FRANKLIN SQUARE
CAPITAL PARTNERS

Franklin Square Holdings, L.P.
2929 Arch Street, Suite 675
Philadelphia, PA 19104

April 11, 2012

VIA E-mail <pubcom@finra.org> and Overnight Delivery

Ms. Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1735 K Street NW
Washington, DC 20006

Re: FINRA Regulatory Notice to Members 12-14

Dear Ms. Asquith:

The Financial Industry Regulatory Authority, Inc. ("FINRA") has published Regulatory Notice 12-14 seeking comments on its proposal to amend NASD Rule 2340 regarding the reporting of per share estimated values on customer account statements (the "Proposed Amendment"). This comment letter is submitted on behalf of FS Investment Corporation and FS Energy and Power Fund (together, the "FS Entities") by Franklin Square Holdings, L.P., the sponsor of the FS Entities. The FS Entities are non-traded business development companies ("BDCs") that are offering shares pursuant to effective registration statements on Form N-2 filed with the Securities and Exchange Commission (the "SEC"). As direct participation programs ("DPPs"), and like non-traded real estate investment trusts ("REITs"), the FS Entities' organization and offering expenses, including selling commissions and dealer manager fees, are regulated by FINRA Rule 2310.

Comment to the Proposed Amendment

In this letter, we request that FINRA address the following issues relating to the Proposed Amendment:

1) **Grandfathering/Implementation Period.** The FS Entities support and applaud FINRA's efforts under the Proposed Amendment. We eagerly anticipate its beneficial effects and feel that its implementation is a positive step for our industry, which is comprised of the different types of investment funds regulated under NASD Rule 2340 (such funds, collectively, "2340 Funds") and the member firms that offer them to their clients. We ask, however, that FINRA carefully consider the method in which the Proposed Amendment is implemented and the applicability of the Proposed Amendment for existing 2340 Funds. As can often happen, the unintended consequences of this well-intended regulation could be quite problematic.

First, please note that all existing 2340 Funds were developed, structured, marketed and sold in a manner compliant with current NASD Rule 2340. An immediate implementation of the Proposed Amendment would very likely result in widespread confusion among investors (whose account statements will show vastly different values overnight) and significant operational difficulties for both sponsors and member firms. To elaborate briefly, back office operations between sponsors and member firms are currently systemized, integrated and fine-tuned, at significant expense, to comply with NASD Rule 2340 in its current form. This allows for the orderly transaction of business, facilitates the flow of funds and information and helps to provide adequate customer service for member firms, registered representatives and their clients. A 2340 Fund may undergo this integration process hundreds of separate times as it adds member firms to its selling group, each of which may employ different forms of technology in carrying out its business. Without properly designed and well-integrated technology and procedures in place well ahead of time that take into account the final implementation of the Proposed Amendment, the potential exists for serious disruptions in the flow of information and, potentially, a total seizure in the conduct of business. In our view, an immediate blanket implementation of the Proposed Amendment imposes an unreasonable (and likely insupportable) burden on sponsors and member firms and should be avoided.

As important as the potential operational challenges posed by the Proposed Amendment in our view is the issue of fairness. Today, member firms house over $84 billion in assets of 2340 Funds, each of which was developed, structured and marketed in strict adherence to applicable law and regulation. Furthermore, sponsor firms are currently conducting offerings in good faith and, as it is often their primary business, many will be doing so as the Proposed Amendment goes into effect. While it is impossible to prove, we submit that many of the 2340 Funds in existence would be structured differently today *had sponsors and member firms known* that Rule 2340 would incorporate the Proposed Amendment. We view the retrospective implementation of the Proposed Amendment as a form of *ex post facto* regulation, with the unintended consequence of immediately rendering existing products and modes of business obsolete or significantly less competitive. We feel that this unduly burdens the sponsors and member firms that have worked diligently in good faith to comply with FINRA regulations in their current form. The length of time and difficulty involved in modifying existing funds to succeed if the Proposed Amendment were to go into effect – which means developing, testing and implementing appropriate technology while obtaining approval of any modifications from more than 55 regulatory bodies that oversee the offering of 2340 Funds – makes this course of action infeasible without a grandfathering provision in place.

As a result, we respectfully request that FINRA exempt from compliance with the Proposed Amendment existing 2340 Funds whose registration statements under the Securities and Exchange Act of 1933 have been submitted to the Securities and Exchange Commission on or before the date the Proposed Amendment was issued. As such, the Proposed Amendment would apply prospectively to new 2340 Funds only, allowing sponsors and member firms adequate time to address the structure of 2340 Funds, the method of offering securities and the development of appropriate operational and technological regimes in light of the final form of the Proposed Amendment without disruption to the existing businesses upon which they and their employees rely. In the interim, we believe that requiring all 2340 Funds to publish a quarterly net asset value per share ("NAV"), as discussed below, would help to address the issue of transparency that is so important to the marketplace.

2) **Elimination of "Not Priced" Option During the Offering Period.** We disagree in a fundamental way with the notion that any form of investment should be granted an option by regulators to obfuscate price discovery while in the midst of a public offering. NAV is one of the most basic and vital forms of information in the investment world. It permits an investor to judge the fairness of any offering price, the liquidation value of his or her investment and the historical and current performance of the manager before deciding to invest. It also facilitates performance monitoring during the investment period. Most of the investment world (including mutual funds, hedge funds, real estate private equity funds, private equity funds and a host other forms of investment) publish NAVs for their investors understanding the necessity for transparency of this sort to be self-evident. In the world of 2340 Funds, published NAVs remain the exception rather than the rule. To help investors properly evaluate 2340 Funds, we believe that NAVs should be published at least quarterly. We question the suitability of any product that is unable to produce some form of timely and reliable price discovery, whether in the form of a public trading price or NAV.

We also disagree with a number of the arguments mentioned in Regulatory Notice 12-14 fashioned to avoid publishing a modified net offering price on client statements. While we refrain from delving too deeply into the details, we focus on two points. First, the very existence of "daily NAV" REITs and unlisted BDCs, which are required to publish net asset values quarterly under the Investment Company Act of 1940, belies the notion that reliable values are impossible to determine or unreasonably difficult to estimate while conducting an offering. Second, while the initial price may be an arbitrary figure, there is nothing arbitrary about the net asset value of a share immediately after a sale is made. The amount of funds per share remaining in the program after deducting underwriting compensation is the exact net asset value, before deducting organizational and offering expenses, pending investment of proceeds (in most cases $9.00 per share). Initially, the market value of any purchases will also aggregate to something *less than* $9.00 per share to reflect the deduction of

organizational and offering expenses borne by investors as well as any acquisition fees that various programs might charge in connection with making investments. As such, a modified net offering price provides a (somewhat generous) barometer of initial per share value during the conduct of an offering.

Of greatest import in our view, however, is that a "no price option" provides a needless opportunity for a variety of actors to avoid discussing potentially significant up-front commissions and fees until well after a sale is made. In addition to permitting certain charges to remain hidden from the customer's view for years, the "no price" option allows sponsors to continue selling shares to unwitting investors at the initial offering price even if the value of the 2340 Fund is significantly lower. We enthusiastically support FINRA's efforts to demystify customer account statements for 2340 Funds; the "no price" option in our view is an unnecessary and potentially damaging step in the wrong direction.

In the name of greater transparency, we respectfully request that all 2340 funds be required to make a bona fide *publication of net asset value on a quarterly basis (as many 2340 Funds already do without difficulty) and use this net asset value to price shares on customer account statements during the offering period and thereafter. Absent a* bona fide *net asset value calculation, we request that all member firms be required to use a modified net offering price on customer account statements during the offering period.*

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We appreciate the opportunity to provide input on the Proposed Amendment, which we feel will strengthen and improve our industry considerably.

Thank you for your consideration.

Sincerely,

Franklin Square Holdings, L.P.

By:_____
Name: Michael C. Forman
Title: Chief Executive Officer

cc:

Mr. Gerald F. Stahlecker, Franklin Square Holdings, L.P.
Mr. Ryan D. Conley, Franklin Square Holdings, L.P.
Mr. Stephen Sypherd, Franklin Square Holdings, L.P.
Ms. Adrienne Hart, FS^2 Capital Partners, LLC