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March 5, 2018

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

By electronic mail: pubcom@finra.org and regular US mail:

Re: Response to FINRA's requesting comment on amendments to Rule 5250.

Dear Ms. Mitchell:

This letter is in response to your Regulatory Notice 17-41 request for comments about amendments to FINRA Rule 5250 to permit issuers to compensate member firms for gathering information, drafting and submitting Form 211 to commence trading and market making.

We believe:

- Rule 5250 should be amended to allow broker-dealers to be compensated for accumulating the necessary information, preparing and submitting a Form 211, and responding to comments from FINRA.
- Small emerging companies are generally limited to over the counter reporting for access to the public markets.
- The policy purpose of Rule 5250 is satisfied by disclosure of payments to market makers.
- Rule 5250 unreasonable limits capital formation and organic growth for small companies.
- Online disclosure is consistent with current industry practice and satisfies the policy purpose of Rule 5250.

Convincing a broker-dealer to undertake the substantial effort to file Form 211 without compensation is very difficult for companies attempting to access the public markets in an efficient and orderly manner. From the broker-dealer perspective, filing a Form 211 involves collecting, reviewing and analyzing the issuer's disclosures, as well as responding to FINRA's comments and questions. The process presents a significant cost and time commitment, without any compensation.

Rule 15c2-11 under Securities Exchange Act of 1934 represents the gateway to public trading and investor interaction for many smaller, growth-stage companies. To begin quoting a security on your markets, broker-dealers are required to collect, review and maintain certain information about the issuer, as specified in Rule 15c2-11. That information must then be submitted to FINRA, together with a completed Form 211 which includes the price at which the broker intends to quote the security and the basis thereof, in addition to other information. Under Rule 6432, the firm filing the Form 211 must also

submit certifications that it has a reasonable basis for believing that the information is accurate and has been obtained from a reliable source.

Rule 5250 explicitly prohibits any payment by issuers or their affiliates and promoters, directly or indirectly, to a member for publishing a quotation, acting as a market maker, or submitting an application in connection therewith. This includes accepting payments for the expenses involved in the preparation and filing of a Form 211. To ensure compliance, firms must submit an additional certification confirming that they have not accepted any payments in violation of Rule 5250.

A broker-dealer underwriting and IPO listing on a national securities exchange may receive substantial payment for serving as investment banker.

Rule 5250 was adopted to ensure that broker-dealers are independent and unbiased when publishing a quotation or making a market in a security. This blanket prohibition on market making compensation is based out of a concern that broker-dealers receiving payments from issuers, or promotors, creates a conflict of interest that would influence the broker-dealer's decision as to whether to quote the security and at what price. Rule 5250 is intended to discourage manipulation of market prices because of backdoor agreements between issuers and market makers. The SEC made the following statement in 2013:

> *In particular, the existence of undisclosed private arrangements between market makers and an issuer and/or its promoters may make it difficult for investors to see the true market for the securities. As a result, what might appear to be independent trading activity may well be illusory.*

The cost of collecting, reviewing, confirming and vouching for the information required by Exchange Act Rule 15c2-11 is costly to perform. The "reasonable basis" standard under FINRA Rule 6432 potentially subjects firms to considerable liability. The firm must also pay the out-of-pocket expenses in conducting this review, including preliminary due diligence, legal and administrative costs. These costs cannot easily be recouped, largely because secondary trading margins have become smaller.

In 2003, FINRA exempted from Rule 5250 payments for market makers to make a market in Exchange Traded Products under Nasdaq's Market Quality Program. We believe FINRA can rely on existing industry disclosure rules like Section 17(b) to provide transparency and access to information for investors.

Qualified small companies do not have access to the public markets and liquidity for their shareholders because broker-dealer firms are not willing to undertake the financial and regulatory burden, without compensation. The result is company's securities resort to the grey market, with wider spreads, less liquidity and limited transparency. Most of the companies that trade over the counter are smaller, growth-stage companies that can benefit from professional advice and guidance on creating a public market. Unfortunately, the inability to receive payment for undertaking the process of approving a security for quoting gives broker-dealers little incentive to develop relationships with these companies.

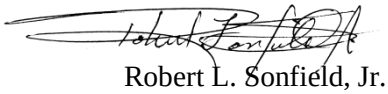
If the Form 211 process was financially incentivized, firms could demand higher quality disclosure from issuers and submit quotations that better reflected issuers' operations and prospects. Enhanced review and research of small cap companies would benefit investors and the company's overall access to capital. Payments for these services would offset the costs of gathering and reviewing issuer information, encourage relationships between companies and investment banking professionals, incentivize higher quality disclosures and promote competitive price transparency and liquidity in public secondary markets.

After an issuer's security has managed approval of a Form 211, the broker-dealer who cleared the process cannot accept payments for making a market in the security going forward. This prohibition comprises active secondary markets. We believe Rule 5250 should encourage markets with publicly available current information and several market makers competing on price, execution quality and liquidity.

Thousands of companies will benefit from the more efficient public secondary markets created by a combination of reforming the operation of FINRA Rules 6432 and 5250, and the JOBS Act.

In conclusion, we come down on the side of an amendment to Rule 5250 to allow broker-dealers compensation from issuers for reasonable expenses preparing and submitting a Form 211. Compensation arrangements will require public disclosure to comply with Section 17(b) under the Securities Act.

Yours very truly,



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