



April 11, 2012

*Submitted via [pubcom@finra.org](mailto:pubcom@finra.org)*

Marcia E. Asquith  
Office of the Corporate Secretary  
Financial Industry Regulatory Authority, Inc.  
1735 K Street, NW  
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 12-14: Customer Account Statements

Dear Ms. Asquith:

On behalf of the Real Estate Investment Securities Association (“REISA”), this letter is submitted in response to the Financial Industry Regulatory Authority, Inc.’s (“FINRA”) request for comments on *Regulatory Notice 12-14: Customer Account Statements* (“**Regulatory Notice 12 -14**”). Regulatory Notice 12-14 is a revision to prior Regulatory Notice 11-44 (“**Regulatory Notice 11-44**”), upon which REISA previously commented by letter dated November 12, 2011 (“**REISA’s Prior Comments**”). REISA is a trade association serving the real estate securities industry, including all professionals active in offering, managing and distributing non-traded REITs, real estate partnerships, tenant-in-common interests (TICs), Delaware statutory trust interests (DSTs), real estate income and development funds, oil and gas interests, natural resources and alternative energy investments.

REISA works to maintain the integrity and reputation of the industry by promoting the highest ethical standards to its members and provide education, networking opportunities and resources. REISA connects members directly to key industry experts through intimate forums providing timely trends and education and helping create a diversified portfolio for their clients. The association was founded in 2003 and has over 800 members who are key decision makers that represent over 30,000 professionals throughout the nation including:

- Sponsors and managers of real estate and related offerings
- Broker-dealers
- Securities licensed registered representatives
- Registered investment advisers (RIAs)
- Investment adviser representatives (IARs)
- Accountants
- Attorneys
- Mortgage brokers
- Institutional lenders
- Qualified intermediaries
- Real estate agents
- Real estate brokers



REISA believes in the importance of protecting the investing public while balancing the need for businesses and sponsors of quality real estate and direct participation investment products, along with the FINRA members who sell these products, to be able to efficiently raise capital without an overly burdensome regulatory scheme. REISA also represents a broad range of interests within its membership and a variety of programs, including public and private programs, including REITs, BDCs, and Reg D funds; and sectors, including real estate, energy, equipment, oil and gas and corporate debt and equity. REISA has attempted to convey the opinions and concerns of its membership as a whole as it relates to its comments below.

In Regulatory Notice 12-14, FINRA has revised its original proposal to amend Rule 2340<sup>1</sup> in response to various comments submitted on Regulatory Notice 11-44 (the “Revised Proposed Amendments”). The Revised Proposed Amendments would, among other things:

- (a) Require general securities members to provide a per share estimated value once an issuer provides an estimate based upon an appraisal of assets and liabilities in a periodic or current report filed under the Securities Exchange Act of 1934, as amended (the “Exchange Act”);
- (b) Allow, during the effective period of the first registration statement for the DPP or REIT securities,<sup>2</sup> members to use either a modified net offering price with an explanation of methodology by which such price was determined or designate the securities as “not priced”; and
- (c) Require certain disclosures to accompany the per share estimated value as set forth in the Revised Proposed Amendments.

REISA appreciates that FINRA addressed some of the comments received on Regulatory Notice 11-44, including REISA’s Prior Comments, but believes that additional clarifications and considerations are required. REISA notes the following with respect to the Revised Proposed Amendments.

1. REISA believes that while Regulatory Notice 12-14 discusses the option to list the securities as “not priced,” the actual text of revised Rule 2340(c)(1) should be revised to clarify that a FINRA member has an option to either provide the per share estimated value or show the security as “not priced.”

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<sup>1</sup> As part of the rulebook consolidation process, FINRA has proposed new FINRA Rule 2231 to replace NASD Rule 2340. See SR-FINRA-2009-028. The amendments discussed in Regulatory Notice 12-14 would be made to NASD Rule 2340 or new FINRA Rule 2231, depending upon the timing of final approval of this Regulatory Notice.

<sup>2</sup> The effective period of the first registration statement for the DPP or REIT securities is not defined in Regulatory Notice 12-14. REISA expects that the time period during which a net offering price could be used would be three years plus an additional 180-day extension period if a follow-on public offering had been registered as it was in Regulatory Notice 11-44.



2. REISA believes that the obligations of FINRA firms must be clarified if issuers do not provide an appraised value within the time period required by Rule 2340.
3. REISA believes that FINRA needs to clarify what consideration members should take into account when formulating a “reasonable belief” that the value is unreliable as well as the practical application of members’ obligations to follow up with the issuer or the independent valuation service if they believe there are “red flags.”
4. REISA believes that in order to take into account the various technological as well as practical issues involving the changes to the way these offerings are valued, implementation of the Proposed Revised Amendments should be delayed until July 1, 2014.
5. REISA believes that FINRA and the SEC should work together to make certain that issuers and FINRA members do not face conflicting regulatory obligations in providing the per share estimated values as proposed.

**Conclusion**

REISA remains committed to collectively working to improve the industry from the standpoint of transparency and valuation. REISA believes that providing valuation information to investors is important and believes that the considerations above should be included in any final rules proposed by FINRA.

REISA appreciates the opportunity to comment on Regulatory Notice 12-14 and looks forward to a continued dialogue with FINRA on these and other important issues for the protection of investors and the capital markets.

Sincerely,

Daniel Oschin  
President, Real Estate Investment Securities Association