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The International Association of Small Broker Dealers and Advisors
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The International Association of Small Broker-Dealers and Advisers, www.iasbda.com submits the following comments on one aspect of the above referenced proposed rule. The Rule requires members to use 85% of the proceeds of their own private offerings for the specific purposes described in the offering. We believe that the use of such a specific number appears to be inconsistent with the NASD'S expressed policy of principles based or tiered regulation. It is on its face one size fits all. It also seems to negate a firm's ability to adapt to changing circumstances after the offering is completed. We believe a better result is achieved by requiring a firm to specify in its disclosure whether it reserves the right to use more than 15% of the offering for other purposes due to changed circumstances and to describe in detail those purposes and circumstances. They should specifically address use of the proceeds for compensation if that is the cause of this rulemaking. Small firms may need more flexibility in this regard as they are more likely to be buffeted by sudden changes or presented with sudden opportunities. A small firm that completes an offering to improve its net capital or enhance its technology could then be presented with an opportunity to enter a new business by hiring a team from a competitor. It would seem that the use of 20% of the proceeds for that purpose would not be so bad and its not the same as using it to enlarge bonuses for current management. While the rule provides for an exemption, another way of achieving this flexibility would be to state the rule in terms of a presumption or a guideline rather than a strict prohibition. We believe that having the NASD staff decide on whether an additional 5% of an offering might be subsequently used to add a new business rather than to add to capital is not an efficient use of staff time or deployment of capital. We also worry that the exemptive process can often be time consuming and costly especially for a small firm.

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