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VIA E-MAIL (rule-comments@sec.gov)

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, Northeast
Washington, D.C. 20549-1090

Re: File No. SR-NASD-2005-114

Dear Ms. Morris:

The Investment Program Association ("IPA") appreciates this opportunity to comment on proposed rule changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") that would amend the provisions of NASD Conduct Rule 2810 regulating compensation, fees and expenses in public offerings of real estate investment trusts ("REITs") and direct participation programs.[1] The proposed rule changes were described in Release No. 34-57199 ("Proposal").[2]

The Proposal contemplates extensive changes to Rule 2810. The IPA commends FINRA for its efforts to clarify and codify policies regarding compensation, fees and expenses in public offerings of direct participation programs and REITs. The IPA will not address all of the proposed changes, but does have comments in the areas described more fully below. The IPA's comments include the following:

- When determining which employees' salaries to include in underwriting compensation, there should be a de minimus exception for dual employees who spend at least 95% of their time performing clerical or ministerial functions.

- The proposed rule should be clarified such that individual items are not counted twice in determining which items of compensation should be included in the 10% cap on underwriting compensation.

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[1] The Investment Program Association, organized in 1985, is a national trade association that represents the interests of sponsors and other industry participants in the promotion of non-traded investment programs, including non-traded real estate investment trusts, real estate programs, equipment leasing programs and oil and gas programs. The members of the IPA include most of the major publicly-offered direct participation program sponsors. The views expressed in this letter do not necessarily reflect the views of all members of the IPA. More information about the IPA is available at our website, http://www.theipaonline.org.

[2] Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3 and 4 Relating to the Regulation of Compensation, Fees, and Expenses in Public Offerings of Real Estate Investments Trusts and Direct Participation Programs, Release No. 34-57199, File No. SR-NASD-2005-114 (January 25, 2008), 73 Fed. Reg. 5885 (January 31, 2008).

Items of Compensation Should Not Be Counted Twice in the Calculation of the 10% Cap on Underwriting Compensation

Proposed Rule 2810(b)(4)(C)(ii)b. and c. provide that underwriting compensation will include payments to any registered representative of a member who receives transaction-based compensation or who is engaged in the solicitation, marketing, distribution or sales of securities. The IPA believes that the wording of subsections b. and c. could result in double counting the compensation to be included in the 10% cap on underwriting compensation. As currently written, under proposed Rule 2810(b)(4)(C)(ii)a., an issuer would be required to count a payment made to a third-party retailing firm and then, under subsections b. and c., the issuer would need to count the payments made by that third-party retailing firm to its registered representatives (which payments were made using the payment that the issuer had already counted under subsection a.). Not only would it be double counting, but for purposes of tracking the payments to be counted under subsections b. and c., the issuer and its affiliated member firm would have no way of knowing what payments or reimbursements an unaffiliated, third-party retailing firm is making to its registered representatives.

Further, the IPA believes the language of subsections b. and c. should be revised in order to eliminate the result that items of compensation would be counted twice in situations in which the member affiliated with the sponsor receives payments under subsection a. and also makes payments to its registered representatives under subsections b. and c. Therefore, the IPA believes that subsections b. and c. of proposed Rule 2810(b)(4)(C)(ii) should be revised as follows:

> b. To any registered representative of a member affiliated with a sponsor who receives transaction-based compensation in connection with the offering, except to the extent that any amount of such compensation has been included in a. above;
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> c. To any registered representative [who] of a member affiliated with a sponsor, which registered representative is engaged in the solicitation, marketing, distribution or sales of the program or REIT securities, except to the extent that any amount of such compensation has been included in a. above and other than [one whose functions] a registered representative who spends at least 95% of his or her time in connection with the offering engaged in [are solely and exclusively] clerical or ministerial functions; or

Footnote Regarding Allocation of Compensation for Dual Employees Involved in Multiple Offerings Should Be Clarified and Incorporated into Rule 2810

The IPA believes that the concepts set forth in footnote 36 to the Proposal should be clarified and incorporated into the rule, rather than relegated to a footnote to the Proposal. Due to the placement of the footnote in the Proposal, a member could be led to believe that the footnote only applies in situations to which the exceptions for small companies and highest paid executives apply (as set forth in proposed Rule 2810(b)(4)(D)). The IPA believes that the ability to allocate among multiple offerings should apply in all cases (consistent with what we believe FINRA's current policy is) and not just when the two aforementioned exceptions apply. The allocation process should be restated and the revised concept should be included in the text of Rule 2810.