ACA Group
Three Canal Plaza, Suite 100, Portland, Maine 04101

ACA Foreside™

June 18, 2025

By Email: pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006-1506

Dear Ms. Mitchell:

We are pleased to comment on Regulatory Notice 25-06 regarding a request for comment on whether additional changes to FINRA rules, guidance, operations or administrative processes would further facilitate capital formation and reduce unnecessary regulatory costs and burdens impacting the capital-raising process.

In particular, FINRA is requesting comments on what, if any, practical issues firms have experienced with the operation of Rules 5122 and 5123 and recommendations as to how FINRA should address such issues.

I. Background

The ACA Foreside family of companies ("ACA Foreside" or the "Firm") includes sixteen affiliated broker-dealers. The Firm's broker-dealers generally serve as the principal underwriter/distributor for unaffiliated investment advisor proprietary mutual funds or exchange traded products ("Funds") and/or maintain FINRA registrations of employees of the fund sponsor or issuer.

In addition, the Firm acts as placement agent for private placement fund offerings of unaffiliated registered investment advisory sponsors and others, as well as allowing registered representatives of the Firm to market these private placement offerings to financial intermediaries, including banks, registered investment advisers and other broker dealers. The performance of these services causes the Firm to be subject to FINRA Rule 5123 (the "Rule") and its applicable filing requirements. The Rule originally went effective on December 3, 2012 with minimal filing requirements, including Private Placement Memorandums ("PPMs"), term sheets or other offering documents related to certain private placement offerings with the FINRA Corporate Finance Dept. New filing requirements became effective on October 1, 2021, requiring member firms to file any retail communications (as defined in Rule 2210) with FINRA along with any PPM, term sheet or other offering document, including any material amended versions thereof, used in connection with a private placement of securities within 15 calendar days of the date of first sale. Historically, FINRA has performed a review of such filings, including the review of retail communications thereof, at no cost to the FINRA member. In the future, FINRA will begin imposing fees[1] on the review of private placement offerings of greater than $25 million. The proposed fee structure is similar to the fees charged for the review of registered fund offerings by the FINRA Corporate Finance Dept.

While the Firm understands that the review of private placement offerings under the Rule encompass all private securities offerings not otherwise exempt from the requirement, the comments included in this

[1] The fees for this review will consist of a flat fee of $300 plus 0.008% of the maximum offering proceeds, subject to a total fee cap of $40,300. This fee structure is similar to the review of registered fund offerings by the FINRA Corporate Finance Dept.

response relate primarily to administration of the Rule applicable to private fund offerings primarily developed and sponsored by registered investment advisers.

II. Comments

As mentioned above, the Firm provides various services to unaffiliated registered investment advisory sponsors in the marketplace with both registered as well as private placement fund offerings. These sponsors may also contract with third-party marketing firms ("TPM firms"). TPM firms provide marketing and placement services to many private fund sponsors on a best-efforts basis and typically do not request or act with any exclusivity either to a particular issuer or sponsor. In most cases, agreements related to the activities of TPM firms are between the TPM firm and the fund sponsor. As such, TPM firms are typically not responsible for the fund offering directly, but instead focus on selling amounts based on their available resources and market contacts. In addition, TPM firms typically limit their marketing services or selling efforts to a specific market segment, such as registered investment advisers or a group of investors - a scope that often does not generate sufficient demand to complete the entire offering. This is especially true where a fund offering is open-ended with no set maximum offering amount.

As mentioned above, the fee structure being applied by FINRA is somewhat similar to the initial review of registered fund offerings, which are subject to the review requirements under the FINRA Corporate Finance Rules[2]. In a registered fund offering, however, there is almost always a principal underwriter or Dealer Manager (the "underwriter") that takes full responsibility for compliance with these filing requirements. The underwriter typically acts in privity of contract with the issuer through an underwriting or distribution agreement (the "agreement"), allowing for the reimbursement of expenses related to the total offering. In addition, the typical responsibilities of an underwriter include the facilitation of a selling group made up of other member firms and memorialized through the execution of selling agreements. Most registered fund offerings, for example, are sold on a best-efforts basis with no member firm, including the underwriter, taking full responsibility for completion of the offering. It makes sense that fees related to a review of these offerings include the total maximum offering proceeds, as it would be unusual for an issuer to only allocate part of the offering to the underwriter. In addition, the payment of any fees related to the review of offerings are likely reimbursed to the underwriter by way of the underwriting agreement with the benefits of a no objections letter being shared with the selling group as a whole as conditioned by the selling agreements[3].

In contrast, private placement offerings may or may not be structured similarly and in many cases, do not include a Dealer Manager or similar role. Private fund offerings often do not have maximum offering amounts, or an outsized amount listed as a fund offering is not raising capital for a stated purpose, but instead have a goal of gathering together investors with common investment objectives. It is quite common for a fund issuer to hire a placement agent for only part of the offering or to target a specific market segment, as placement agents often do not have any responsibilities related to the structuring of the offering or the determination of the offering amount. It is also common for a fund issuer to hire multiple placement agents, each having a separate contractual relationship with the issuer. In many cases, these

---

[2] Section 7(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with FINRA pursuant to the Corporate Financing Rule equal to: (1) $500 plus .015% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed $225,500; or (2) $225,500 for an offering of securities on an automatically effective Form S-3 or F-3 registration statement filed with the SEC and offered pursuant to Securities Act Rule 415 by a Well-Known Seasoned Issuer as defined in Securities Act Rule 405. The amount of the filing fee may be rounded to the nearest dollar.

[3] FINRA Rule 5110(a)(3)(B) A member that participates in a public offering is not required to make a filing if the filing has been made by a member that is responsible for managing the offering or by another member that is in the syndicate or selling group.

placement agents do not have the added responsibility of either managing the sale of the entire offering or building a selling group. As such, there would be no means for the burden and fee expenses related to the required filings under the Rule to be shared across all members that might be participating in the sale of a single fund offering. In addition, member firms seeking to market or sell only part of the fund offering would be responsible for the payment of a review fee under the Rule calculated based off the entire fund offering amount, which could be substantial relative to the market segment that member is seeking to target. It would be similarly unfair to burden multiple member firms with separate review fees under the Rule for the same offering. Given the structure of certain offerings, however, there might not be a governance mechanism for all member firms participating in the same offering to benefit from a single filing, as there would likely be no agreement binding each of these member firms together. While the benefits of a single review filing should inure to each member firm participating in a fund offering, private placement offering in the unregistered fund world often lack the structured selling group coordination typically seen in registered fund offerings.

We believe the administration of fees related to the filing requirements of the Rule should be structured in a manner that allows for each member firm selling a fund offering to only be responsible from a fee perspective for the amount that member firm expects to sell in the offering. The determination of the offering amount for purposes of calculating the review fee would be made using a good faith estimate by the member firm. Each member firm selling a single fund offering would be required to make separate filings in order to benefit from this fee structure. This would in no way prevent an offering from being structured in a manner where a lead member takes responsibility for the filing on behalf of others, but instead would provide an alternative for those offerings where each placement agent is acting in a manner separate from each other. Member firms who wish to make separate 5123 filings under this alternative fee structure and pay review fees only on the portion of the offering they believe in good faith they can sell, could further make attestations that the firm maintains responsibility for the offering either by determining the total offering amount or the management of a selling group. Member firms under this alternative could additionally attest that they have not been allocated or otherwise promised a certain part or all of the offering and that they are not acting with exclusivity. These representations would help ensure that the member firm making each filing is truly not responsible, nor should it be held responsible, for the maximum offering amount. We believe that this flexibility in fee structure would help facilitate capital formation by continuing to allow private fund sponsors the ability to partner with TPM firms seeking to target specific market segments or who only have the resources necessary to sell part of a particular fund offering. This would allow these firms to sell these fund offerings on a best-efforts basis without the burden of review fees related to the entire fund offering. A lack of flexibility in this respect may have a chilling effect on specialized TPM firms, causing them to avoid larger fund offerings, and thereby depriving private fund sponsors of necessary marketing services. In addition, fund sponsors could be deprived of the ability to continue structuring their selling efforts related to private fund offerings in a manner described in this comment letter.

We appreciate in advance your consideration of our comments.

Sincerely,

Jennifer Brunner
Chief Compliance Officer

Susan La Fond
Chief Compliance Officer

Alicia Strout
Chief Compliance Officer

Gordon Taylor
Chief Compliance Officer