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Via Electronic Submission

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Office of the Corporate Secretary
FINRA Inc
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 25-06 – Supporting Capital Formation

Introduction

Ken Norensberg, CEO of Luxor Financial Group, Inc and former Member of the FINRA Board of Governors, is grateful for the opportunity to comment on **Regulatory Notice 25-06**. As a nationally recognized regulatory and broker dealer compliance consulting firm, Luxor Financial Group regularly consults with broker dealers and their registered representatives and has heard their concerns. As such, we can voice their concerns by presenting this comment letter as follows:

General Comments

All FINRA Rules need to have a risk-based approach. Over the years Members have heard from FINRA that they are taking a Risk Based Approach to the rules and the enforcement of these Rules. When speaking with Members, the response is always that FINRA is taking a heavy hand through "regulation by enforcement" and that new and existing Rules start out seeking to solve an issue and then transform into other items which become overburdensome to Firms. Firms then feel like they are trying to adjust to Rules which continue to evolve into nonsensical bureaucracy.

Capital Acquisition Broker Dealers ("CABs")

In 2016 FINRA adopted a separate set of Rules known as CABs which are limited broke dealers which focus on Private Placements to institutional investors. Currently, there is no need to expand their capabilities. If a CAB broker dealer wishes to expand their business lines, then they can make a Continuing Membership Application and do so. The idea of a limited broker dealer is just that, to create a limited regulatory scope surrounding a limited business. Expanding these abilities makes them no longer a limited broker dealer and they can avail themselves of other available options.

Finders

The topic of a "finder" and the payment of a "finder's fee" arises frequently in the small broker dealer space. There are often individuals who are not licensed but have business contacts they wish to introduce to broker-dealers for private placement transactions, or even for full-service accounts, and who, understandably, wish to receive a fee for successful introductions. This issue is particularly relevant for small broker dealers seeking to raise capital for their offerings.

I'm in favor of allowing a FINRA regulated broker dealer to utilize finders in that the finder's role remains limited to **"Joe meet John who is connected to a FINRA registered broker dealer and may have products that would interest you".** This is merely an act of business development and broker dealers should be able to utilize whatever business contacts are out there to secure funding, and those who make a referral should be able to receive a fee should that introduction bear fruit.

This of course does not take away the responsibility of Know Your Customer ("KYC"), Regulation Best Interest ("Reg BI"), Anti Money Laundering Provisions etc. The responsibility of the broker dealer would remain the same as it would for any customer of the Firm, no matter how that customer came to the Firm. Therefore, with the understanding of the limited nature of the Finder's actions and the regulatory oversight and responsibility of the broker dealer, Finder's can be a very helpful part of the financial ecosystem to encourage a broader participation in the capital markets.

Research Reports

The current Rules relating to "Conflicts of Interests" are overly burdensome and subjective to each examiner and enforcement agents view. They prohibit virtually any language which may sound like a sales pitch or potentially an exaggerated statement. Disclosures need to be direct "**The Firm has a conflict for the following reasons" "This is not an offer to buy or sell any security" Securities are only offered through a perspective" etc.** Instead, what has happened is that Firms producing any type of report place several pages of "disclosures" most of which will be questioned endlessly by a regulator.

Additionally, a distinction needs to be made between a research report and a report on the overall economic conditions or the environment of a particular sector or private placement security. For example, a report created to inform potential purchasers of private placement shares, where no liquid public marketplace exists without making any price predictions and with clear disclosures of any conflicts, is different from an actual research report that discusses pricing and makes predictions about potential price movements.

Communications with the public:

Over the years, FINRA has sent out numerous notices relating to how broker dealers communicate with the public. The interpretation of these Rules and the way FINRA handles them when auditing Member Firms has created an environment where every word that is put into an offering document or marketing piece is scrutinized to the point of absurdity. This has created an environment where Firms are placing several pages of "disclosures" in a futile effort to appease the regulators and not say anything which may be misconstrued as "exaggerated" "Promissory" "Hyperbole" or any other potential violation based on the subjective reading by an examiner or FINRA enforcement.

The interpretations of the Communications with the public Rules need to be of a Risk Based nature and staff need to view these communications with a totality of the document and not towards a specific phrase, paragraph or notation.

Additionally, as technology advances, more clients are relying on communicating via text and registered representatives are faced with either lacking the ability to communicate properly or violating the communications rules. Moreover, Firm's are taken to task with heavy handed regulatory actions is for whatever reason they fail to review or properly account for every eventuality, which is an impossibility.

Violations of these Rukes need to consider the nature of communication and whether or not the public was harmed by it, not simply that the Rule was violated.

Rule 5122/5123/5130/5131

While these Rules are intended for Firms to be transparent and to protect investors, once again, the Rules have been interpreted where no matter what a Firm does, the regulator takes issue with it. It is impossible for anyone to disclose every eventuality, potential pitfall or the appearance of impropriety. Fraud is almost NEVER found until investors have been fleeced of their money and bad actors will always exist. The Rules need to be viewed in the context that Member Firms are trying their utmost to be quality Members and that they have the intent and integrity to follow the Rules.

The expansion of rules—whereby a regulator takes a heavy-handed approach with member firms and imposes additional obligations and resource allocations for non-risk-based compliance, should be grounded in actual risk, not in the subjective or arbitrary views of an examiner. Increasingly mandated disclosures relating to every conceivable issue to accredited, sophisticated investors are failing to provide meaningful protection and need to be amended for less, not more disclosure.

The legislators have made clear that access to Capital for Small Companies needs to be just that…**Accessible**! FINRA must strike a fair balance between investor protection and the rights of individuals, Companies and Member firms to participate in the market. A **risk-based, measured regulatory framework** is not only more just, but also more effective at ensuring long-term market health. I respectfully urge FINRA to ease the Rules and adopt a more equitable, nuanced approach to rulemaking and enforcement.

Sincerely,

Ken Norensberg

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