Public Investors Arbitration Bar Association

November 14, 2011

Via Email Only
rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090.

Re: SR-FINRA-2011-057, Proposed Rule Change To Adopt New FINRA Rule 5123 (Private Placements of Securities)

Dear Ms. Murphy:

Thank you for the opportunity to comment on the above-referenced proposal to adopt new FINRA Rule 5123 regarding disclosures with respect to private placements. I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"). PIABA is cautiously supportive of the new rule, recognizing that it is important that regulators remain vigilant.

PIABA is a bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums. Our members and their clients have a strong interest in FINRA rules relating to the communications that are made to the general investing public.

We are pleased that FINRA has recognized the need for a rule that would set forth the disclosures a firm must make when offering or selling a private placement to its customers. The rule will require firms to describe the anticipated use of offering proceeds, and the amount and type of offering expenses and offering compensation. It is understandable that brokerage firms may have no control over the documents prepared by the issuer of the private placement, and therefore it would not be feasible for the firm to ensure that disclosures are made in those documents. However, it should not be a burden on the firms to disclose this information, as it should be in possession of this information in connection with its own due diligence on the offering. Therefore, the firms are capable of providing their own independent disclosure.

We are also pleased that FINRA will require that the firms file these disclosure documents. The proposed rule requires the initial disclosure document be filed within 15 days of the date of first sale. Any amendments to the disclosure documents must be provided to FINRA within 15 days after being provided to any investor or prospective investor. We believe that this is inconsistent. The two provisions should be consistent, and firms should be required to file the initial disclosure documents within 15 days of being provided to an investor or prospective investor.

In addition, we believe FINRA should remain vigilant in ensuring that brokers are following the sales practice rules. It should be clear that simply providing a disclosure document will not correct an oral misstatement or omission made by the broker. Most investors rely on the oral presentation made by their brokers, as opposed to numerous documents they receive prior to and shortly after investing, which may contain pages of small print that is often difficult to understand.

There have been a recent string of private placements that have turned out to be Ponzi schemes. Some that come to mind are Medical Capital, Provident/Shale Royalties, and DBSI. More than ever, FINRA needs to help protect investors and make sure that brokers provide balanced, accurate information regarding these private placements. When a broker tells a customer that an investment is appropriate, that customer should be able to trust that their broker is giving them valid advice, and if the advice is inappropriate, the customer should be able to hold that broker accountable. The broker should not be able to hide behind the paperwork that accompanied or followed the investment decision.

Therefore, PIABA is supportive of the new rule, but requests that it be clear that the rule will not create a safe harbor for brokers. Once more, we appreciate the opportunity to comment on the proposed rule.

Very truly yours,

Ryan K. Bakhtiari
Aidikoff, Uhl & Bakhtiari
9454 Wilshire Blvd., Suite 303
Beverly Hills, CA 90212
Telephone (310) 274-0666
Fax (310) 859-0513
rbakhtiari@aol.com