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

December 9, 2011
via Email: pubcom@finra.org

RE: FINRA Notice 11-48, FINRA Requests Comment on a Proposed New Rule Requiring Carrying/Clearing Member Firms to Maintain and Keep Current Certain Records in a Central Location.

Dear Ms. Asquith:

Assent LLC (“Assent”) would like to submit a comment pursuant to FINRA’s proposed new Rule 4516 (the “new Rule” or “proposed Rule”), (Readily Identifiable and Accessible Records) as published in FINRA Notice 11-48.

Assent is a wholly owned FINRA broker dealer of SunGard. SunGard is one of the world’s leading software and technology services companies. SunGard has more than 20,000 employees and serves over 25,000 customers in more than 70 countries. SunGard provides software and processing solutions for financial services, education and the public sector. Assent is currently in the process of merging with its affiliated broker dealer, Fox River Execution Technology, LLC, an algorithmic type trading firm. Assent provides sponsored access to all major and other regional exchanges, operates a dark pool ATS, and acts as a clearing and carrying firm for correspondent broker dealers.

Assent appreciates FINRA’s ongoing efforts for member regulation and ensuring that member firms have policies and procedures in place to safeguard and protect proprietary and customer information at all times. Notwithstanding these efforts by FINRA, Assent feels that FINRA, as well as the Securities and Exchange Commission (“SEC”), have existing rules in place that already require member firms to maintain readily identifiable and accessible records. We feel that the promulgation of this additional rule would be duplicative and will create an operational and compliance burden, as well as increased costs on clearing and carrying firms. Finally, the impetus behind this new Rule proposal involves “the inability to locate certain documents and information was identified as a concern in connection with the Lehman Brothers Inc. liquidation during the recent credit crisis.” (See footnote three of this Notice) As such, we feel that a tiered system for clearing firms, similar to that used by FINRA for Examination purposes, could be worthwhile in this case. For example, a clearing firm that carries over a certain number of accounts or more than a certain dollar size of customer assets (i.e., MF Global) should have greater requirements than a firm not over a given threshold.

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There are essentially four aspects to new Rule 4516 that is being raised for comment:

1. Establishing readily identifiable records that must be maintained in a principal office that must be specifically designated by the member firm;
2. Establishing ten delineated books and records requirements that are subject to new Rule 4516;
3. Providing for any electronic systems maintained by the clearing firm on behalf of records associated with the correspondent member, be made available on a read only basis to FINRA, the SEC and SIPC;
4. Designate a contact person responsible for maintaining and keeping current the records required under the new Rule.

Firstly, FINRA recently gained approval to consolidate a number of NASD and NYSE Rules that will be effective December 5, 2011. The new Rules (FINRA Rules 2268, 4511, 4512, 4513, 4514, 4515, 5340 and 7440(a)(4)) are expansive in scope and address various requirements that previously did not exist for members. For example, new FINRA Rule 4513 (“Records of Written Customer Complaints”) clarifies that “customer complaint records in each OSJ applies only to complaints that relate to that office, including complaints that relate to activities supervised from that office, and provides that firms may maintain the required records at the OSJ or make them promptly available at such office upon FINRA’s request.” Proposed rule 4516 would create confusion among members if the designated principal office is different from the OSJ thus creating ambiguity as to which office is required to maintain such records.

Secondly, all clearing and carrying firms are already required to maintain the ten delineated books and records items under existing FINRA and SEC requirements. This part of the new Rule is duplicative to existing books and records requirements. For instance, SEC Rule 17a-3 (“17a-3”) outlines the records to be maintained and identified. Creating a separate requirement to identify specific books and records under the new Rule would be in conflict to those already identified in 17a-3. SEC Rule 17a-4(f) requires that all books and records retained electronically be stored in non-rewriteable, non-erasable formats known as “write once, read many” or “WORM”. Typically records utilized by clearing and carrying firms on a day to day basis; for example, updating correspondent or customer securities positions, trade data, and/or commission adjustments, are straight through processed (“STP”) to update across systems automatically. The STP system is the lifeblood of efficient capital markets and securities processing. Under SEC Rule 17a-4(f), firms already have the requirement to store the data, reports, etc. in WORM format. Those records not stored electronically, yet outlined in 17a-3, are required to be safeguarded (which typically means backed up electronically) as mandated by the firm’s Business Continuity Program (“BCP”).



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Thirdly, clearing and carrying firms may provide access to correspondent members to various systems in order to access information pertaining to that member firm. FINRA Rule 8210 encompasses all requests by FINRA for information or documentation. Thus, FINRA is already empowered to request and obtain information provided to a correspondent member firm, regardless of how it was originally delivered to a member firm. New Rule 4516 is duplicative and does little to enhance those record requests when considering FINRA Rule 8210(g) (also see Regulatory Notice 10-59). FINRA Rule 8210(g) already requires the electronic delivery of information, including on a portable media device (“PMD”), in an encrypted format.

Lastly, FINRA members under NASD Rule 3010 (a) and (b) are required to establish written supervisory procedures, and assign those persons responsible, including among other things the maintenance of books and records. Typically at a clearing and carrying firm, the CCO, COO, and/or FINOP assume those responsibilities in a shared manner given the scope of records maintained. The 10 delineated records under new Rule 4516, if assigned to one (1) individual to maintain and keep current, would place an undue burden on that individual, and the subsequently the firm, given the lack of operational control one person would have across the entire firms records. This could be an enormous task to accomplish under the new Rule.

In summary, Assent feels that given the new FINRA Books and Records Rules effective December 5, 2011, will already create a need for enhanced systems, compliance and operational changes to clearing and carrying firms. Moreover, given the duplicative nature of proposed Rule 4516 as previously described, we feel that it should not be approved in its current form. The additional costs for compliance and meeting the demands as outlined in the new Rule proposal does little to enhance existing books and records requirements in any meaningful and practical way.

Thank you for the opportunity to provide our comments to this Rule Proposal.

Sincerely yours,

Robert B. Gaeta
Sr. Compliance Officer

cc: Greg Pratnicki
Chief Compliance Officer
Assent LLC

Christopher Meade
Chief Operations Officer
Fox River Technologies, LLC