

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103334; File No. SR-FINRA-2025-001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Exempt Certain Business Development Companies From FINRA Rules 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and 5131 (New Issue Allocations and Distributions)

June 26, 2025.

I. Introduction

On March 25, 2025, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change (SR-FINRA-2025-001) to exempt certain business development companies, as that term is defined in Section 2(a)(48) of the Investment Company Act of 1940 (“Investment Company Act”), each a “BDC,” from FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and from paragraph (b) (Spinning) of FINRA Rule 5131 (New Issue Allocations and Distributions).³ The proposed rule change was published for comment in the **Federal Register** on March 31, 2025.

On May 13, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the

proposed rule change.⁵ On June 12, 2025, FINRA filed a partial amendment to the proposed rule change (“Partial Amendment No. 1”).⁶ The Commission received two comment letters in response to the publication of the Notice,⁷ as well as a response letter from FINRA.⁸ The Commission is publishing this Order to provide notice of the filing of, and to solicit from interested persons comments on, Partial Amendment No. 1, and is approving on an accelerated basis the proposed rule change, as modified by Partial Amendment No. 1 (“Amended Proposal”).

II. Description of the Proposed Rule Change

As described in more detail in the Notice,⁹ FINRA proposed to amend FINRA Rule 5130 by adding a categorical exemption for non-traded BDCs in new paragraph (c)(12) and, by reference, in FINRA Rule 5131(b)(2) (together, the “proposed exemption”). The proposed exemption, as originally included in the Notice, would have applied to a BDC, “the shares of which are registered under the Securities Act [of 1933].” ¹⁰ FINRA stated in the Notice that the proposed exemption would allow non-traded BDCs, and therefore investors in non-traded BDCs, to more easily obtain access to new issues in so much as they could be included in the allowable 30 percent of a non-traded BDC’s portfolio.¹¹ In addition, the proposed exemption would expand the pool of investors who can participate in initial public offerings (“IPOs”) through their investment in a non-traded BDC and would allow non-traded BDCs to

⁵ See Securities Exchange Act Release No. 103033 (May 13, 2025), 90 FR 21377 (May 19, 2025). The Commission designated June 29, 2025, as the date by which the Commission shall approve or disapprove or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ See Partial Amendment No. 1, available at https://www.finra.org/sites/default/files/2025-06/FINRA-2025-001_Partial_A-1.pdf. In Partial Amendment No. 1, FINRA requested that the Commission find good cause pursuant to Section 19(b)(2) of the Exchange Act for approving the proposed rule change, as modified by Partial Amendment No. 1, prior to the thirtieth day after its publication in the **Federal Register**.

⁷ Comments are available at: <https://www.sec.gov/comments/sr-finra-2025-001/srfinra2025001.htm>.

⁸ See Letter from Ilana Reid, Associate General Counsel, FINRA (June 12, 2025) (“FINRA Response”), available at <https://www.sec.gov/comments/sr-finra-2025-001/srfinra2025001.htm>.

⁹ See Notice, 90 FR 14284–88.

¹⁰ See Notice, 90 FR 14285. As discussed below, in Part III, Partial Amendment No. 1 changed this text to state “provided that the business development company was not formed or maintained for the specific purpose of permitting restricted persons to invest in new issues.” See Partial Amendment No. 1, *supra* note 6, at 5.

¹¹ See Notice, 90 FR 14286.

more easily diversify their portfolios with new issues to the extent that such investments are consistent with all other applicable regulations.¹²

III. Summary of Comments, FINRA’s Response, and Commission Findings

After reviewing the Notice, Partial Amendment No. 1, and comment letters received, the Commission finds that the Amended Proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.¹³ In particular, the Commission finds that the Amended Proposal is consistent with Section 15A(b)(6) of the Exchange Act,¹⁴ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also finds that the Amended Proposal, is consistent, in particular, with Section 15A(b)(9) of the Exchange Act,¹⁵ which requires that FINRA rules not impose any burdens on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Amended Proposal will protect investors and the public interest by allowing non-traded and private BDCs,¹⁶ which are subject to the investor protections provided by the Investment Company Act and the applicable rules adopted thereunder, to more easily invest in new issues and to diversify their portfolios, without diminishing investor protection. It will promote capital formation by expanding access to IPOs through the entities of non-traded BDCs and private BDCs. The Amended Proposal is designed to prevent fraudulent and manipulative acts and practices by maintaining the integrity of the public offering process through the requirement that BDCs not be formed or maintained for the specific purpose of permitting restricted persons to invest in new issues.¹⁷

¹² See Notice, 90 FR 14286.

¹³ In approving this rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ 15 U.S.C. 78o-3(b)(9).

¹⁶ FINRA stated that the term “private BDC” refers to a BDC that is offered in a private placement. See Partial Amendment No. 1, *supra* note 6, at 3 n.4.

¹⁷ See *Regulatory Notice* 23-09 (May 2023) (“FINRA promotes the capital raising process through appropriately tailored rules for its members that are designed to promote transparency and to establish important standards of conduct for the benefit of all market participants, including

Continued

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 102723 (March 25, 2025), 90 FR 14284 (March 31, 2025) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

The Commission received two comment letters on the proposed rule change.¹⁸ Both commenters stated their general support for the proposed rule change,¹⁹ one of which suggested that the proposed exemption should be expanded to cover all BDCs, including privately offered BDCs.²⁰ ICI stated that it is “difficult, if not impossible” for private BDCs, similar to non-traded BDCs, to satisfy the representation requirements of FINRA Rules 5130 and 5131.²¹ In addition, ICI stated that BDCs are subject to “extensive” regulation by the Commission under the Investment Company Act and that “[i]t does not logically flow” that privately offered closed-end funds can avail themselves of an exemption from FINRA Rules 5130 and 5131 while a private BDC cannot qualify for the proposed exemption.²² ICI also stated that extending the proposed exemption to private BDCs would not impact the integrity of the public offering process because private BDCs are subject to the same investment limitations under Section 55(a) of the Investment Company Act as non-traded BDCs are and are therefore unlikely to be formed for the purpose of investing in new issues.²³

In response, Partial Amendment No. 1 amended the proposed rule change to include private BDCs. FINRA stated that it generally agrees with ICI that extending the proposed exemption to private BDCs would not impact the integrity of the public offering process because private BDCs are subject to extensive regulation under the Investment Company Act, including the same investment limitations to which non-traded BDCs are subject.²⁴ FINRA stated that it was therefore amending the proposed rule change to exempt from FINRA Rule 5130 and FINRA Rule 5131(b) all BDCs, provided that the BDC was not formed or maintained for the specific purpose of permitting restricted persons to invest in new issues. According to FINRA, for purposes of the

exemption, the requirement that exempted BDCs not be formed or maintained for the specific purpose of permitting restricted persons to invest in new issues would further preserve the integrity of the public offering process.²⁵ FINRA stated that similar language appears in the exemption for foreign investment companies under FINRA Rule 5130(c)(6)(C).²⁶

The Commission agrees with FINRA that conditioning the proposed exemption on the requirement that a BDC not be formed or maintained for the purpose of circumventing the prohibition in FINRA Rule 5130 or 5131(b) will help to further mitigate the unlikely risk that an otherwise restricted or covered person may invest in a non-traded or private BDC for the purpose of investing in new issues.²⁷ Further, for the reasons discussed above, in this Part III, the Amended Proposal is designed to prevent fraudulent and manipulative acts and practices, as well as to promote just and equitable principles of trade, and does not impose any burdens on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments on Partial Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Partial Amendment No. 1 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FINRA-2025-001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-FINRA-2025-001. This file number should be included on the subject line if used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

post all comments on the Commission’s internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendment, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to the file number SR-FINRA-2025-001 and should be submitted on or before July 22, 2025.

V. Accelerated Approval of the Amended Proposal

The Commission finds good cause to approve Amended Proposal prior to the thirtieth day after the date of publication of notice of the filing of Partial Amendment No. 1 in the **Federal Register**.²⁸ In Partial Amendment No. 1, FINRA modified the proposed rule change—in direct response to comment received—to promote capital formation while maintaining the protections that FINRA Rules 5130 and 5131(b) are designed to provide. FINRA did not propose to change the substantive intent of the proposed rule change. To reduce ambiguity regarding the scope of the proposed rule change, FINRA instead proposed to remove the text “the shares of which are registered under the Securities Act” and replace it with “provided that the business development company was not formed or maintained for the specific purpose of permitting restricted persons to invest in new issues.” The basis for this partial amendment is the same as the basis for the original proposed rule change, which the Commission previously noticed for public comment.

After consideration of the two comments received on the proposed rule change, the Commission concludes

investors and issuers.”). See also Notice, 90 FR 14286.

¹⁸ See Letter from Kevin Ercoline, Assistant General Counsel, Investment Company Institute (April 21, 2025) (“ICI”); Letter from Anya Coverman, President and CEO, Institute for Portfolio Alternatives (April 21, 2025) (“IPA”).

¹⁹ See ICI, at 2; IPA, at 2.

²⁰ See ICI, at 2–3.

²¹ See ICI, at 2.

²² See ICI, at 3. ICI stated that a private fund is not subject to the Investment Company Act (and generally has a much higher investment standard reflecting the associated investor sophistication and risk tolerance attributes) while a BDC is subject to “extensive” regulation under the Investment Company Act. See ICI, at 3.

²³ ICI, at 3.

²⁴ See FINRA Response, *supra* note 8, at 3. See also Partial Amendment No. 1, *supra* note 6, at 4.

²⁵ See FINRA Response, *supra* note 8, at 4.

²⁶ In Partial Amendment No. 1, FINRA proposed to add the words “or maintained” to subparagraph (C) of FINRA Rule 5130(c)(6) to clarify that a foreign company cannot be formed or maintained for the purpose of circumventing the prohibition. See Partial Amendment No. 1, *supra* note 6, at 6.

²⁷ See FINRA Response, *supra* note 8, at 2.

²⁸ 15 U.S.C. 78s(b)(2).

that Partial Amendment No. 1 responds to comments received, adds clarity to the proposed rule change, and does not raise any novel regulatory concerns. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁹ to approve the proposed rule change, SR-FINRA-2025-001, as modified by Partial Amendment No. 1, on an accelerated basis.

VI. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with Section 15A(b)(6) of the Exchange Act,³⁰ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act³¹ that the proposed rule change (SR-FINRA-2025-001), as amended by Partial Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103333; File No. SR-NYSE-2025-22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Sixth Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. and Ninth Amended and Restated Certificate of Incorporation of Intercontinental Exchange Holdings, Inc.

June 26, 2025.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on June 16,

2025, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Sixth Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. (“ICE”) and Ninth Amended and Restated Certificate of Incorporation of Intercontinental Exchange Holdings, Inc. (“ICE Holdings”) to reflect regulations relating to security-based swap execution facilities (“SBSEFs”), update the registered office in the State of Delaware, and make non-substantive and conforming changes. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the ICE Current Certificate of Incorporation and ICE Holdings Current Certificate of Incorporation (together, the “Current Certificates”) to reflect regulations relating to SBSEFs, update the registered office in the State of Delaware, and make non-substantive

and conforming changes.⁵ No change is proposed to the operating agreement of the Exchange.

The changes to the ICE Current Certificate of Incorporation described herein would become operative upon the proposed Seventh Amended and Restated Certificate of Incorporation (“ICE Proposed Certificate of Incorporation”) becoming effective pursuant to its filing with the Secretary of State of the State of Delaware. The changes to the ICE Holdings Current Certificate of Incorporation described herein would become operative upon the proposed Tenth Amended and Restated Certificate of Incorporation (“ICE Holdings Proposed Certificate of Incorporation” and, together with the ICE Proposed Certificate of Incorporation, the “Proposed Certificates”) becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

Changes Related to SBSEFs

Securities and Exchange Commission (“Commission”) regulations extend limitations on stockholder voting and ownership to SBSEFs.⁶ Because ICE’s subsidiary ICE Swap Trade, LLC (“IST”) has registered with the Commission as an SBSEF, these Commission regulations apply.

IST has adopted Rule 410 (Ownership Limitation),⁷ which IST has advised the Exchange was designed to incorporate the requirements of 17 CFR 242.834 (“Rule 834”) into the rules of the SBSEF. Additionally, ICE and ICE Holdings intend to amend their Current Certificates as described below.

ICE Proposed Certificate of Incorporation

The ICE Current Certificate of Incorporation would be amended as follows.

First, Article V (Limitations on Voting and Ownership) has limitations on stockholder voting and ownership that apply so long as ICE directly or indirectly controls a national securities exchange registered under the Act, such as the Exchange. These would be

⁵ ICE is the sole shareholder of ICE Holdings. ICE Holdings is the parent company of ICE Swap Trade, LLC. ICE Holdings is also the sole shareholder of NYSE Holdings LLC, which is the sole shareholder of NYSE Group, Inc., the parent company of the Exchange.

⁶ See 17 CFR 242.834. See also Securities Exchange Act Release No. 98845 (November 2, 2023), 88 FR 87156 (December 15, 2023) (Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities) (adopting new Regulation SE, consisting of 17 CFR 242.800 through 17 CFR 242.835), effective February 13, 2024).

⁷ See ICE Swap Trade, LLC Submission No. 25-02 (SBSF-ICES-2025-002).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 15 U.S.C. 78o-3(b)(6).

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ For compliance with Federal Register publication requirements, the Commission slightly edited note 9, *infra*.