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Via email to: pubcom@finra.org

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

Re: FINRA's Regulatory Notice 14-09 Request for Comment
Proposed Limited Corporate Financing Broker Rules

Dear Ms. Asquith:

This comment letter is submitted on behalf of the six lawyers who authored the recent request to the SEC with respect to M&A Brokers, which relief was granted by the staff in a No-Action Letter made publicly available on January 31, 2014 and amended February 4, 2014 (the "M&A Brokers Letter"). We submit this comment letter with respect to FINRA's proposed rule set for firms that meet the definition of "limited corporate financing broker" ("LCFB") (the "LCFB Rule Proposal").[1]

As proposed by FINRA, an LCFB is a firm that engages in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and "soliciting" investments from "institutional investors." We applaud FINRA in recognizing the rationale proposed by the ABA Task Force for Private Placement Brokers (the "Task Force") and enunciated in its 2005 report (the "2005 Task Force Report") calling for a broker-dealer limited category of registration. However, we do not believe that the language in the LCFB Rule Proposal is clear enough, nor as proposed, goes far enough to limit the costs and other additional burdens to which these types of limited broker-dealers are currently subject.

FINRA has specifically sought comment as to whether the M&A Brokers Letter impacts the analysis of whether a firm would become an LCFB and whether it is likely that some limited corporate financing firms (a) will not register as a broker consistent with the fact pattern set forth in the M&A Brokers Letter, or (b) will become FINRA members and qualify as an LCFB. There is no reason under the M&A Brokers Letter for persons acting within its parameters to be regulated as an LCFB or register as any other type of broker. The SEC has effectively carved

[1] See Limited Corporate Financing Brokers at FINRA Regulatory Notice 14-09 (February 2014), available at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p449586.pdf

out this category of brokers from all registration requirements, provided they abide by the parameters set forth in the M&A Brokers Letter. Because M&A brokers are not required to register with the SEC, they are ineligible for membership with FINRA and cannot be required to be regulated as LCFBs. Only M&A brokers who wish to conduct activities outside the four corners of the M&A Brokers Letter (*i.e*., participating in capital raising activities) will be eligible for membership as an LCFB or some other broker category.

We have not addressed each of your requests for comments, but rather wish to point out our key concerns.

First, FINRA's explanation of what an LCFB can and cannot do is ambiguous and needs to be stated more clearly. As described in the proposal and more thoroughly below, an LCFB can solicit institutional investors.[2] Nevertheless, proposed Rule 016(h)(2) states that the term LCFB does <u>not</u> include a broker-dealer that "accepts orders from customers to purchase or sell securities…as agent for the customer…." If by permitting solicitation but not the acceptance of orders FINRA means that an LCFB may engage in effecting transactions but that final acceptance of orders is within the sole control of the issuer, and that the LCFB cannot bind the issuer to a sale, that point should be more clearly stated. In other words, FINRA needs to make explicit that an LCFB can engage in capital raising in private placements, so long as the customer is at least an institutional investor (or as we propose below, qualified purchaser), and that the prohibition against an LCFB from accepting customer orders to purchase or sell securities, even as agent, was not intended by FINRA to limit an LCFB from engaging in capital raising.

We also believe that FINRA should lower the economic threshold of the types of customers an LCFB may <u>**solicit**</u> in order to <u>**effect**</u> these private placements without compromising the goal of investor protection. The "qualified purchaser" standard of the Investment Company Act of 1940[3] is, we believe, a much more appropriate standard. While, an LCFB would be allowed to serve clients such as individuals or entities seeking advice on securities offerings or sales of businesses who do not meet the "institutional investor" definition, an LCFB is more restricted in the category of investors that it can qualify, identify and solicit to invest in a transaction.

The term "institutional investor" would have the same meaning as that term has under FINRA Rule 2210 (Communications with the Public). The term generally includes banks, savings and loan associations, insurance companies, registered investment companies, governmental entities, employee benefit plans, qualified plans, or other persons (including natural persons, corporations, partnerships, trusts, family offices or otherwise) with total assets of at least $50 million or any person acting solely on behalf of any such institutional investor.

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[2] *See* Rule 016(h)(1)(F).

[3] 15 U.S.C. 80a-2(a)(51). A qualified purchaser must meet one of the following criteria: a) Individuals who own $5 million in investments; b) Institutional investors who own $25 million in investments; c) A family owned company that owns $5 million in investments; d) For trusts with less than $25 million, a trust where the trustee and each person who contributes assets to the trust is a Qualified Purchaser; e) A "Qualified Institutional Buyer" under Rule 144A of the 33 Act, except that "dealers" under Rule 144 must meet the $25 million standard of the 1940 Act, rather than the $10 million standard of Rule 144A;
f) A company owned beneficially only by Qualified Purchasers; however, a company will not be deemed to be a qualified purchaser if it was formed for the specific purposes of acquiring the securities offered by a 3(c)(7) fund.

We understand that FINRA does not propose to allow LCFBs to solicit investors based on a more inclusive standard, such as the definition of "accredited investor" in Regulation D under the Securities Act of 1933 and as proposed in the 2005 Task Force Report. FINRA reasons that its regulatory programs have uncovered serious concerns with the manner in which firms market and sell private placements to accredited investors. Application of the LCFB Rules to firms that market and sell private placements to accredited investors would require FINRA to expand the applicable conduct rules and other provisions. Therefore, FINRA argues that lowering the threshold of "institutional investor" would eviscerate the benefits of a streamlined rule set. However, the Qualified Purchaser standard adequately serves the investor protection goals at issue. Qualified Purchasers that are individuals or family owned companies must own invested assets of at least $5 million; Qualified Purchasers that are institutions must own at least $25 million. Such persons and entities are generally far more sophisticated and knowledgeable than an accredited investor, who need only have earned income of $200,000, and Qualified Purchasers are more likely to engage financial advisors, accountants and lawyers to assist them in making such decisions.

We also propose that FINRA collaborate with the North American Securities Administrators Association ("NASAA") and the SEC to further reduce certain administrative burdens for LCFBs while still providing meaningful investor protections. We are mindful of the vital role played by state securities regulators in monitoring activities of securities intermediaries. We urge FINRA to continue to work closely with representatives of NASAA in a joint effort to devise a more appropriate framework for limited business brokers. We also recommend that FINRA work with the SEC to devise a better investor protection mechanism than a $5,000 minimum net capital requirement. This may require a fidelity bond or perhaps a fund, to which LCFBs must contribute and that could be drawn upon in cases of fraud or other loss by an LCFB. It is important to note that individual states may have certain fidelity bond requirements and thus it is critical that they be consulted as well in order to make the final rule set more efficient and cost effective. Additionally, we believe that FINRA should eliminate the requirement for an annual audit by PCAOB accountants. These requirements seem entirely unnecessary and unduly burdensome from a financial point of view given the limited business of LCFBs, the fact that they do not execute securities transactions, maintain customer accounts or hold funds or securities. Should regulators wish to assure themselves that an LCFB or its principal has not received customer funds, the regulator could accomplish that goal far more effectively by reviewing the relevant bank account activity.

For similar reasons, the requirement to file FOCUS Reports on a quarterly basis, and the obligation to have a Financial and Operations Principal (FINOP) who has passed either the Series 27 or the Series 28 exam could be eliminated. It may be more effective to concentrate scarce regulatory resources on escrow requirements, general solicitation issues, offering documentation (in order to be able to affirmatively establish the availability of the exemption), to name a few. Regulators could require a designated principal to complete simplified training that would cover the very limited accounting skills and knowledge required for this type of broker-dealer rather than requiring a FINOP. Without lessening the financial burden of operating a firm, there is little incentive for a firm to become an LCFB rather than a broker-dealer. Likewise, FINRA could institute very focused examination and continuing educational requirements for LCFB principals and agents with respect to applicable regulatory requirements.

Additionally, FINRA should make it clear that it will permit, pursuant to NASD Rule 2420 or an amended rule, all member firms (including LCFBs) to share compensation with M&A Brokers based on a representation that the M&A Broker satisfies the conditions of the M&A Brokers Letter and the member firm has no reason to believe otherwise. This type of activity would be explicitly included in the language of the successor to Rule 2420, FINRA Rule 2040, that was proposed in 2009 but still has not been adopted.

We also urge FINRA to adopt a more streamlined Membership Process (NMA/CMA) for these basic LCFB applications. The application review period should be no more than 90 days from the time of filing and the fee should be reduced to a maximum of $2,500 (CMA) or $3,750 (NMA). The typical expense and 180-day review period from the time an application is filed, are unnecessary barriers to entry for these types of limited brokers.

Registered representatives of an LCFB should also have the opportunity to maintain registrations that go beyond those required to perform activities for the LCFB so long as they satisfy Continuing Education requirements in the related areas, similar to what has been proposed and discussed for Retained Associates.

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We support FINRA's objective to provide a broker-dealer limited category of registration. However, for the reasons cited above, we believe that the rule proposal falls short of providing an efficient and cost effective limited registration for LCFBs. The six lawyers appreciate the opportunity to comment upon FINRA's rule proposal.

Sincerely,

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