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April 19, 2006

Mr. David Weaver, Esq.
General Counsel
Texas State Securities Board
P.O. Box 13167
Austin, TX 78711-3167
VIA FACSIMILE: (512) 305-8310

Re: Comments on Proposed Rule: 7 Tx Admin. Code §§115.1, 115.3, and 115.11 (published at 31 TEXREG 2777 et seq.)

Dear Mr. Weaver:

The following are the undersigned's comments on Proposed Rule 7 Tx. Admin. Code §§115.1, 115.3, and 115.11 (published at 31 TEXREG 2777 et seq.). These comments are my solely my own and are not the comments or opinions of Whitaker, Chalk, Swindle & Sawyer, L.L.P. or any of the firm's clients.

Proposed Rules §115.1, 115.3, and 115.11 provide that finders, persons who introduce accredited investors who are natural persons to investment opportunities and vice versa without participating in the investment negotiations or providing advice about the investment, may obtain a limited securities broker or dealer registration under the Texas Securities Act. The registration would include a waiver of the examination requirement and prohibit finders from participating in negotiations or rendering advice about the investment, conducting due diligence, valuing or analyzing the proposed investment, advertising to seek investors or issuers, having custody of investor or issuer funds or securities, or serving as escrow agent for the investment transaction. The Proposed Rules also require finders to disclose to investors their compensation, their limitations on recommendations and advice, and potential conflicts of interest. Finally, the Proposed Rules impose record-keeping requirements on registered finders.

I. Disclosure Requirement Comments

Proposed Rule 115.11(b)(1)(A) requires that the finder disclose compensation paid to the finder. This requirement appears to generally duplicate the information in the use of proceeds disclosure section of private placement memoranda and public offering prospectuses. If the

issuer discloses maximum commissions to the accredited investor, it may not be relevant as to what portion of those commissions were paid to whom. Thus, the State Securities Board should consider exempting the finder from disclosing the specific compensation received when the issuer discloses the commissions paid in the offering, limiting the required finder disclosure to a general statement that the finder's compensation is transaction-based.

Proposed Rules 115.11(b)(1)(B) and 115.11(b)(1)(C) require the finders to disclose that they can neither recommend nor advise the accredited investor with respect to the offering and must disclose "potential conflicts of interest" in connection with the finder's activities. The State Securities Board can provide comfort to finders that their disclosures are adequate if the State Securities Board approves a legend that must be provided by finders to accredited investors who are natural persons. The Securities and Exchange Commission successfully used a mandatory disclosure legend recently in its securities offering reform release, (SEC Release Nos. 33-8591; 34-52056; IC-26993; FR-75, July 19, 2005),[1] and the State Securities Board may want to consider having a mandatory disclosure legend for finders.

A finder's mandatory disclosure legend might say the following:

> [Name] is registered as a "finder" under the Texas Securities Act and rules promulgated under the Act. [He, She, It] can neither advise you about nor recommend that you invest in any investment offering. [Name] may be compensated by the issuer should you purchase securities that [he, she, it] referred you, and might not be so compensated should you choose not to invest. [Name] may also provide other services to you that may conflict with the referral of an investment opportunity to you.

II. Record-Keeping Requirements Comments

Proposed Rule 115.11 imposes record-keeping requirements on registered finders. Rule 115.11(d)(2) requires that the records be maintained for five years and Rule 115(d)(3) states that the records "***must be arranged and indexed*** in a manner that will permit the ***immediate location*** of any particular document." (emphasis added) These standards present a discontinuity between

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[1] 17 CFR 230.433(c)(2)(i) (effective December 1, 2005) states that free writing prospectuses must include the following legend:

> The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling toll-free 1-8[xx-xxx-xxxx].

the record-keeping requirements for a finder and the record-keeping requirements for other types of registered brokers and dealers. Indeed, under the proposed rule a finder's record-keeping requirements would be more severe, albeit less voluminous, than most registered securities brokers and dealers.

Rule 115.5(a) states that securities dealers who comply with Rules 17a-3 and 17a-4 under the Securities and Exchange Act of 1934 comply with Rule 115.5's record-keeping requirements. Rule 17a-4 generally requires that securities dealers maintain ledgers, blotters, customer account opening and maintenance records, and certain compliance records for six years and other designated records for three years. Rule 17a-4 also requires that the records be stored ***"in an easily accessible place"*** for the first two years for both of these types of records. [2] (emphasis added)

Proposed Rule 115.11(d)(3) thus is discontinuous with other dealer record-keeping requirements under the rules promulgated under the Texas Securities Act in three respects:

1) Proposed Rule 115.11(d)(3) requires that registered finders be able to "immediately" locate documents. This appears to be a higher standard than the "readily accessible" standard applied to most other registered securities brokers and dealers under Rule 115.5(a) and SEC Rule 17(a)(4). In practice under the "readily accessible" standard, examiners typically provide a reasonable, but not extended, amount of time to produce records. The "immediate location" requirement would appear not to provide that leeway in an examiner's request.

2) The "readily accessible" standard under Rule 115.5(a) and SEC Rule 17(a)(4) does not define any particular filing system. It permits securities and brokers and dealers to maintain their own filing system as it suits their business needs and resources, provided that the records are "readily accessible." Proposed Rule 115.11(d)(3), however, appears to require specific filing arrangements and indexing. The proposed rule, as drafted, appears to allow the Securities Commissioner to sanction a finder if the finder immediately produces all the records requested, but in a manner the Staff deems disorganized.

3) Unlike Rule 115.5(a) and SEC Rule 17(a)(4), Rule 115.11 does not provide for the standard business practice of archiving older business records. Currently securities brokers and dealers may avail themselves of numerous professional archiving companies

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[2] Rule 17a-4 further requires that securities brokers and dealers maintain certain specially designated records in an easily accessible place or for the life of the enterprise, including corporate books and an exemption notice from the fingerprinting requirements. It also requires that securities brokers and dealers maintain certain customer account information for six years and certain information relating to the registration of associated persons and their disciplinary histories, fingerprint cards, and stolen and counterfeit securities reports for three years in an easily accessible place.

who may be able to maintain older business records safely and securely away from their office. Proposed Rule 115.11(d)(3), however, would deny that option to registered finders. Indeed, registered finders may need to archive records for business purposes and then incur the expense of copying the entire archive to store in their offices so that the records an be "immediately located."

Thus, the State Securities Board should consider:

1) Adopting the "readily accessible" standard from SEC Rule 17a-4 instead of the "immediate location" standard for records required to be maintained under Proposed Rule 115.11;

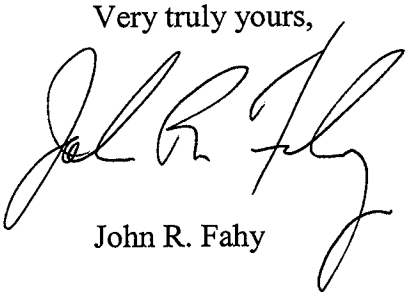
2) Deleting any reference to requiring how a file be arranged, logged, or indexed, and allowing businesses to decide how to arrange, log, or index their files to meet applicable record-keeping standard in consideration of their business needs and resources; and

3) Allowing finders to archive records more than two years old.

Finally, Proposed Rule 115.11(d)(4) provides that: "In the event that a records retention system commingles records required to be kept under this subsection with records not required to be kept, representatives of the Securities Commissioner may review all commingled records." The State Securities Board should consider the applicability of this *carte blanche* provision in connection with countervailing legal duties. For example, attorneys and insurance agents who are registered as finders may require confidentiality of their client files to maintain attorney-client communication and attorney work product privileges or to adhere to the privacy rules relating to medical records promulgated under the Health Insurance Portability and Accountability Act of 1996.

I appreciate your consideration in this matter. Please contact the undersigned at (817) 978-0547 or at jfahy@whitakerchalk.com for additional information.

Very truly yours,



John R. Fahy