

FINRA representative --

In response to the request for comments on the proposed amendments to FINRA Rule 5122, we believe that they are unjustified and unnecessary, and that they will not produce any meaningful improvement in investor protection. Instead, the proposed quasi-registration will lead to delays and complications in conducting the very kinds of offerings that the securities laws exempt from such burdens, as well as to demands for additional FINRA staffing and fee increases.

Existing Federal securities law, SEC and FINRA rules and regulations, and Federal case law that interprets them already make abundantly clear what constitutes sufficient disclosure. Layering on additional disclosure requirements only moves ever farther from a principles-based approach to a rules-based one. This produces confusion that hinders effective regulation and supervision rather than aiding it. In any case, the SEC already requires the filing of Form D for *all* private placements. If additional information on the companies or the offering documents involved in private placements is thought to be necessary, Form D is surely the place to require it.

FINRA's statement that its experience with private placements to date provides useful evidence on both the risk of delays and the potential burdens of a filing requirement is deeply flawed. Indeed, based on endnote 7 of Notice 11-04 itself, the volume of filings requiring review would increase at least ten-fold – from about 300 a year to about 3,000 per year. Moreover, even if an offering can proceed without FINRA's approval, the risk that an overzealous reviewer will halt the offering process is of serious concern. As a practical matter, this risk will chill the commencement of an offering; it would not proceed without FINRA approval, however informal, despite the proper timing for the offering as determined by its participants

Finally, we and others in the industry perceive that FINRA's proposed amendments to Rule 5122 are part of a larger jurisdictional dispute with the SEC over review of private placements and the potential revenue to FINRA therefrom. FINRA adduces no evidence for the necessity of an additional review of private placement documentation separate from that of the SEC to protect investors, but merely asserts it.

Given our objection to the proposed amendments to Rule 5122, we are not responding to the request for suggested improvements to them. The entire proposal should be dropped.

If you have any questions about this comment, please contact either Roger Mehle, Chairman and Co-Chief Executive Officer, or Charles Sethness, President and Co-Chief Executive Officer, of Achates Capital Advisors.

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