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February 3, 2011

VIA ELECTRONIC MAIL

Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

**RE: Regulatory Notice 11-04: Private Placements of Securities, FINRA
Requests Comment on Proposed Amendments to FINRA Rule 5122
to Address Member Firm Participation in Private Placements**

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, a broker-dealer who prefers to remain anonymous, in response to Regulatory Notice 11-04, "FINRA Requests Comment on Proposed Amendments to FINRA Rule 5122 to Address Member Firm Participation in Private Placements" ("Proposal Notice"). The Proposal Notice proposes an amendment to FINRA Rule 5122 (the "Proposed Amendment").

In its current form FINRA Rule 5122 generally requires disclosure in the offering document of the intended use of offering proceeds, expenses, and the amount of selling compensation to be paid to the broker-dealer and its associated persons, for a private placement in which a participating broker-dealer (or its control entity) is the issuer. Rule 5122 also requires that at least eighty-five (85) percent of the offering proceeds must be used for the business purposes identified in the offering document. Finally, such offering documents must be submitted to FINRA for an *ex post* review to assess compliance.

The Proposed Amendment would expand Rule 5122 to all private placements in which a member participates. The Proposed Amendment would incorporate the definition of "participation" from FINRA Rule 5110(a)(5) as follows:

Participation in the preparation of the offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis, furnishing of customer and/or broker lists for solicitation, or participation in any advisory or consulting capacity to the issuer related to the offering

Id. As such, the Proposed Amendment will expand significantly the number of private placement offerings regulated by FINRA. The Proposed Amendment also seeks to impose the 15 percent cap on payment of offering costs and compensation in private placements in which a member participates. FINRA specifically requested comments on whether this requirement imposes an unnecessary burden on smaller private placements and our comments will focus on such impact.

Private placements vary in type and complexity; variable costs of offering and compensation insure that a full spectrum of investments is made available to sophisticated investors. The current disclosure requirements applicable to private placements under Rule 5122 sufficiently protect the interests of such investors because the offering documents must instruct participants as to the estimated use of proceeds and compensation to members. Arbitrarily limiting the cost of offering and compensation in a vastly expanded number of private placements, without regard for the unique nature of such offerings, will not serve the purpose of preventing abuse. Instead, such additional restriction may eliminate those investment offerings that require unusual degrees of oversight, management and risk on the part of the issuer. Such offerings often provide special advantages to those investors for whom they are appropriate.

Investment in low income housing tax credits (“LIHTC”) is one such specialized offering, providing unique benefits, and carrying enhanced levels of oversight and risk to the issuer. This particular private placement is appropriate only for individuals and entities that reasonably expect to be eligible to use the tax credits to offset significant state income or insurance premium tax liability. These sophisticated investors understand the value of the tax credits according to their individual tax and cash-flow circumstances. Moreover, LIHTC investments involve numerous regulatory compliance issues – the operating companies that own and manage rent-restricted multifamily housing are subject to ongoing oversight by state housing agencies as well as by the IRS. Accordingly, due diligence is a long and arduous process. Restricting the costs of offering and compensation required to provide this particular type of private placement may arbitrarily and unfairly prevent the issuer from recovering the actual costs of analyzing and offering such a complex and unique investment. In a worst-case scenario, such restriction could impair the level of due diligence performed by an issuer.

In addition to the initial due diligence costs, LIHTC investments carry an unusual amount of ongoing risk to the issuer. While investors often agree to be members of the investment vehicle for a ten-year duration, they typically may choose on an annual basis whether or not to make additional investment, and participate in current tax savings. The issuer is responsible for its due diligence on this long-term basis, regardless of the number of investors who choose to participate. Moreover, an issuer is more likely to have made an ongoing purchase commitment for the full term that LIHTC tax benefits are available (usually, ten years), and thus is subject to the risk and costs of not being able to do so. It is axiomatic in our economic structure that enhanced risk and responsibility entitles one to enhanced reward, and any regulation that seeks to thwart such a basic market force may engender unintended and adverse consequences.

Marcia E. Asquith
February 3, 2011
Page 3

While we understand that it is the role of FINRA to always seek ways to provide additional protections to investors, we believe that the Proposed Amendment would impose an undue burden on issuers of certain specially tailored private placements, such as those supporting housing, energy, film, and other tax credits. This in turn could have the effect of removing such beneficial offerings from the marketplace. Despite the potential for such an adverse result, we do not believe that the Proposed Amendment provides any additional protection to the public.

We appreciate this opportunity to comment on the Proposed Amendment to Rule 5122. Please contact me with any questions regarding the views expressed herein.

Respectfully submitted,

SCHULTEN, WARD & TURNER

A handwritten signature in dark ink, appearing to read 'W. Schulten', is written over a horizontal line.

Wm. Scott Schulten