April 23, 2014

To: Maria E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006

Re: Proposed Rule Set for Limited Corporate Financing Brokers (Regulatory Notice 14-09)

General Observations

I am encouraged by FINRA's proposed activities for Limited Corporate Financing Brokers ("LCFB"). I believe LCFB may meaningfully increase the alternatives for competent representation available to small businesses seeking to sell themselves or raise capital. However, limiting investors and acquirors to "institutional investors" undermines what FINRA's proposed rules are seeking to accomplish for the following reasons:

1) LCFB and their clients cannot reasonably know upfront without potentially negative consequences if certain potential buyers/investors meet the institutional investor qualification before or even after they are solicited. While it is common in the private placement context to pre-qualify accredited investors by asking that such investors complete a questionnaire to certify their "accredited investor" status prior to providing offering materials, a buyer or investor may be unwilling to certify to the much higher institutional investor status prior to receiving any information on the transaction. The buyer of a small company in many cases may be a comparable size company or a competitor. The seller will likely never know the financial position of the buyer in an all cash for stock transaction. The seller is primarily concerned with the buyer's ability to pay the purchase price and the terms of the transaction. If the deal is structured as a cash and stock deal or an all stock deal, the seller would in fact have reasonable access to the buyer's financials and could determine if the buyer has $50 million in assets, however, the timing of determining this could be a month or more after the LCFB has been engaged by its client. Further, the institutional investor status of the investor is only relevant to the LCFB and no other party to the transaction. There is no "investor protection" rationale in the proposed rule for requiring institutional investor status rather than accreditor investor status. Under U.S. securities laws, accredited investors are assumed to be both informed and sophisticated enough not to need the protections afforded to other investors under the federal securities laws.

2) I believe that the proposed rules as currently written would prohibit a LCFB from representing small companies unless the LCFB agreed upfront with the prospective client as to what purchasers/investors would be solicited and that list would be limited to institutional investors. This does not seem practical given that a prospective buyer/investor list is usually not compiled until well into any engagement and often concurrent with or after the LCFB representatives having done a substantial portion of their financial and business due diligence including thoroughly assessing the competitive landscape, which in many cases will undoubtedly identify potential buyers/investors. For a small company seller, limiting the landscape of buyers (for the sole purpose of allowing the LCFB to be engaged and participate in the transaction for compensation) is a disadvantage to the selling client with no offsetting benefit. The smaller the pool, the less likely the company will be sold which could negatively impact job growth, and future investment in the economy.

If I am the prospective client and the LCFB "honestly" explained to me this limitation as to who can be solicited, and the lack of any offsetting benefit, I would not hire the LCFB. The client could always turn to a traditional broker-dealer to seek representation, use a M&A Broker under the recent SEC no-action letter, assume no advisory representation, use legal counsel only, or circumvent or disregard the rules entirely.

Putting aside the larger broker-dealers which generally would have limited interest in representing companies with an enterprise value of less than $25 million, many of the regional broker-dealers currently have minimum fee requirements that are still cost prohibitive to a small company. Even if these broker-dealers accept the assignment, it is possible the company and the engagement will not get the senior level attention that is warranted and the client expects and is paying for.

3) Even assuming that a seller and its advisor can determine that all the potential buyers to be solicited are institutional investors, what happens if and when the company receives an unsolicited offer from a non-institutional investor? What is the LCFB responsibility in this scenario? Would the LCFB still be paid even if the company sells to the unsolicited party? This is problematic.

Summary and Suggestions

While I appreciate the term "accredited" has been diluted somewhat by the overall growth in the economy and inflation, it is the standard long established for registered broker-dealers with respect to selling private placements. Accredited investors are presumed under U.S. securities laws to be sophisticated enough to not need the protections afforded other investors under U.S. securities laws. It is the role of the U.S. Congress and the SEC to determine what the appropriate thresholds should be for the accredited investor standard to balance the goals of investor

protection, the public interest and the economy. Section 413(a) of the Dodd-Frank Act, requires the SEC undertake a review of the definition of accredited investor as it applies to individuals every four years and make adjustments as the SEC deems appropriate for protection of investors, in the public interest and in light of the economy. From the proposed rules, FINRA is proposing to dictate what level is appropriate for investor protection, rather than Congress and the SEC. It is hard for me to understand why a sole practitioner like myself with twenty-five years of investment banking experience with three bulge-bracket firms is being asked to submit to a higher standard. Is not a large part of your concern addressed with the registration requirements (Series 24,79, etc.) that LCFB principals and employees must adhere to? Registration and continuing education are the salient factors FINRA uses to determine minimum competency with respect to all registered broker- dealers. I believe that all advisors, whether associated with a bulge-bracket firm or sole practitioner like myself should be held to the same standard, no less or no more, in the pursuit to offer their clients only world-class advice.

While it is not my intent to pursue non-institutional accredited investors, there are many very sophisticated and wealthy investors that I believe should not be excluded in executing an M&A transaction or private placement. You may consider establishing a new definition for "non-institutional accredited investor" with a minimum net worth above accredited but below institutional.

You will be able to weed out many of the "bad actors" through your proposed registration of LCFB. Unfortunately, there will always be those individuals that have no respect for the law.

Furthermore, the SEC no-action letter dated January 31, 2014, is more favorable to brokers than the proposed FINRA rules. I believe, with respect to the sale of a company, many M&A brokers may take comfort in the SEC no-action letter and selectively disregard any new FINRA rules given they are, as written, more restrictive.

Inadvertently, the FINRA rules as proposed may actually discourage companies from hiring a LCFB given the inconsistencies between the two sets of rules for certain of the same activities. It is reasonable to assume that counsel to a seller will advise their client not to hire the LCFB given the inconsistencies. These inconsistencies increase risk, and increased risk has a cost. Does a seller need to be concerned with remedies that may accrue to a buyer if the advisor on the transaction relies on one set of rules and not the other? If you are an owner of a small company that has been in the family for generations and have made the important decision to sell, would you risk hiring a broker that is potentially restricted in his ability to maximize shareholder value and that may be subject to litigation/enforcement from FINRA and the SEC. Is it conceivable the LCFB would advise his client to not solicit a certain party in the best interest of the client because he realizes the party is not an institutional investor? The rules would dictate that the LCFB not act in the best interest of his client. This creates an illogical result.

I hope my comments will encourage FINRA to modify the definition of institutional investor if it is unwilling to establish parity among all providers of financial advice.

I would be happy to discuss my comments and suggestions with you.

Sincerely,

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