February 17, 2009

Florence Harmon, Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Harmon,

I wish to voice my serious objection to the rule in its currently proposed form. The proposal is flawed in many respects, as outlined below, and I strongly urge the Commission to decline FINRA's request for passage of this rule.

Jurisdiction: FINRA has been granted the authority by Congress to oversee the *brokerage* activities of broker-dealers, not their *corporate* activities. Private placements of their own securities by broker-dealers constitute the latter, and fall under the jurisdiction of the SEC. Further, FINRA clearly has no jurisdiction over control entities that are not broker-dealers. Again, such jurisdiction falls under the SEC.

Burden of Proof: FINRA has not shown sufficient proof that a rule governing MPOs is necessary in the first place. FINRA has noted that it has "investigated and brought numerous enforcement cases concerning abuses in connection with MPOs". Out of a membership of approximately 5,500, FINRA brought cases against a total of nine firms for MPO "abuse" over a four-year period, 2003 to 2006. Nine out of 5,500 over four years does not fit the definition of "numerous" and does not warrant a new rule.

The principal allegations FINRA has made against the firms accused of MPO violations are:

(1) *Members failed to provide PPMs to investors.* Where as I am completely in favor of providing full and fair disclosure to investors by way of a PPM, it must be noted that the law does not specifically require PPMs in all cases – in many cases a Term Sheet is sufficient. Which begs the question: if the law doesn't require it, why would FINRA?

(2) *PPMs contained incorrect, misleading or selective disclosure.* This is a violation of the anti-fraud provisions of the Act and, consequently, the SEC should prosecute alleged violators to the full extent of the law. There is no need for a new rule to prosecute activity that can currently be prosecuted under an existing law.

Filing Requirement: I am opposed to the filing requirement, both initial and subsequent, of the proposed rule, as well as the requirement to make a PPM part of a member audit. I see no productive purpose in burdening compliant members with these additional requirements. I am not opposed, however, to the filing

requirement if *all* private securities issuers, FINRA members and non-members, are required to file their PPMs *with the SEC,* and the same are afforded confidential treatment. It is the selective nature of the filing requirement (FINRA members only) that I am not comfortable with.

Confidential Treatment: In the business world, when one party breaches confidentiality, the aggrieved party can take the violating party to court. FINRA has said on more than one occasion that it has absolute immunity. What recourse do members have if FINRA breaches “confidential treatment”? Does FINRA make its employees sign confidentiality agreements? And what recourse does a member have against FINRA and its employees if a FINRA employee breaches confidentiality *after* he or she is no longer an employee of FINRA? The confidential treatment provision affords no practical protection to members.

Accredited Investor Definition: If a member issues its private securities only to accredited investors and specifically excludes non-accredited investors from its private placement, the offering should be entirely exempt from the requirements of the rule. The definition of “accredited investor” was established by the SEC in large part because the SEC believed accredited investors are capable of reviewing PPMs and other due diligence material and are considered savvy enough to make their own decisions. Despite the spectacular falls of many hedge funds in recent years, there is no regulation of this segment of the industry because they accept investment from only accredited investors (even though the reality is that behind many of the pension funds that invest in hedge funds, there are millions of investors who are not accredited). FINRA has noted that “the SEC has recently proposed clarifying and modernizing” the definition of 'accredited investor'. If FINRA’s proposal is incorporated into the rulebook, MPOs will become the only private offerings to have a filing requirement even though all investors in an MPO may be accredited. This does not meet the fairness test, and imposes overly burdensome filing requirements on broker-dealers.

Concluding Remarks: Where as I strongly support the idea that at least 85% of offering proceeds should be used in the business, I don't believe this should be carved into a rule. FINRA’s proposal is tantamount to making all 5,500 broker-dealers wear an ankle bracelet when, over four years (2003 to 2006), only nine of them, less than one-fifth of one percent, engaged in MPO violations. Consequently, I respectfully request that you decline FINRA's proposal.

Very truly yours,

Neville Golvala
CEO
ChoiceTrade