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Lawyers in the Best Sense

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**Via E-Mail (pubcom@finra.org)**

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

**RE: FINRA Request for Comment 11-04 (Proposed Amendments to  
FINRA Rule 5122 to Address Member Firm Participation in Private  
Placements)**

Dear Ms. Asquith:

The Cornell Securities Law Clinic (the “Clinic”) welcomes the opportunity to comment on the Proposed Amendments to Financial Industry Regulatory Authority (“FINRA”) Rule 5122 to Address Member Firm Participation in Private Placements (the “Proposed Amendments”). The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and public education as to investment fraud in the largely rural “Southern Tier” region of upstate New York. For more information, please see <http://securities.lawschool.cornell.edu>.

Current FINRA Rule 5122 requires, in any private placement of unregistered securities in which a member firm or its controlling entity *is the issuer*, that the member firm disclose to investors in the offering document the intended use of offering proceeds, the offering expenses, and the amount of selling compensation to be paid to the firm and its associated persons. Rule 5122 includes exemptions for offerings of private placements to institutional accounts, qualified purchasers, qualified institutional buyers, investment companies, and banks; offerings to employees of the issuer; and offerings in which the member firm acts primarily in a wholesaling capacity.

The Proposed Amendments expand the scope of Rule 5122. Any member firm that *participates* in a private placement must provide disclosure to investors. In addition to the requirements of current Rule 5122, the Proposed Amendments require disclosure of any affiliation of the member firm and the issuer, the nature of such affiliation, and the amount of any compensation to be paid to the firm and its associated persons. The



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Proposed Amendments also eliminate the exemption for offerings in which the member firm acts primarily in a wholesaling capacity.

The Clinic supports the proposed expansion of Rule 5122. The Proposed Amendments address investor protection in three important respects.

First, the Proposed Amendments reach a broader segment of the private placement market. The Clinic supports expanding the scope of disclosure as a matter of market communication and transparency. Disclosure promotes informed investment decisions.

Second, the Proposed Amendments address the need for additional investor protection demonstrated by recent SEC and FINRA enforcement actions involving private placements. The Proposed Amendments require disclosure of any affiliation of the member firm and the issuer and the nature of such affiliation, alerting investors to potential conflicts of interest. The Proposed Amendments also require disclosure of *any* compensation to be paid to the firm and its associated persons, rather than disclosure only of *selling* compensation as required by current Rule 5122, reaching direct and indirect compensation in connection with an offering.

Third, the Proposed Amendments eliminate the exemption for wholesaling, closing a potential loophole in light of the expanded scope of disclosure. This measure addresses an area of the private placement market susceptible to fraud.

The Clinic appreciates the opportunity to comment on the Proposed Amendments. As set forth above, the Clinic supports the Proposed Amendments and the additional protection they afford investors.

Respectfully submitted,



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William A. Jacobson, Esq.  
Associate Clinical Professor  
Director, Cornell Securities Law Clinic



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Kyle Hogan  
Cornell Law School 2012