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June 25, 2014

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

Re: SR-FINRA-2014-006, Exchange Act Release No. 34-72193
Proposed Rule Change Relating to Per-Share Estimated Valuations
For Unlisted DPPs and REITs

Dear Ms. Murphy:

On behalf of the Public Investors Arbitration Bar Association ("PIABA"), I thank the Commission for the opportunity to provide further comments on the proposed amendment to NASD Rule 2340 and FINRA Rules 2310 and 5110. PIABA is a national, not-for-profit bar association comprised of attorneys, including law professors and regulators, both former and current. PIASA members who are practicing attorneys devote a significant portion of their work time representing public investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in securities and arbitration forums and has advocated for investor education and investor rights. Our members and their clients have a strong interest in rules promulgated by FINRA relating to both investor protection and disclosure.

As set forth in PIABA's previous comment letter of March 11, 2014, PIABA believes that the proposed amendments to NASD Rule 2340, while an improvement over current practice, are inadequate because FINRA should prohibit member firms from selling direct participation programs ("DPPs") and unlisted real estate investment trusts ("REITs") for which issuers do not provide valuation estimates based on independent third-party appraisals. The current proposed amendment would permit FINRA members to sell DPPs and REITs for which the issuer does not provide an estimated valuation, during the period between the commencement of a public offering and the second anniversary of breaking escrow, so long as the issuer has agreed to disclose a per-share estimated value and the basis therefore in the first periodic report filed pursuant to Section 13(a) of 15(d) of the Exchange Act after the second anniversary of breaking escrow.

This approach is inadequate because it will continue to allow member firms and their registered representatives to sell REITs and DPPs for which the issuer does not

provide an estimated valuation during the initial distribution period (when most of the shares are sold). By the time the proposed rule's requirement that the issuer provide a valuation becomes effective, over two years after the commencement of an offering, most of the shares in an offering will likely already have been sold.

PIABA also opposes the proposed amendment to NASD Rule 2340 because the proposed rule would not require FINRA member firms to report accurate valuation information for DPPs and REITs on customer account statements. Indeed, the proposed amendment to NASD Rule 2340 eliminates any requirement for a member firm to include a per-share estimated value of DPP units or non-traded REIT shares in customer account statements. Under the proposal, a general securities member would not be required to include in a customer account statement a per share estimated value for an unlisted DPP or REIT security, but any member (not only a general securities member) may choose to do so if the value has been developed in a manner reasonably designed to ensure that it is reliable, the member has no reason to believe that it is unreliable.

FINRA indicates that it "has determined not to explicitly require the presentation of a valuation in customer account statements because it could interfere with the objective of ensuring that valuations are reliable." SR-FINRA-2014-006, p. 12. While FINRA has expressed concern that member firms should not be required to report values for which they cannot confirm accuracy makes sense as far as it goes, the best way to ensure accurate reporting of valuations is not to eliminate the requirement that valuations be reported, but to effectively require that issuers provide accurate third-party valuations from the beginning of an offering of DPPs or REITs. It bears emphasis that these non-traded securities are regularly offered to the public and sold as stable, fixed income investments. The impression that DPPs and REITs are stable, income-producing securities is only reinforced when investors receive periodic distributions from the securities (which in many cases do not reflect actual income from the underlying assets) and see the values of the DPP or REIT shares reported month after month as unchanged from the offering price (typically, \$10.00 a share).

By prohibiting the sale of DPP and REIT shares for which there is no accurate valuation information at all times from the beginning of such offerings, and by requiring the reporting of accurate valuation information based on third-party appraisals at all times after the shares are sold, FINRA would effectively be requiring issuers to provide accurate valuation information for DPP and REIT shares. If issuers did not do so, they would not be able to distribute shares through FINRA member independent broker-dealers, which is how these DPP and REIT shares are almost universally distributed.

The proposed amendments to Rule 2340 concerning two per-share estimated value methodologies that would be presumptively reliable are an improvement over current rules but are still inadequate. Broadly speaking, the first methodology allows member firms for a limited period of time to use per share proceeds, net of offering expenses and net of described distribution coverage shortfalls as a per share estimated

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value. The second methodology allows member firms to use a per share estimated value contained in the annual report, which valuation has been determined by a third party expert or such an expert has provided material assistance in determining the valuation. The amendments would at least eliminate the nearly universal practice of reporting DPP and REIT share value at cost basis (usually \$10 a share) for years after the beginning of an offering, as they would require member firms to account for the diminution of capital caused by offering expenses and distributions and require valuation based on the net proceeds of the offering and the capital available for investment, net of distributions. However, this method is too crude and potentially inaccurate to be treated as presumptively reliable. In many cases, the assets underlying DPPs and REITs may have significantly deteriorated in value even over a relatively short period (as frequently occurred in the case of non-traded REITs offered during the 2004-2006 time frame, whose underlying assets often plummeted in value as real estate prices fell during 2007-2009).

In summary, to meet its investor protection obligations, FINRA should amend Rules 2310 and 5110 to prohibit general securities members from selling DPP units or non-traded REIT shares unless issuers of such units or shares will provide in each annual report a valuation of the units or shares based upon an independent appraisal of the assets, liabilities, and operations of the program or REIT. In addition, Rule 2340 should require the reporting of those appraised values unless a member firm reasonably believes that the per unit or per share estimated value is unreliable. In that event, consistent with the NASD's prior interpretation of Rule 2340, member firms should be required to report an estimated value based upon an analysis of the audited financial statements of the program or REIT prepared by independent valuation services. As the result of such a rule, issuers would likely take responsibility for obtaining accurate valuation of DPP and REIT shares, and accurate values would be reported to investors. The half-measures in the rule proposals would allow member firms to provide slightly improved information to investors in some instances, while permitting members to continue current misleading sales and reporting practices during the early stages of DPP and REIT offerings.

Thank you for your consideration.

Sincerely,



Jason Doss,
President