Prodigious LLC

April 12, 2012

Marcia E. Asquith   Via email: pubcom@finra.org
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Regulatory Notice 12-14

Ms. Asquith:

We submit this letter of comment to voice our concerns with respect to the proposed changes noted in the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 12-14 ("12-14") which were provided in response to Regulatory Notice 11-44 ("11-44") which outlines various changes to FINRA Rule 2340. Thank you for allowing us to voice our response on the matter.

In response to 11-44, numerous responders provided valid reasons as to why the proposals by FINRA to address the values of unlisted Direct Participation Programs ("DPPs") and REITs were not feasible. We are of the opinion that the proposals in 12-14 are not adequate in addressing a number of concerns that the member firms will face when attempting to comply with the changes. Furthermore, the changes proposed in 12-14 will cause additional issues for the investors.

On Page 4 of 12-14 FINRA writes, "*Instead, FINRA proposes to require that a firm provide a per share estimated value based upon an appraisal from the issuer's most recent periodic or current report. We agree with commenters that the appraised value that appears in the issuer's periodic or current reports should provide the most reliable per share estimated value*." It has been our experience in providing valuations that this is not plausible because the "'issuer's most recent periodic or current report' is partially a subjective number predicated on analysis and evaluation not held to any standardized accounting practice.

Sometimes the value provided in a cyclical report is carried over from the previous reporting period. At other times the issuers provide a quarterly report which does not include a valuation. The proposal language should be amended to indicate "the most recently provided value, regardless of the date of the most recent report" and additionally there should be more explanation with respect to the context of the word "appraised" as it is used. For instance, if the security is not real estate based – the "appraised" values may not apply. Of course most of the comments to 11-44 appeared to be coming from the perspective of REITS – of which out of tens of thousands of securities in this sector are representative of less than 100 of the securities known to many firms in the industry.

We believe that the interpretation based on the proposed language will allow too much latitude for issuers that essentially can prop up their books when reporting values in an effort to establish a false sense of standards. When determining a valuation of an issuer's product, the financials of the issuer as well as the cash, securities and other instruments within the product are adequately evaluated. Relying solely on an issuer to provide valuation data could bring about similar problems that faced this sector of the industry in the early 1990s. By not requiring the values, at a minimum, to be audited by an outside party, the valuations being provided are a farce.

We are willing to become a part of the solution by not only voicing our thoughts on issues with the proposed rule, but also offering some degree of possible solution. In our opinion, the number that would be the most accurate and the most representative figure for the investing public is, "What would their security be worth given a best exit strategy" Whether it be exit strategy; a secondary sale; redemptions or issuer buybacks are all different given the circumstances. Since all secondary transactions are required by rule to be reported to FINRA, it seems that should be a viable resource the broker/dealer community could rely upon. It is our preference that secondary prices and/or redemption plans be utilized because they are not as likely to be biased. In the case of a secondary price, the value is determined by two main factors, the competing market and unaffiliated valuation. In the case of a redemption price, it is backed by cash which is a powerful incentive to get closer to a real value, and fiduciary responsibility regulation is quite clear and robust.

More specifically the Securities and Exchange Commission ("SEC") has preferred accounting methods which were adopted in concert with Financial Accounting Standards Boards ("FASB"), Accounting Standards Codification (“ASC”) or Generally Accepted Accounting Principles ("GAAP"). In nearly all of our experience, an issuer has never reported a valuation that an investor could utilize as a basis for exiting their security. Keep in mind, redemption plans sometimes have parameters such as investors have to own the position for a specific period of time, or it's based on a sliding scale. When issues such as these are present, we feel as though FINRA should define the methodology to be used – such as the use of the earliest holding time possible to determine the redemption price so that all investors possible would be included regardless of the individual position’s holding period. Of course this would cause the need for additional disclaimers, which also should be defined or deemed too great a burden. It would seem appropriate that a member firm handle the burden of redemption plans if one exists, as long as parameters are clearly defined with respect to aforementioned variables. It would be important to recognize that this solution may be a burden and if so we suggest a possible second solution.

For tax reporting purposes, using the IRS required value that is established and hasn’t changed for years would be preferable as was referenced in our response to 11-44. The broker/dealer community is currently required to calculate these numbers and it appears to be a viable option since it is already in use. This is especially true in the quarter it is reported by the firm. It seems as though if member firms or the governing bodies do not want the burden created by our first option, allowing the industry to use an accepted value, calculated using a universally accepted methodology, seems logical and to be completely appropriate. With all the many caveats outlined above and the myriad of disclosures the proposed rule change would require, it will likely leave the investors more confused and thus muddying the true picture. This second option would also eliminate the confusion often created by one value on the issuer’s statement, a second value on member firm customer statement and a third value sent once a year to meet IRS requirements. If the goal is to obtain and allow for the value to be changed more often than annually, for example, within the parameters of the cycle of the specific security, the proposed rule language should permit for the allowance of utilizing the varying cycles that occur within this market sector"

Until ASC 825 (formerly FAS 159), ASC 820 (formerly FAS 157 “Fair Value Measurements and Disclosures”) and Internal Revenue Service’s (“IRS”) Revenue Ruling 59-60 are given appropriate consideration, investors will continue to not be in receipt of a true valuation on their statements; they will have problems with tax reporting and the necessary transparency to the general public and investors for DPPs and non-trading REITs will never be achieved.

Our third option would be allowing member firms to use a book value if provided. As stated in the initial paragraphs of this section, there are issues with book value that must be addressed. We believe allowing the values but requiring that member firms identify whether those values are reported by issuers utilizing audited versus unaudited financial statements and whether the issuer is affiliated or unaffiliated with the entity calculating the value is imperative. We propose that regardless of whether the value is calculated by an affiliated or unaffiliated party, it should be disclosed as such and we further propose that whether or not the value has been audited, and if so, whether by an affiliated or unaffiliated party should also be disclosed. You may not be able to give the investor information that could be deemed reliable or address the myriad of methodologies used in calculation, but in the very least the member firms can disclose up front as to whether the information could be more or less reliable by virtue of its preparation.

On Page 5 of 12-14 it is stated, "*This quarterly filing "grace period" is designed to ensure that issuers have had sufficient time to conduct an appraisal and include an appraised value after the initial offering period. Moreover, a quarterly public filing deadline might occur immediately after the initial offering period, and for this reason the proposal would allow firms to present the net offering price until the issuer has filed one more quarterly filing, unless the issuer includes an appraised value in its periodic or current reports before that time.*"

First and most importantly, not all securities supported by this rule provide quarterly reporting. Secondly, if this rule is to apply specifically to publicly registered, non-trading REITS – the proposed rule changes should address that security type specifically followed by requirements for all other security types falling into this sector. The SEC defines Non-Standard Asset as "any security not listed on a recognized exchange". If this regulation is to incorporate all Non-Standard Assets, can it be specifically stated and if not, can it specifically state what security types are to be incorporated and what is exempt? By combining REITS and other DPPs without specifying as to whether they are publicly registered, or any other parameters, and the fact that the "concerns" addressed were almost all specifically addressed to REITS doesn't solve the problem as the rules cannot be adequately applied to the other security types.

We believe the issue of language stipulating an "appraised" value must be reconsidered. It is understood that to address this point, there must be some language put into place that deals with offering periods and providing time for an issuer to invest those funds raised; however, we believe that building rule language from the point of view of only a single security type within the covered sector is short sighted.

Our third topic comes from Page 7 of 12-14 it states, "As noted above, in recent years some unlisted DPPs and REITs have developed a daily NAV." It has been our experience that relying upon and/or creating a certain standard to one DPP will not apply to all DPPs. As such, a daily NAV would only apply to an extremely small number of DPPs and REITs and would again create confusion.

A fourth and final thought process from our perspective, which we believe should be considered is as follows. We believe there will always be inherent problems with respect to the methodology and valuation of these types of securities because no two are alike. Furthermore, I point to another concern with respect to DPPs specifically in the way they offered to prospective investors. In every Private Placement Memorandum ("PPM") there is disclosure language which generally states, ***Limited Liquidity.*** *Investment in the Partnership is highly restricted with significant restrictions. Investors do not have a right to withdraw from the Partnership. Investors should be prepared to hold their investment for an indefinite period of time. There is generally no publicly recognizable market for the Units and none is expected to develop.*

Because no true liquid market exists for DPPs and other Non-Standard Assets, what an investor can expect to receive in the sale of said securities will be misleading and they will most likely never realize the value identified on their customer statement. We believe a standardized method of valuation is necessary but various principals must be followed such as standardized accounting; accurate disclosures with respect to the different types of DPPs and REITs; member firm reporting requirements and issuer standards to name a few. While we wanted to include this statement for disclosure purposes, we realize that this is a very large issue that would require much stronger requirements than are intended to be addressed with in this rule.

One primary concern that will always be prevalent with respect to the issuers of DPPs and non-trading REITs is that they are not held to similar and more stringent standards as those of public companies. Inasmuch, an issuer's accounting and reporting processes are not streamline nor are they required to follow standards established by FASB, ASC or GAAP. Having access to the methodology utilized by each issuer and then reviewing that methodology so that investors can be correctly and completely informed is a burden much too large for a broker-dealer to undertake. Again, leaving the investors to garner these facts on their own, and then interpret and understand said facts, when simply standardizing the valuation process could be an opportunity for clarity and transparency that the industry should not overlook.

Again, thank you for allowing Prodigious, LLC to provide comments on the aforementioned matters and we trust that our opinions will assist the Financial Industry Regulatory Authority in achieving its goals. Prodigious has been providing specialized services with respect to non-standard assets, DPPs and non-publicly traded REITs to FINRA and NYSE broker/dealers for nearly 20 years.

Respectfully,

Prodigious, LLC

Enclosure: Prodigious, LLC Public Comment to 11-44

November 11, 2011

Marcia E. Asquith
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Ms. Asquith:

We are submitting this letter of comment to voice our concerns of the proposed changes as noted in the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 11-44 ("11-44"). The changes to FINRA Rule 2340 attempts to address the values of unlisted Direct Participation Programs ("DPPs") and Real Estate Investment Trusts ("REITs") as they are to be reported on customer account statements.

As stated in 11-44, *"FINRA proposes to permit valuations based on the offering price during the Initial Offering Period when the program is acquiring assets and firms are selling shares at a stable value on a best-efforts basis. However, FINRA proposes to amend the rule to require that all per share estimated values, including those that are based on the offering price, reflect a deduction of all organization and offering expenses (net value)."* It appears 11-44 and the changes proposed in Rule 2340 do not take into consideration key elements such as the Financial Accounting Standards Boards ("FASB") and Accounting Standards Codification ("ASC") 820.

It is our understanding that the FASB partnered with the Securities and Exchange Commission ("SEC") in their construction of the "Fair Value" rules as it pertains to ASC 820. However, this should not be confused with "Fair Market Value" in the Internal Revenue Service's ("IRS") Revenue Ruling 59-60 as described below.

Pursuant to Generally Accepted Accounting Principles (GAAP) and FASB, once a method of valuing assets has been selected, firms are required to continue to utilize that same method for the life of the asset. ASC 825 (formerly FAS 159) specifies that the choice of valuation method is up to the reporting entity. In order to determine "fair value" ASC 820 (formerly FAS 157 "Fair Value Measurements and Disclosures") specifies three levels in which a determination may be made. They are as follows:

Level 1: prices for the same asset from an active market. (If a stock trades on an exchange, then the trade price is the fair value.)

Level 2: observable inputs, such as the active market price for similar assets, or a redemption price for the subject asset. (If the client holds a note, then it would seem that the principal redemption price is an observable input and the interest is to compensate the note holder for the time value of money.)

Level 3: unobservable inputs, such as an income approach or a market data approach or a cost approach.

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Therefore, once a method for valuing the assets has been chosen, it must continue to provide a value within those standards identified above until the asset is sold, paid off or becomes impaired. Furthermore, FASB ASC 820 requires firms to independently evaluate the fair value measurement process utilized by the fund managers to accurately calculate the NAV.

As referenced above, another key factor that appears to not be taken into consideration is the IRS Revenue Ruling 59-60. In Section 1 of 59-60 it states, "The purpose of this Revenue Ruling is to outline and review in general the approach, methods and factors to be considered in valuing shares of the capital stock of closely held corporations for estate tax and gift tax purposes. The methods discussed herein will apply likewise to the valuation of corporate stocks on which market quotations are either unavailable or are of such scarcity that they do not reflect the fair market value."

According to 59-60 there are eight components which must be taken into consideration when arriving at a fair market value.

1. The nature of the business and the history of the enterprise from its inception.

2. The economic outlook in general and the condition and outlook of the specific industry in particular.

3. The book value of the stock and the financial condition of the business.

4. The earning capacity of the company.

5. The dividend-paying capacity.

6. Whether or not the enterprise has goodwill or other intangible value.

7. Sales of the stock and the size of the block of stock to be valued.

8. The market price of stocks of corporations engaged in the same or a similar line of business having their stocks actively traded in a free and open market, either on an exchange or over-the-counter.

When taking ASC 820 and IRS Rev Ruling 59-60 into consideration, it appears the proposed changes to FINRA Rule 2340 may inherently cause potentially serious tax problems to owners of alternative investments. The proposed changes identified in 11-44 also do not address redemption prices and secondary market trades. Rule 2340 does not address the concerns of giving considerations to changes in asset values with respect to valuations. So our primary concern is whether there is empirical evidence to support FINRA 11-44 (Rule 2340) over ASC 820 or Rev Ruling 59-60. As such, the question as to whether the IRS would accept the changes with respect to Rule 2340 approach over 59-60 for estate valuations remains to be answered.

With that said we have used a similar method if the valuation date is during the offering period and if the offering period is relatively short and other indicators are not available. However, once the redemption price kicks in, the method prescribed by Rule 2340 will essentially become meaningless, so the proposed changes will cause confusion for multiple-year offerings.

We would be open to discuss this matter and our thoughts as to what we believe would be the most appropriate and prudent methods and solutions to address the concerns described above.

About Prodigious

Prodigious has been providing pricing and valuation services as well as transfer services for alternative investment securities on behalf of the financial services industry since the 1990s. It has a strong knowledge and intimate understanding of these securities and it is our desire to ensure the integrity of the marketplace is maintained while providing complete transparency for both the industry participant firms and the general public.

Respectfully,

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