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Submitted Electronically via Email
(rule-comments@sec.gov)

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 5131
File Number SR-FINRA-2013-037

Dear Secretary Murphy:

Cordium¹ appreciates the opportunity to provide comments on the Securities and Exchange Commission's (the "SEC") Notice of Filing of a Proposed Rule Change to Amend Financial Industry Regulatory Authority ("FINRA") Rule 5131 (New Issue Allocations and Distributions). Generally, FINRA Rule 5131(b) (the "anti-spinning rule") is designed to prevent the allocation and distribution of new issues to accounts in which executive officers and directors of investment banking clients, and persons materially supported by such executive officers and directors, have a beneficial interest in exchange for investment banking business. Private funds have attempted to meet the de minimis exception,² but frequently have had difficulty obtaining and aggregating the information from their indirect beneficial owners (e.g., participants in any fund of funds investors) that would allow them to represent that they meet the de minimis. Unless such funds opt to use a carve-out procedure (restricting allocations to covered persons), these funds are prohibited from participating in new issues.

The proposed FINRA Rule 5131 amendments would provide a limited exception to FINRA Rule 5131(b) in the private fund of funds context, allowing FINRA members to rely on written representations from certain accounts that do not look through to the indirect beneficial owners of a fund invested in the account. The structure and investment activity of most private investment funds make it almost impossible for an individual to engage in a spinning arrangement through a fund of funds or other entity investing in a direct fund. As

¹ Cordium (formerly known as HedgeOp Compliance, LLC) is a global regulatory and compliance consultant to investment advisers, private funds and registered investment companies. Cordium's private fund clients include funds of funds with aggregate assets under management in excess of \$60 billion.

² Rule 5131(b)(2) provides a de minimis exception for allocations to an account (e.g., a fund) in which the beneficial interests of covered persons of a company do not exceed in the aggregate 25% of the account.

described in the Notice of Filing, FINRA believes that funds of funds meeting certain proposed conditions do not raise the concerns that FINRA Rule 5131(b) is intended to address and that it is unlikely that the proportional benefits to any particular indirect investor would promote spinning with respect to such funds.

Cordium concurs with FINRA's assessment of the unlikelihood of spinning in the fund of funds context, and fully supports amending FINRA Rule 5131 to provide an exception with respect to these funds. There is no policy reason to support a blanket denial of participation in new issues by these funds; generally, an investor in a fund of funds (even a potential covered person) does not have the power to direct which broker a portfolio fund uses or will use and may not even know in which portfolio funds the fund of funds is invested.

However, while Cordium commends FINRA on the goals of the proposed rule change, Cordium respectfully submits that certain of the conditions set out in the proposed amendments are unnecessary to ensure that a fund poses minimal risk of spinning, and in fact are so restrictive that they would result in a very small number of fund of funds being able to avail themselves of the new exception.

Eliminate Proposed Fifth Condition that No Beneficial Owner of the Fund of Funds is Also a Control Person of the Fund of Funds' Investment Adviser

Specifically, Cordium suggests that FINRA eliminate the proposed fifth condition that the fund of funds "not have a beneficial owner that also is a control person of such fund's investment adviser." If a fund of funds meets the remaining proposed conditions, this fifth condition in no way further minimizes the danger of spinning. If the portfolio fund's investment adviser and the fund of fund's investment adviser have no common control person (the proposed rule change's sixth condition), it should not make a difference whether or not the fund of funds has a beneficial owner that is a control person of the such fund's adviser. Since the fund of fund's investment adviser will have no say in the investments being made by the portfolio fund, whether or not a control person of the fund of fund's investment adviser has any beneficial ownership interest in the fund of funds is irrelevant.

Cordium believes that the proposed fifth condition can be eliminated without any harm to FINRA's goal of assuring that a member's new issue allocation will not be in furtherance of spinning and that compliance burdens are appropriately reduced where the risk of spinning is low. It is very common for a fund of funds to have an investor which is both a beneficial owner of the fund of funds and a control person of such fund's investment adviser. Imposing the proposed condition would lead to a situation where a fund of funds would not be able to rely on the exception if its manager or certain affiliates own even a single share of the fund, even if such investors own less than 25% of the fund of funds, and the fund of funds itself (i) owns less than a 25% interest in the portfolio fund and (ii) is not affiliated with the investment adviser to

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such portfolio fund. Eliminating the proposed fifth condition would allow many more of the funds of funds for which FINRA has crafted the proposed exception to avail themselves of the new exception.

Reconsider Size of Fund Threshold

Cordium respectfully requests that FINRA and the SEC reconsider the second proposed condition, i.e., that the fund have assets greater than \$50 million. If a fund of funds meets the other proposed conditions, we do not believe that the size of the fund will have a meaningful impact on the possibility of spinning. Requiring a minimum fund size may also reduce the number of funds of funds that will be able to rely on the new exception. The Notice states that the requirements regarding the minimum size of the private fund and the percentage ownership thresholds (i.e., the fund owns less than 25% of an account and is not a fund in which a single investor has a beneficial interest of 25% or more) are meant to ensure that “the proportional benefit of any new issue allocation to a single indirect beneficial owner would be insufficient to further spinning.” Cordium believes that the combination of the proposed percentage ownership thresholds, the absence of a common control person between the fund of fund’s investment adviser and the portfolio fund’s investment adviser and the fact that the fund of funds was not formed for the specific purpose of investing in the portfolio fund are more than sufficient to evidence the unlikelihood of spinning. Alternatively, Cordium would suggest that FINRA’s objective would be met with a lower minimum assets requirement and asks that FINRA consider a lower fund size threshold.

The elimination of the proposed condition that the fund of funds “not have a beneficial owner that also is a control person of such fund’s investment adviser” and the elimination (or reduction) of the size of fund threshold would be consistent with the intent of FINRA Rule 5131(b) and would make additional capital available for initial public offerings, increasing the market by allowing these funds of funds to participate.

Cordium appreciates the opportunity to provide these comments to the SEC. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact the undersigned at (212) 515-2801.

Respectfully submitted,



William G. Mulligan, CEO
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