to determine who is appropriate for any expanded coverage.

3. FINRA believes that all firms should carry “per event” coverage. While this a reasonable statement in theory, in practice its value is nominal. Additionally, this requirement virtually eliminates the ability to secure this coverage from any carrier other than the FINRA sponsored program.

Most insurers, for their own balance sheet quantification or for reinsurance purposes, issue policies with an ultimate cap as to liability. In theory, a "per event" form could pay for multiple repeated losses throughout the policy term and provides an unlimited limit of liability. Most insurers today, provide both a "Single Loss" limit of liability and an "Annual Aggregate" limit of liability. A “double” the "Single Loss" annual aggregate limit of liability is readily available in today’s marketplace. This provides the same coverage as a per event” policy with two maximum policy limit loss events.

Based upon the very broad definition of "Single Loss" (or similarly “event” in a non-aggregated form) under most policies, it would highly unusual to experience two or more separate and unrelated acts (particularly at the "Single Loss" maximum) resulting in multiple losses under a given policy in a policy year. Further bolstering this thought is that even in the event of one loss over a five year period, a member firm no longer qualifies for the FINRA program. A reasonable marketplace alternative to the “per event” requirement is to simply require a higher overall annual aggregate limits for those under an aggregated form. The rule could be such that for a member firm requiring $5MM in coverage (Single Loss Limit), the Annual Aggregate must be a minimum of $10MM. This would address FINRA’s concern and broaden the breadth of options to member firms.

4. Under the Notification of Change section, FINRA requires notice for cancellation, termination or substantial modification of the fidelity bond. I suggest that you add “exhaustion” to this provision requiring member firms (in those cases where an aggregate form is being used) to advise FINRA where they have experienced a loss or losses that have exhausted the coverage.

5. The phrase “unable to obtain” the Securities Dealer Blanket Bond needs to be further defined. The eligibility requirements under the FINRA program are clear. Are those the sole reasons a member firm is “unable to obtain” a Securities Dealer Blanket Bond ?

What if the member firm is unable to obtain a Securities Dealer Blanket Bond at what they perceive to be a reasonable cost from the program ? What if the member firm is unable to obtain a Securities Dealer Blanket Bond on a coverage basis they require as the FINRA program only allows "automatic riders". What if the member firm is unable to obtain a Securities Dealer Blanket Bond from a carrier that meets the minimum financial solvency requirements as dictated by their risk management department ?

6. The proposed rule allows for certain exemptions from the fidelity bonding requirement. As you aware, many member firms are wholly or majority owned by substantially larger parents (i.e. insurance companies). The parent organizations of these member firms typically purchase their own fidelity bonds and include the member firm subsidiary as an insured under that program. These programs typically contemplate substantial limits (often in excess of $100 million) and often provide coverage substantially greater than what is required under the proposed rule. FINRA should consider an exemption for any member firm that can evidence coverage under another fidelity bond program providing substantively the same coverage as required hereunder. Many of these parents have surplus or net worth in the billions far exceeding the nominal limits required under the current and proposed FINRA rule. A further qualification for this exception could include a minimum surplus requirement of $500 million or $1 billion.

The current and proposed fidelity bond requirement for firms meeting the qualifications noted above is a duplication of coverage and potentially complicates loss settlement in a situation where both the member firm and parent firm's bonds are affected by a single loss. Additionally, the premium for the FINRA bond is an unnecessary expense as the coverage already exists. I would expect an objection from FINRA on the basis that the policy limits are now potentially shared with other entities. That would be true, however, based upon the nominal limits required by FINRA relative to those carried by firms meeting this standard, substantially more coverage exists. Additionally, through the required inclusion of the Notification of Change rider, FINRA could require the member firm to secure its own coverage in the event it is notified that the Parent Company's limits are impaired.

7. Today, outside of the FINRA sponsored program, member firms satisfy the current rule though the purchase of a policy (bond) from one of numerous insurers. The majority of these insurers provide true insurance to the member firm and meaningful risk transfer. One of the leading providers of this coverage, however, will only consider providing the FINRA required compliance coverage to those types of firms identified in Item 6 above utilizing an indemnity or hold harmless agreement (between the member firm, its parent and the insurer), effectively converting the insurance policy to one of self insurance with the policy being merely a front to satisfy FINRA. In the interest of a member firms transparent compliance with this fidelity bond requirement, the proposed rule should address the legitimacy of this practice. Please note that this would become a non-event if an exemption as indicated in Item 6 is implemented.

Thank you for your consideration and I look forward to your response.