CENTER FOR CAPITAL MARKETS COMPETITIVENESS
OF THE
UNITED STATES CHAMBER OF COMMERCE

DAVID T. HIRSCHMANN
PRESIDENT AND CHIEF EXECUTIVE OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062-2000
202/463-5609 • 202/955-1152 FAX
david.hirschmann@uschamber.com

April 11, 2012

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

Re: FINRA Regulatory Notice 12-14: FINRA Requests Comment on Proposed Amendments to NASD Rule 2340 to Address Values of Unlisted Direct Participation Programs and Real Estate Investment Trusts (hereinafter, together referred to as DPPs)

Dear Ms. Asquith:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation representing the interests of over three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. To achieve this objective it is an important priority of the CCMC to advance an effective and transparent system for capital formation, including capital formation for alternative investments like direct participation programs (DPPs). The CCMC welcomes the opportunity to comment on Regulatory Notice 12-14 (Notice 12-14) published by the Financial Industry Regulatory Authority, Inc. (FINRA) on March 7, 2012 regarding amendments to NASD Rule 2340 to address how firms report the per share estimated value of unlisted DPPs and unlisted Real Estate Investment Trusts (REITs) on customer account statements.

The CCMC supports the efforts of FINRA to provide protections and transparency to investors through amendments to NASD Rule 2340 and gratefully acknowledges FINRA's openness to feedback expressed in Notice 12-14 as a continuation of the comment process begun last year by FINRA Regulatory Notice 11-44 regarding customer account statements.

We believe there are many positive benefits to requiring on a customer account statement, within two quarterly filings of the conclusion of a DPP's initial offering period, the use of a per share estimated value based on current financial information.

However, we are concerned about the absence of a clear discussion of the timeframe for implementation of the proposal and all of its aspects, particularly changes impacting the DPP initial offering period. Adoption of the proposed amendment without proper consideration of its impact across a variety of constituencies could result in serious repercussions to the commercial real estate market and the broader U.S. economy, without any commensurate benefits.

We believe that FINRA should not act to implement a rule capable of having such widespread impact without first providing separately for public comment its proposal regarding rule implementation. To this end, we strongly recommend that FINRA delay acting unilaterally to implement its proposal until additional meetings and dialogue with the DPP industry to fully explore and identify the best timeframe and means through which improved customer account statements may come about.

For well over a decade, most DPPs have used an arbitrary $10.00 per share price during the offering period because it allows for ease and simplicity in determining the number of shares to be issued. This offering price, however, does not represent the book or net asset value of a share in the DPP, the amount of proceeds an investor would receive in the event of liquidation, or the price at which the shares would be traded if they were listed on an exchange—all factors clearly disclosed in the DPP's prospectus. While we support full and obvious disclosure of the commissions associated with such purchases, we continue to note that because the $10.00 offering price does not reflect actual value, deducting front-end underwriting compensation expenses to create a net offering price will do nothing to change the arbitrary nature of the starting point from which the net offering price calculation begins. To this end, we urge FINRA to draft the final rule carefully such that investors will not be led to believe that a net offering price (which we note is a reflection of gross proceeds to the issuer) is a closer approximation of intrinsic value.

An investment in a DPP is a long-term investment, and the ultimate success of the investment is based on a variety of factors, including the DPP's ability to select and manage assets, and its ability to implement a business plan effectively and

efficiently over a substantive asset holding period. During the initial offering period, the fundamental nature of the assets to be acquired, as well as the costs associated with their appraisal, prevent them from being readily quantified and translated into an estimated per share value bearing any significant connection to the type of return or per share value the investor could expect when the offering finally liquidates. To the extent the choice to use a net offering price on a customer statement is a departure from long standing statement practice, we believe that FINRA should confer with DPP industry leaders and devise a rule implementation plan that provides greater transparency on initial fees charged to the investor without allowing the investor to mistakenly conclude that the value of their initial investment has experienced an immediate loss as soon as the investment is made. Such an investor misunderstanding could bring immediate significant harm to the DPP industry's ability to raise capital.

We further note that FINRA's decisions on timing of the effectiveness of any final new rule should take into account the following:

1. The impact of implementation on existing programs in their initial offerings, including historical versus future calculations of return of capital, distributions, and total return;

2. The issuer legal, printing and other costs associated with creating and distributing offering materials converting to new share pricing and disclosure systems;

3. The costs associated with transfer agent technology updates associated with statement production for net offering price statements, as well as the possible need to modify historical statements for offerings active when the proposal is implemented;

4. The impact of a net offering price on existing issuer advisory agreements and related compensation, promote and/or hurdle calculations;

5. The impact of a net offering price on existing participating broker selling agreements and managing dealer agreements and related compensation matters;

6. The impact of any transition to ERISA valuations based upon net offering price for existing offerors;

7. The ability of trail commissions to be treated as capitalized versus operating expenses by issuers;

8. The impact of a net offering price statement on DPP assets held in brokerage accounts under AIP;

9. The preferential distribution implications of using a net offering price for distribution reinvestment plans; and

10. The possible taxability of the price difference in net offering price purchases versus fully loaded purchases.

As the U.S. economy and this industry recover from the recent economic downturn and commercial real estate activity picks up again, financial regulators should heed caution when considering rules that could hamper capital formation. While the list of issues above is not FINRA's sole responsibility, it is a relevant consideration set for the implementation of the final customer account statement rule. FINRA's final plan to implement a revised NASD Rule 2340 should also consider the significant improvements and upgrades to the DPP investment process incumbent upon such securities' recent ability to be DTCC eligible and thus capable of placement within traditional investor brokerage accounts.

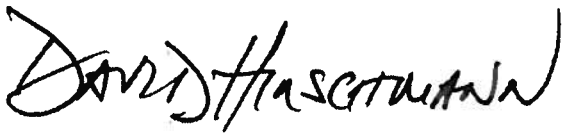
A lack of capital flowing into the nonlisted DPP and REIT markets will have repercussions for the broader economy. These products have played a key role in the recovery of distressed markets since the economic collapse, providing tens of thousands of Americans with employment directly and indirectly through the capital formation process, and through the development, management and maintenance of assets they hold. Without this robust sector of the financial community operating at capacity, the emergence of the economy will continue at a laggard pace. Only by FINRA and other regulators proceeding judiciously in a manner that promotes transparency without unduly inhibiting growth and capital formation will the U.S. economy return to its former vibrancy.

Conclusion

In summary, the CCMC believes that the implementation of FINRA's proposed customer account statement rule offers many positives for capital formation and for investors. However, if not carefully implemented in consultation with DPP industry leaders, the process of making the rule effective could place significant difficulties on nonlisted DPPs and REITs. Therefore, we recommend that FINRA delay this proposed amendment's effectiveness until it can establish such lines of communication, arrive at agreed upon best practices, and once more seek comment from affected stakeholders and interested parties before implementation of a final rule.

We appreciate the opportunity to submit these comments and would be happy to discuss these issues with you or your staff.

Sincerely,



David Hirschmann