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Invested in America

June 18, 2025

Submitted via email to: PubCom@finra.org
Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 25-06: FINRA Requests Comment on Modernizing FINRA Rules, Guidance and Processes to Facilitate Capital Formation

Dear Ms. Mitchell:

The Securities Industry and Financial Markets Association ("SIFMA" or "we")[1] appreciates the opportunity to respond to the request for comment by the Financial Industry Regulatory Authority, Inc. ("FINRA") in Regulatory Notice 25-06 ("Regulatory Notice 25-06"),[2] which requests comments on its rules and related guidance governing (i) corporate financings,[3] (ii) research analysts and research reports, and (iii) capital acquisition brokers ("CAB") and other limited purpose broker-dealers, in an effort to further facilitate capital formation. We note that SIFMA has also previously provided comment letters dated August 7, 2023, in response to Regulatory

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1 SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate for legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association.

2 *See* FINRA Regulatory Notice 25-06 (March 20, 2025), *available at* https://www.finra.org/rules-guidance/notices/25-06.

3 FINRA Rules 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements), 5121 (Public Offerings of Securities with Conflicts of Interest), and 5123 (Private Placements of Securities). With respect to the corporate financing rules, SIFMA also previously commented on Regulatory Notice 23-09 and Regulatory Notice 24-17. *See* letter from Joseph Corcoran to Jennifer Piorko Mitchell regarding FINRA Regulatory Notice 23-09 dated August 7, 2023, *available at* https://www.finra.org/sites/default/files/NoticeComment/SIFMA_8.7.23_23-09_Comment%20Letter.pdf; *see* letter from Joseph Corcoran to Jennifer Piorko Mitchell regarding FINRA Regulatory Notice 24-17 dated March 20, 2025, *available at* https://www.finra.org/sites/default/files/NoticeComment/SIFMA%20Comment%20Letter%20-%20Regulatory%20Notice%2024-17%282024513759.12.docx%29%20Final%203-20-2025.pdf.

Notice 23-09 ("Regulatory Notice 23-09 Comment Letter") and March 20, 2025, in response to Regulatory Notice 24-17 ("Regulatory Notice 24-17 Comment Letter").[4]

This letter sets forth SIFMA's (i) supplemental comments to FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements), FINRA Rule 5121 (Public Offerings of Securities With Conflicts of Interest), and FINRA Rule 5123 (Private Placements of Securities), with those set forth in our Regulatory Notice 23-09 Comment Letter and Regulatory Notice 24-17 Comment Letter, and (ii) proposed comments to FINRA Rule 5190 (Notification Requirements for Offering Participants) and the CAB rules. Attached hereto as **Exhibit A** and **Exhibit B** are proposed changes to FINRA Rule 5110 and FINRA Rule 5121, respectively, reflecting our comments noted below.

I. Introduction.

SIFMA supports FINRA's ongoing efforts to review and consider changing its rules to increase efficiency and reduce unnecessary burdens on the capital raising process without compromising protections for investors and issuers. We acknowledge and appreciate the extensive effort FINRA has made over the years to meet with and hear from interested parties, including many of our members. Regulatory Notice 25-06 represents an important opportunity to continue to provide feedback on areas of regulation that may impede the capital formation process without the corresponding benefit of meaningful investor protection.

In this regard, SIFMA believes the modifications and clarifications to the rules detailed below are of significant importance to increasing the efficiency and effectiveness of FINRA's regulation of capital formation while continuing to promote transparency, establish important standards of conduct for its members, and maintain appropriate protections for investors and issuers.[5]

II. The exemptions and exclusions from FINRA Rule 5110 requirements under FINRA Rule 5110(h) should be modified.

FINRA Rule 5110 governs the terms and conditions under which FINRA member firms may participate in public offerings of securities. Under FINRA Rule 5110(a)(2), all public filings in which a member participates must be filed with FINRA for its review and approval, subject to an available exemption or exclusion. As a general matter, FINRA Rule 5110(h)(1) exempts certain public offerings from the FINRA filing requirement of the rule, but not rule compliance, and FINRA Rule 5110(h)(2) excludes certain offerings from both filing and rule compliance.

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[4] *See* FINRA Regulatory Notice 23-09 (May 9, 2023), *available at* https://www.finra.org/rules-guidance/notices/23-09; *See* FINRA Regulatory Notice 24-17 (Dec. 20, 2024), *available at* https://www.finra.org/rules-guidance/notices/24-17.

[5] With respect to our comments on FINRA Rules 2241 (Research Analysts and Research Reports) and 2242 (Debt Research Analysts and Debt Research Reports) (collectively, the "Research Rules"), *see* SIFMA's submission in response to Regulatory Notice 25-06 (the "SIFMA Research Rules Letter").

2.1 FINRA should eliminate the "experienced issuer" condition to the FINRA filing exemption under FINRA Rule 5110(h)(1)(C) and (E).

FINRA Rule 5110(h)(1) sets forth an exemption from the FINRA filing requirement for the following transactions: (i) offerings of securities registered with the SEC on registration statement Forms S-3, F-3, or F-10, provided that the registrant is an experienced issuer; (ii) offerings of investment grade rated non-convertible debt securities and non-convertible preferred securities; (iii) securities offered by a bank, foreign bank, corporate issuer, foreign government, or foreign government agency that has outstanding unsecured non-convertible debt with a term of issue of at least four years or unsecured non-convertible preferred securities that are investment grade rated, or are outstanding securities in the same series that have equal rights and obligations as investment grade rated securities; and (iv) exchange offers where the company issuing securities qualifies to register securities with the SEC on registration statement Forms S-3, F-3, or F-10 and is an experienced issuer.

An "experienced issuer" is defined to mean an entity that has: (i) a reporting history of 36 calendar months immediately preceding the filing of the registration statement; and (ii) at least $150 million aggregate market value of voting stock held by non-affiliates; or alternatively the aggregate market value of the voting stock held by non-affiliates of the issuer is $100 million or more and the issuer has had an annual trading volume of such stock of three million shares or more. Form S-3, Form F-3, and Form F-10 are available to issuers that, *inter alia*, have a public float of at least $75 million and have been subject to applicable regulatory reporting requirements for at least 12 months and filed such reports in a timely manner. The experienced issuer definition effectively triples that public reporting standard (from 12 months to 36 calendar months) and doubles the public float standard (from $75 million to $150 million) for issuers to satisfy the FINRA filing exemption under FINRA Rule 5110(h)(1)(C) and (E).

These heightened standards eliminate a category of issuers from relying on the FINRA filing exemption that are recognized by the SEC as having a level of standing and experience to qualify for issuing securities on Forms S-3, F-3, and F-10, which ultimately deters capital formation for these issuers due to (i) the additional time required for FINRA to review and approve the terms of their public offerings and (ii) the increased cost of transaction execution attributable to the FINRA filing fee and related outside counsel fees and expenses.[6] As a result, we respectfully request that FINRA amend FINRA Rule 5110(h)(1)(C) and (E) to eliminate the experienced issuer condition.

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[6] The FINRA maximum filing fee to be paid by issuers is expected to increase from $225,500 to $1,125,000. *See* Proposed Rule Change to Adjust FINRA Fees to Provide Sustainable Funding for FINRA's Regulatory Mission, SR-FINRA-2024-19 (November 11, 2024), *available at* https://www.finra.org/sites/default/files/2024-11/sr-finra-2024-019.pdf and Proposed Rule Change to Modify the Implementation Schedule of Amendments to Section 7 of Schedule A to the FINRA By-Laws Adopted in SR-FINRA-2024-019 (June 5, 2025), *available at* https://www.finra.org/sites/default/files/2025-06/sr-finra-2025-007.pdf.

2.2 WKSIs should be excluded from FINRA Rule 5110.

The SEC has recognized that well-known seasoned issuers ("WKSIs") have a level of sophistication that affords them different treatment under its rule requirements. For example, WKSIs have a streamlined registration process, including automatic shelf registration, allowing them to raise capital more quickly. WKSIs have reduced restrictions on communications during the pre-filing period, including using free-writing prospectuses, and they also have simplified disclosure requirements for shelf offerings. WKSI offerings should be excluded from both the FINRA filing and other compliance obligations under FINRA Rule 5110. WKSIs do not need the additional protection that the filing requirements and additional oversight FINRA provides under FINRA Rule 5110, and investors already benefit from disclosure relating to the underwriting arrangements required by SEC rules. Given their size and reporting history, WKSIs are well-positioned to protect their own interests and their investors' interests while negotiating underwriting terms with members. Accordingly, we request that FINRA amend FINRA Rule 5110(h)(2) to include an exclusion for offerings of securities by WKSIs.

2.3 The investment grade rated condition for public offerings of non-convertible debt securities and non-convertible preferred securities exemption from the FINRA filing requirement under FINRA Rule 5110(h)(1)(B) should be eliminated.

FINRA states in Regulatory Notice 25-06, "[t]he primary function of Rule 5110 is to protect issuers (and their investors at the time of the offering) from unfair underwriting terms and arrangements."[7] As a general matter, FINRA deems underwriters' compensation that is equal to or greater than 9% of the offering proceeds in connection with an initial public offering ("IPO") of securities and 8% in all other offerings to be unreasonable. Based on market practice and competition among underwriting firms, underwriting compensation received by participating members in connection with public offerings of non-convertible debt securities and non-convertible preferred securities, whether investment grade or high yield, are consistently substantially below the 8% or 9% thresholds.

SIFMA requests that the exemption from the FINRA filing requirement under FINRA Rule 5110(h)(1)(B) eliminate the investment grade rated condition for public offerings of non-convertible debt and non-convertible preferred securities, given that the fees to be received by the participating underwriters in connection with these offerings are consistently substantially below the 8% and 9% thresholds such that the additional oversight of a FINRA filing requirement is not warranted. Although these offerings would qualify for an exemption from a FINRA filing, they would still be subject to the other rule requirements, including the disclosure obligations, such that the issuer and their investors would be sufficiently protected by those provisions in support of FINRA's goal to "lessen members' filing burdens while maintaining the rule's important protections for market participants."

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[7] *See* FINRA Regulatory Notice 25-06 (March 20, 2025), *available at* https://www.finra.org/rules-guidance/notices/25-06.

III. The definition of "underwriting compensation" and the exclusions therefrom should be updated and clarified.

3.1 The FINRA Rule 5110 review period should be shortened.

FINRA Rule 5110(j)(20) defines "review period" to mean "(i) for a firm commitment offering, the 180-day period preceding the ***required filing date*** through the 60-day period following the effective date of the offering, (ii) for a best efforts offering, the 180-day period preceding ***the required filing date*** through the 60-day period following the final closing of the offering, and (iii) for a firm commitment or best efforts takedown or any other continuous offering made pursuant to Securities Act Rule 415,[8] the 180-day period preceding the ***required filing date*** of the takedown or continuous offering through the 60-day period following the final closing of the takedown or continuous offering."[9] The "required filing date" is triggered, in part, upon the initial filing with the SEC, including confidential filings and submissions.

We believe that the definition of "review period" should be amended to commence ***60 days prior to the public filing*** of the offering and end ***30 days*** following the effective date of the offering or final closing of the offering, as applicable. For a firm commitment or best efforts takedown or any other continuous offering made pursuant to Securities Act Rule 415,[10] the review period should be the 60-day period preceding the commencement of sales in the takedown or continuous offering through the 30-day period following the final closing of the takedown or continuous offering.

The length of the review period as it currently operates is unnecessarily long and overly burdensome. We note as a general matter that investments by member firms and their affiliated investment businesses can be an important source of capital for private and public companies, and can help fund the development of new and important technologies, products and services and expand job creation domestically and abroad. Any rules that would shut off that source of capital should be narrowly tailored to address a real and pressing harm. While FINRA Rule 5110's aim of keeping member firms from charging excessive underwriting compensation is a legitimate goal, we note there is significant competition in the market for underwriting services which acts as a natural price control on such services. For instance, while member firms are generally not restricted under FINRA Rule 5110 from charging underwriting fees as high as 8 or 9% of the proceeds of an offering, member firms rarely if ever obtain fees of that magnitude and typically earn much less. We note too that there is robust competition amongst investors with respect to the sourcing and pricing of private investment opportunities.

We therefore believe it would be a relatively rare and unusual set of circumstances that would enable a member firm to use its offer of underwriting services as a means of extracting more favorable terms from an issuer for an equity investment, and yet in all cases FINRA Rule 5110 presumes that any gain on an equity investment in the issuer made at any time during the review period was the result of the participating member's exploitation of such circumstances and is

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8 17 CFR § 230.415.

9 FINRA Rule 5110(j)(20).

10 17 CFR § 230.415.

therefore counted as underwriting compensation. At the time a member firm or its affiliate makes an equity investment in an issuer, it is difficult to predict whether there will be a gain or return on the investment that will result in underwriting compensation that is prohibited under FINRA Rule 5110. The rule therefore disincentivizes and deters legitimate investment activity, in many cases for extended periods of time. For example, because the review period begins half a year prior to the filing of a confidential submission of a registration statement, the total amount of time captured by the review period in IPOs can extend up to as much as a year or longer depending on the timing of the particular public offering. The review period may also encompass periods of time during which the member firm was not mandated to act as an underwriter on (or even aware of) the issuer's future public offering, which can have a chilling effect on investment activity by member firms and their affiliates even where such activity would not ultimately have been prohibited under FINRA Rule 5110 and where such investments could have greatly benefitted companies in need of capital.

We believe the more streamlined 60- and 30-day periods of separation we propose above would properly minimize the rule's suppression of legitimate investment and capital raising activity while still ensuring that any applicable investment is made a substantial period of time before or after the underwriting services are agreed to or provided and therefore unrelated to those services. We note for comparison that, as a benchmark for determining when two securities transactions are sufficiently distinct and unrelated, the SEC has settled on a separation in time of 30 days.[11]

3.2 The lookback period for the anti-dilution exclusion from underwriting compensation should be shortened.

FINRA Rule 5110 Supplementary Material .01(b)(18) excludes from underwriting compensation "securities acquired in order to prevent dilution of a long-standing interest in the issuer, if: (A) the amount of securities does not increase a member's percentage ownership of the same generic class of securities of the issuer or of the class of securities underlying a convertible security calculated immediately prior to the investment; and (B) an initial purchase of securities of the issuer was made ***at least two years preceding the required filing date*** and a second purchase was made before the review period." (emphasis added).[12]

Similar to SIFMA's proposed comment to the definition of review period above, SIFMA believes that this lookback period should be shortened from ***two years preceding the required filing date*** to ***60 days preceding the public offering***. For a firm commitment or best efforts takedown or any other continuous offering made pursuant to Securities Act Rule 415,[13] the initial purchase should be made within the 60-day period preceding the commencement of sales in the takedown or continuous offering. As noted above, in uncertain markets, issuers may choose to make confidential submissions early in the deal timeline. A requirement that the initial purchase of securities of the issuer was made two years preceding the required filing date is unnecessarily long,

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[11] *See* 17 CFR § 230.152.

[12] FINRA Rule 5110 Supplementary Material .01(b)(18).

[13] 17 CFR § 230.415.

and accordingly, it is very difficult and impractical for participating members to rely on this exclusion.

3.3 The per se unreasonable underwriting compensation under FINRA Rule 5110(g)(8) should be eliminated.

As a general matter, the receipt of any option, warrant, or convertible security with the following characteristics by a participating member, is ***per se*** unreasonable underwriting compensation under FINRA Rule 5110(g)(8):

- is exercisable or convertible more than five years from the commencement of sales of the public offering;
- has more than one demand registration right at the issuer's expense;
- has a demand registration right with a duration of more than five years from the commencement of sales of the public offering;
- has a piggyback registration right with a duration of more than seven years from the commencement of sales of the public offering;
- has anti-dilution terms that allow the participating members to receive more shares or to exercise at a lower price than originally agreed upon at the time of the public offering, when the public shareholders have not been proportionally affected by a stock split, stock dividend, or other similar event; or
- has anti-dilution terms that allow the participating members to receive or accrue cash dividends prior to the exercise or conversion of the security.[14]

These restrictions have been in effect since FINRA adopted NASD Rule 2710, the predecessor rule to FINRA Rule 5110, in 1981, over 40 years ago. In NASD Notice to Members 81-16, NASD stated that an underwriter "generally should not negotiate more favorable terms for itself than for its customers" and, for this reason, securities received as underwriting compensation "should not be exercisable or convertible on more favorable terms than securities being offered to the public."[15] We are not aware of any additional guidance issued by the NASD or FINRA with respect to the policy supporting the specified terms governing these restrictions, including the applicable timeframes.

The consequences associated with these prohibitions are disproportionate to the rule's intended effect because the securities are considered ***per se*** unreasonable underwriting compensation, causing the participating member to be removed from the syndicate or otherwise sell the securities to participate in the public offering. For example, if an affiliate of a participating member acquires a security of the issuer that has a piggyback registration right with a duration of more than seven years from the commencement of sales of the public offering, at a time which falls within the

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[14] *See* FINRA Rule 5110(g)(8).

[15] NASD Notice to Members 81-16 (April 15, 1981) *available at* https://www.sechistorical.org/collection/papers/1980/1981_0101_NASDNTM-04.pdf.

review period of a subsequent public offering by that issuer, such participating member would automatically be disqualified from participating in that offering unless it divests the securities. In addition, under certain circumstances, participating members may receive securities with these terms as part of an offering where they are among a group of investors. Participating members may therefore be forced to amend the negotiated terms governing these securities to have less favorable terms than other investors solely for purposes of complying with FINRA Rule 5110(g)(8).

For these reasons, SIFMA respectfully requests that FINRA eliminate FINRA Rule 5110(g)(8) to avoid the unintended consequence of excluding FINRA members from participating in a public offering if they or their affiliates acquired such securities during the review period or forcing them to sell such securities, or amend the terms of such securities, due to the rule requirements. Because the rule restrictions were adopted over 40 years ago and the lack of NASD or FINRA guidance regarding the basis upon which it determined the specified restrictions, elimination of FINRA Rule 5110(g)(8) would further FINRA's goal of modernizing the rule to reflect change in financial markets, products, services, and risks.

3.4 Under FINRA Rule 5110(d)(1)-(4), the condition that securities must be "acquired before the required filing date of the public offering" to be excluded from underwriting compensation should be eliminated if all other conditions under the rule are satisfied.

FINRA Rule 5110(d) excludes from the definition of underwriting compensation securities of the issuer purchased in connection with various transactions by a participating member or its affiliate to the extent certain conditions are satisfied, including that such securities must be acquired ***before the required filing date of the public offering***, in each case. These exclusions from underwriting were first included in an amendment to NASD Rule 2710[16] in 2000. In the Adopting Release,[17] FINRA noted that "because an issuer's ability to negotiate at arm's length to raise capital directly from participating members ***may be particularly compromised once the members are actively engaged in soliciting investors in the public offering*** on behalf of the issuer, NASD believes it is appropriate to limit the exclusions to transactions that occur before filing a registration statement." (emphasis added).

FINRA should amend FINRA Rule 5110(d) to delete the condition that securities must be acquired "before the required filing date of the public offering" so that any securities of the issuer acquired by a participating member or its affiliate at any time, whether prior to or after the required filing date are excluded from the definition of underwriting compensation, provided all other conditions set forth in the relevant provisions of FINRA Rule 5110(d) are satisfied. Those other conditions under the rule are by themselves a robust safeguard against such investments constituting or giving rise to unreasonable underwriting compensation.

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16 NASD Rule 2710.

17 SEC Release No. 34-48989 (December 31, 2003) *available at* https://www.federalregister.gov/documents/2003/12/31/03-32183/self-regulatory-organizations-order-approving-proposed-rule-change-and-notice-of-filing-and-order.

Further, as noted above, there is significant competition in the market for underwriting services, which acts as a natural price control on such services, and there is robust competition amongst investors with respect to the sourcing and pricing of private investment opportunities. Accordingly, whether or not participating members are actively engaged in soliciting investors in the public offering, there is limited risk that an issuer's ability to negotiate at arm's length to raise capital directly from such members would be compromised.

In addition, investments by member firms and their affiliates can be an important source of capital for private and public companies. Accordingly, the requirement that such securities be acquired before the required filing date of the public offering should be eliminated, as this current requirement hinders capital formation without the corresponding benefit of investor protection.

Moreover, because this proposed amendment would capture any securities acquired by the participating member's affiliate at any time, FINRA should eliminate Supplementary Material .02 which gives FINRA discretionary power to exclude securities that are acquired in connection with certain bona fide venture capital transactions from the definition of underwriting compensation, regardless of the acquisition date.[18]

3.5 The definition of "institutional investor" under FINRA Rule 5110(j)(10) should be amended to eliminate participating members' ownership interests in the investor.

The exclusions from the definition of underwriting compensation for securities acquired in transactions enumerated under FINRA Rule 5110(d)(2) and (d)(3) are conditioned on several factors, including (i) that an institutional investor beneficially owns at least 33% of the issuer's total equity securities, and (ii) unaffiliated institutional investors purchase at least 51% of the total number of securities sold in the private placement at the same time and on the same terms, respectively. The term "institutional investor" is defined under FINRA Rule 5110(j)(10) to mean "any person that has an aggregate of at least $50 million invested in securities in its portfolio or under management, including investments held by its wholly owned subsidiaries; provided that no participating members manage the institutional investor's investments ***or have an equity interest in the institutional investor, either individually or in the aggregate, that exceeds 5% for a publicly owned entity or 1% for a nonpublic entity***."[19] (emphasis added).

FINRA should eliminate the condition that participating members cannot have an equity interest in an institutional investor that exceeds 5% for a publicly owned entity or 1% for a nonpublic entity. As a practical matter, this low ownership threshold precludes member firms from relying on the FINRA Rule 5110(d)(2) and (d)(3) exclusions. In addition, participating members often do not have access to the ownership of institutional investors with whom they are co-investing in a private placement. Given the low ownership threshold and the expansive definition of "participating member" (which includes all associated persons of a member firm and their immediate family—a group that, for all but the smallest member firms, will be significantly large),

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[18] *See* FINRA Rule 5110 Supplementary Material .02 Venture Capital Transactions and Significantly Delayed Offerings.

[19] FINRA Rule 5110(j)(10).

participating members may be discouraged from relying on the exclusions in FINRA Rule 5110(d)(2) and (d)(3) due to the possibility that, for example, an affiliate could have an ownership percentage of the institutional investor that would prevent the participating member from relying on such exclusions. SIFMA continues to believe that the time and cost associated with making such determination is not warranted or necessary to achieve the fundamental purpose underlying these provisions.[20]

3.6 A right of first refusal ("ROFR") should have no compensation value.

FINRA Rule 5110 Supplementary Material .01(a)(9) automatically values a ROFR to participate in future public offerings, private placements or other financings of the issuer received by a participating member at 1% of the offering proceeds. FINRA adopted the 1% valuation in the early 1970s, and we are not aware of any NASD or FINRA guidance articulating the basis upon which FINRA determined that amount. In light of the 8% and 9% limitations on the total amount of underwriting compensation that participating members are permitted to receive in connection with a public offering, adding 1% for a ROFR, which the participating member may never exercise, accelerates the potential for that amount of underwriting compensation to exceed 8% and 9%.

FINRA should amend Supplementary Material .01(a)(9) to eliminate the arbitrary 1% valuation assigned to a ROFR and instead consider a ROFR as underwriting compensation with no compensation value.[21] Participating members are already required to comply with numerous restrictions governing ROFRs, among which include an additional termination right for the issuer for the member's material failure to provide the agreed-upon underwriting services, and disclosure obligations. SIFMA believes that such restrictions and limitations sufficiently protect the issuer and investors.

3.7 The exclusion from underwriting compensation under FINRA Rule 5110 Supplementary Material .01(b)(14)-(16) should include securities that were not otherwise deemed to be underwriting compensation under the rule at the time they were acquired.

Under FINRA Rule 5110 Supplementary Material .01(b)(14)-(16) the following securities are not deemed to be underwriting compensation: (i) securities acquired as the result of a conversion of securities that were originally acquired prior to the review period; (ii) securities acquired as the result of an exercise of options or warrants that were originally acquired prior to the review period; and (iii) securities acquired as the result of a stock split, a pro-rata rights, or similar offering where the securities upon which the acquisition is based were acquired prior to the review period.

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[20] *See* letter from Sean Davy to Jennifer Piorko Mitchell regarding FINRA Regulatory Notice 17-15 dated June 1, 2017, *available at* https://www.finra.org/sites/default/files/notice_comment_file_ref/17-15_sifma_comment.pdf.

[21] We note that FINRA Rule 5110 Supplementary Material .06 treats non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction related to a public offering at a fair price as underwriting compensation with no compensation value, and FINRA proposed that non-convertible preferred securities should be treated the same. *See* FINRA Regulatory Notice 24-17 (December 20, 2024), *available at* https://www.finra.org/rules-guidance/notices/24-17.

FINRA should broaden this exclusion from underwriting compensation to include securities acquired as the result of a conversion, option or warrant exercise, and stock split, respectively, where the securities were not otherwise deemed to be underwriting compensation under the rule, including FINRA Rule 5110(d) or Supplementary Material .01(b).

Per our Regulatory Notice 23-09 Comment Letter,[22] if securities are deemed not to be underwriting compensation because they meet an exclusion in FINRA Rule 5110(d), such as the exclusion for securities acquired in co-investments with certain regulated entities, then any securities received pursuant to a stock split (or conversion or exercise of options) of those securities should not be deemed underwriting compensation. This treatment is consistent with the intended scope of Supplementary Material .01(b)(14)-(16). Moreover, as noted with respect to our comment in Section IV of this letter, such an amendment would be consistent with the reasonable expectations of participating members and, accordingly, would be more equitable without affecting the integrity of the offering process or the protections intended to be provided in the interests of investors and issuers.

3.8 FINRA should delete FINRA Rule 5110 Supplementary Material .03. and adopt an exclusion from underwriting compensation under FINRA Rule Supplementary Material .01(b) for securities acquired "from a person other than the registrant or other person that is offering its securities to the public, or person acting on behalf of such registrant or other person that is offering its securities to the public".

Under FINRA Rule 5110 Supplementary Material .03, FINRA may exclude certain securities acquired by a participating member ***from a third-party entity*** from the definition of underwriting compensation. FINRA considers various factors including the nature of the transactions in which the securities were acquired, in determining whether such securities are excluded from underwriting compensation. According to the Adopting Release, FINRA recognized that securities can be acquired from third parties for reasons unrelated to underwriting and, for that reason, established a principles-based approach to this exclusion.[23]

FINRA should delete this Supplementary Material and instead adopt an exclusion from underwriting compensation for securities acquired during the review period from a person, as defined under FINRA Rule 5110(j)(17), other than the registrant or other person that is offering its securities to the public, or person acting on behalf of such registrant or other person that is offering its securities to the public. If the securities are acquired from a person other than the registrant or person acting on behalf of the registrant, concerns about inherent conflicts of interest between the participating member and the registrant would not arise. As a practical matter, these securities transactions are independent of the public offering and accordingly, the securities acquired in such transactions should not be deemed underwriting compensation.

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[22] *See* letter from Joseph Corcoran to Jennifer Piorko Mitchell regarding FINRA Regulatory Notice 23-09 dated August 7, 2023, *available at* https://www.finra.org/sites/default/files/NoticeComment/SIFMA_8.7.23_23-09_Comment%20Letter.pdf.

[23] SEC Release No. 34-85715 (April 25, 2019) *available at* https://www.sec.gov/files/rules/sro/finra/2019/34-85715.pdf.

This issue principally arises in the context of member firms' fund of funds businesses. A participating member may buy a position from a fund complex, and if that fund owns part of the issuer, and the member firm acquired the securities during the review period, FINRA may deem the securities to be underwriting compensation. Adopting this exclusion would establish an objective determination that such securities are excluded from underwriting compensation, and, therefore, eliminate the additional time and costs spent by member firms, their counsel, and FINRA to conduct the analysis, which would facilitate the capital formation process.

3.9 The exclusion from underwriting compensation for M&A services should be expanded to include non-cash compensation received for services in connection with a merger or acquisition or other similar strategic transactions.

FINRA Rule 5110 Supplementary Material .01(b)(2) excludes from underwriting compensation "***cash compensation*** for providing services for a private placement or for providing or arranging for a loan, credit facility, or for services in connection with a merger or acquisition." (emphasis added). SIFMA believes that this exclusion should be expanded to include cash ***or non-cash*** compensation received for services in connection with a merger or acquisition ***or other similar strategic transaction***.

For example, a member may receive securities of a company as compensation for serving as an M&A advisor. If that company decides to subsequently engage in a public offering, and the securities that the member previously received in connection with an M&A transaction fall within the review period of that public offering, such securities would be deemed underwriting compensation, absent any other exemption or exclusion, which creates the potential unintended consequence of preventing the member from participating in that subsequent public offering, or selling the securities. As a practical matter, because the M&A transaction would be separate and apart from any subsequent public offering, any compensation received in connection with that M&A transaction should not be deemed underwriting compensation, regardless of the form of compensation. In addition, member firms often act as advisors in connection with strategic transactions such as carve-outs (*e.g.*, spin-off or split-off transactions) that are not technically a merger or acquisition. Expanding the exclusion to include non-cash compensation for M&A and other strategic transactions would be consistent with the spirit of the exclusion and its intended purpose.

IV. FINRA Rule 5121: The conditions governing the QIU requirement and the definition of "conflict of interest" should be modified.

4.1 A QIU should be required only if each member primarily responsible for managing the public offering has a conflict of interest or is an affiliate of any member that has a conflict of interest, and the offering does not meet the conditions under FINRA Rule 5121(a)(1)(B) or (C).

Under FINRA Rule 5121(a)(1)(A), a QIU is required to participate in a public offering if any member primarily responsible for managing the public offering has a conflict of interest or is an affiliate of any member that has a conflict of interest, unless the securities offered have a bona fide public market or are investment grade securities or are securities in the same series that have equal rights and obligations as investment grade rated securities. However, if one lead manager has a

conflict of interest and another does not, the unconflicted lead manager should be able to assure the independence of due diligence without the burdensome need for a separate QIU. Accordingly, FINRA should amend FINRA Rule 5121(a)(1)(A) to provide that a QIU is only required if all of the lead managers or bookrunners have a conflict of interest and the offering does not otherwise meet the requirements of FINRA Rule 5121(a)(1)(B) or (C).

4.2 Public offerings that qualify for a FINRA Rule 5110 filing exemption should not be subject to a FINRA Rule 5110 filing obligation if a QIU is required to participate in the offering.

Under FINRA Rule 5121(d), any public offering that requires the participation of a QIU is subject to a FINRA filing under FINRA Rule 5110, even if the offering satisfies a filing exemption under the rule. SIFMA continues to believe that this requirement is outdated and is a holdover from when FINRA Rule 5121's predecessor rule (NASD Rule 2720) required member firms to obtain FINRA approval to act as a QIU.[24] Historically, under NASD Rule 2720, participating members would need FINRA approval to serve as a QIU in a public offering when the filing was submitted. Currently, a FINRA filing solely requires the participating members to confirm that a QIU is participating in the offering, but FINRA's prior approval of the participating member serving as QIU is not required.

FINRA filings are a significant time and cost expense to members, issuers, and each of their respective counsel. Issuers are required to pay a FINRA filing fee of up to a maximum of $225,500, which is expected to increase to $1,125,000.[25] Further, members pay additional fees to their counsel to coordinate the FINRA filing process. Therefore, requiring a FINRA filing for such offerings may have unintended consequences, including by delaying an offering pending FINRA's review of the filing and granting a conditional No Objections Letter and thereby exposing the issuer to market risk, which can deter capital formation without the corresponding goal of investor protection, as such offerings are still subject to the substantive provisions, including the QIU and disclosure obligations, set forth under FINRA Rules 5110 and 5121. In this regard, to the extent a public offering qualifies for a filing exemption under FINRA Rule 5110, such filing exemption should not be lost if a QIU is required to participate in the offering. Therefore, FINRA Rule 5121(d), together with the corresponding references to FINRA Rule 5121 and FINRA Rule 5121(a)(2) in FINRA Rule 5110(a)(1)(C) and FINRA Rule 5110(h)(1), respectively, as set forth on **Exhibit A** hereto, should be deleted.

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[24] *See* letter from Sean Davy to Jennifer Piorko Mitchell regarding FINRA Regulatory Notice 17-15 dated June 1, 2017, *available at* https://www.finra.org/sites/default/files/notice_comment_file_ref/17-15_sifma_comment.pdf.

[25] *See* Proposed Rule Change to Adjust FINRA Fees to Provide Sustainable Funding for FINRA's Regulatory Mission, SR-FINRA-2024-19 (November 11, 2024), *available at* https://www.finra.org/sites/default/files/2024-11/sr-finra-2024-019.pdf and Proposed Rule Change to Modify the Implementation Schedule of Amendments to Section 7 of Schedule A to the FINRA By-Laws Adopted in SR-FINRA-2024-019 (June 5, 2025), *available at* https://www.finra.org/sites/default/files/2025-06/sr-finra-2025-007.pdf.

4.3 The exception from the QIU requirement under FINRA Rule 5121(a)(1)(C) should be amended to add offerings of non-convertible debt securities that are not investment grade rated.

FINRA Rule 5121 is intended to "protect investors in offerings where the member has a conflict of interest."[26] Specifically, "[t]he participation of a qualified independent underwriter assures the public of the independence of the pricing and due diligence functions in a situation where a member is participating in an offering where the member has an affiliation or conflict of interest."[27] The Adopting Release to the rule noted concerns with respect to the sale of non-investment grade rated securities to retail customers.

However, offerings of non-convertible debt securities principally involve institutional investors, which, given their level of sophistication, are not the type of investors that need the additional protections provided by a QIU noted above. In this regard, the participation of a QIU is not necessary in public offerings of non-convertible debt securities that are sold to institutional investors. Accordingly, FINRA Rule 5121(a)(1)(C) should be amended to add offerings of non-convertible debt securities that are not investment grade rated.

4.4 The conflict of interest caused by a participating member's receipt of 5% or more net offering proceeds under FINRA Rule 5121(f)(5) should be increased to 10%.

A conflict of interest arises under FINRA Rule 5121(f)(5) when at least 5% of the net offering proceeds is used to reduce or retire the balance of a loan or credit facility extended by the member, its affiliates, and its associated persons, in the aggregate, or otherwise directed to the member, its affiliates, and associated persons, in the aggregate. FINRA should increase the 5% threshold to 10%. Increasing the threshold to 10% will not disincentivize a participating member from exercising the usual standards of due diligence as that participating member will still be subject to liability under the Securities Act of 1933, as amended. Additionally, SEC rules require disclosure in the prospectus of the use of proceeds and underwriting arrangements. Finally, the use of proceeds of a public offering is unilaterally determined by the issuer, including to use the net offering proceeds of a public offering to repay indebtedness owed to a participating member, and may be changed late in the offering, which can lead to practical offering execution issues outside of the control of the participating member. For example, if an offering is upsized at pricing, the issuer may choose to allocate more of the proceeds to the repayment of indebtedness, which may cause a participating member to exceed the 5% threshold, necessitating the need for conflicts of interest disclosures and/or the retention of a QIU. Similarly, if an offering is downsized, the previously planned repayment of indebtedness to a participating member may exceed the 5% threshold because of the smaller offering size. In such circumstances, an issuer may have insufficient time to identify and engage a QIU and therefore be forced to alter the use of proceeds

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[26] *See* SEC Release No. 34-62702 (August 18, 2010), *available at* https://www.federalregister.gov/documents/2010/08/18/2010-20365/self-regulatory-organizations-financial-industry-regulatory-authority-inc-order-approving-the.

[27] *See* NASD Notice to Members 97-68 (October 1, 1997), *available at* https://www.finra.org/sites/default/files/NoticeDocument/p004490.pdf.

in a manner inconsistent with its corporate objectives. Moving the threshold from 5% to 10% should help reduce the likelihood of such disruptive circumstances arising.

4.5 The definition of "control" under FINRA Rule 5121(f)(6) should not include beneficial ownership of preferred equity.

As noted above, FINRA Rule 5121(f)(6) defines "control" to include, "beneficial ownership of 10 percent or more of the outstanding preferred equity of an entity, including any right to receive such preferred equity within 60 days of the member's participation in the public offering" and "the power to direct or cause the direction of the management or policies of an entity."[28]

As we stated in a prior comment letter, the beneficial ownership of preferred equity, in and of itself, is not a meaningful measure of control or affiliation for purposes of FINRA Rule 5121.[29] Typically, holders of preferred equity do not have voting rights, and, as a practical matter, do not have a control relationship with an issuer by virtue of their ownership. Further, ownership of preferred equity often does not come with board seats or any other indicia of control that is typically present for owners of common shares. Accordingly, FINRA should eliminate beneficial ownership of preferred equity from the definition of control.

V. The filing requirements under FINRA Rule 5190 should be simplified.

5.1 The post-pricing "trading notification" filing requirement for distributions of actively traded securities should be eliminated.

Under FINRA Rule 5190(d), a member acting as a manager of a distribution of any security that is considered actively traded under Rule 101 of SEC Regulation M[30] must provide notice to FINRA of (i) the determination that no restricted period applies and the basis for such determination, and (ii) the pricing of the distribution. FINRA Rule 5190 is "designed to ensure that FINRA receives pertinent distribution-related information from its members in a timely fashion to facilitate its Regulation M surveillance program."[31] However, under Rule 101 of Regulation M, there is no restricted period for actively traded securities and, therefore, there is no restricted period for FINRA to monitor. In this regard, the filing requirement under FINRA Rule 5190(d) is an unnecessary administrative burden on members without the corresponding benefit of meaningful investor protection.

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28 FINRA Rule 5121(f)(6).

29 *See* letter from Sean Davy to Jennifer Piorko Mitchell regarding FINRA Regulatory Notice 17-14 dated June 6, 2017 *available at* https://www.sifma.org/wp-content/uploads/2017/06/SIFMA-Submits-Comments-to-FINRA-on-Rules-Impacting-Capital-Formation.pdf.

30 17 CFR § 242.101.

31 *See* SEC Release No. 34-62970 (September 22, 2010), *available at* https://www.sec.gov/files/rules/sro/finra/2010/34-62970.pdf.

5.2 The "restricted period notification" filing requirement for offerings of securities that do not have a pre-existing market should be modified.

FINRA should modify the "restricted period notification" filing requirement for offerings of securities that do not have a pre-existing market, such as IPOs or offerings of convertible securities. For example, while as a technical matter IPOs are subject to a five-day restriction under Regulation M, there is no pre-pricing listing for or trade reporting in the securities—therefore, requiring members to give advance notice to FINRA of such offerings via FINRA Rule 5190 filings does not serve any significant public policy goal (while it increases the compliance burdens on member firms).[32] This same reasoning applies to offerings of convertible securities or offerings of other securities that do not have a pre-existing market.

Specifically, FINRA should amend the restricted period notification requirement for any offering of a security which will be an exchange-listed security or an OTC equity security but that, prior to the pricing of the offering, is not an exchange-listed security or an OTC equity security as defined in FINRA Rule 6420.[33] For such securities, FINRA should solely require a filing no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances. This filing would include the information required by FINRA Rule 5190(c)(1)(B) (*i.e.*, pricing information) and therefore would provide FINRA with a means of monitoring compliance with Regulation M while streamlining the process for members.

VI. <u>The exemptions from the filing requirement under FINRA Rule 5123 should be amended to include any entity exclusively composed of the types of investors enumerated in FINRA Rule 5123(b)(1)(A)-(J), including entities that have been specifically formed for purposes of the subject investment</u>.

According to Regulatory Notice 23-09, the requirement for member firms to file information on the private placements in which they participate under FINRA Rule 5123 helps FINRA assess the risks associated with those offerings and identify those that are potentially problematic.[34] There are several exemptions from the FINRA Rule 5123 filing requirement for offerings sold to certain investors that satisfy specified criteria that demonstrate a "sufficiently high level of sophistication to justify exemption from FINRA Rule 5123."[35] In the Regulatory Notice 23-09 Comment Letter, SIFMA urged FINRA to expand the exemptions from the FINRA Rule 5123 filing requirement

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[32] *See* Regulation M Filings, *available at* https://www.finra.org/filing-reporting/regulation-m-filings.

[33] FINRA Rule 6420(f). *See* Question 1.1 of SEC Regulation M-Related Notice Requirements Under FINRA Rules Frequently Asked Questions, *available at* https://www.finra.org/rules-guidance/faq/regulation-m.

[34] *See* FINRA Regulatory Notice 23-09 (May 9, 2023) *available at* https://www.finra.org/rules-guidance/notices/23-09.

[35] *See* FINRA Regulatory Notice 23-09 (May 9, 2023) *available at* https://www.finra.org/rules-guidance/notices/23-09.

for accredited investors as defined in SEC Rule 501(a)(9) and (a)(12).[36] SIFMA would like to thank FINRA for concurring with this comment and proposing such amendments in Regulatory Notice 24-17.[37]

In addition to those exemptions, FINRA should adopt an exemption from the requirements of FINRA Rule 5123 for any entity exclusively composed of the types of investors enumerated in FINRA Rule 5123(b)(1)(A)-(J), including entities that have been specifically formed for purposes of the subject investment. An entity composed of the type of investors that are already included in an exemption from FINRA Rule 5123 is not the type of investor that needs additional protection that the disclosure and filing requirements and additional oversight FINRA provides under FINRA Rule 5123.

If these investors demonstrate a "sufficiently high level of sophistication to justify exemption from Rule 5123,"[38] then as a practical matter, an entity composed solely of these investors should also be treated similarly. Investors may form entities or investment vehicles for the purposes of investing in a particular transaction for business or tax purposes, and if those entities are composed of the investors described in FINRA Rule 5123(b)(1)(A)-(J), then such entities should be afforded the same treatment as their underlying investors.

VII. SIFMA supports FINRA's proposed amendments to the CAB rules to permit CABs to act as placement agent or finder for secondary private placement offerings with institutional investors.

According to FINRA guidance, the CAB rules were adopted to permit member firms acting in limited capacities to register as FINRA members, noting "many FINRA rules should not apply to these firms, or should be modified to reflect their limited business activities"[39] and for that reason, adopted a narrower set of rules that govern CABs. For example, under CAB Rule 016(c)(1)(F), a CAB can act as a placement agent or finder (i) on behalf of an issuer in connection with a sale of newly-issued, unregistered securities to institutional investors (which includes, for example, registered investment companies), or (ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. FINRA further notes that "CABs may not

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[36] *See* letter from Joseph Corcoran to Jennifer Piorko Mitchell regarding FINRA Regulatory Notice 23-09 dated August 7, 2023, *available at* https://www.finra.org/sites/default/files/NoticeComment/SIFMA_8.7.23_23-09_Comment%20Letter.pdf.

[37] *See* FINRA Regulatory Notice 24-17 (December 20, 2024), *available at* https://www.finra.org/rules-guidance/notices/24-17.

[38] *See* Notice of Filing of Amendments No. 2 and No. 3 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendments No. 1, No. 2, and No. 3 to Adopt FINRA Rule 5123 (Private Placements of Securities) in the Consolidated FINRA Rulebook, SEC Release No. 34-67157 at 12 (June 7, 2012) *available at* https://www.sec.gov/files/rules/sro/finra/2012/34-67157.pdf.

[39] *See* FINRA Regulatory Notice 16-37 (October 17, 2016), *available at* https://www.finra.org/rules-guidance/notices/16-37.

act as an agent for secondary transactions involving unregistered securities, other than in connection with the change of control of a privately held company."[40]

CABs may currently serve as a placement agent for a private placement in a primary issuance. However, if that CAB subsequently wanted to syndicate such interests to co-investors, it would not be permitted to do so under the CAB rules. Member firms who would anticipate acting in such capacity may therefore be discouraged from becoming a CAB due to these limitations.

SIFMA agrees with FINRA's proposal in SR-FINRA-2025-005 to permit CABs to "act as placement agents or finders for secondary transactions of unregistered securities in the limited circumstance where both the seller and purchaser of such unregistered securities are institutional investors for purposes of the CAB Rules and the sale qualifies for an exemption from registration under the Securities Act." [41] FINRA anticipated that allowing CAB firms to expand their activities in such a manner would "benefit from increased flexibility in their business practices."[42] SIFMA agrees with this analysis.

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SIFMA appreciates this opportunity to comment on Regulatory Notice 25-06 and thanks FINRA in advance for its consideration of this submission. SIFMA would be pleased to discuss any of these points further and provide additional information that would be helpful. Please do not hesitate to contact the undersigned or SIFMA's outside counsel, Jennifer Morton of Allen Overy Shearman Sterling US LLP, at (212) 848-5187.

Sincerely,

Joseph P. Corcoran

Joseph Corcoran
Managing Director and Associate General Counsel
SIFMA

cc: Robert W. Cook, President and Chief Executive Officer, FINRA
Robert L.D. Colby, Chief Legal Officer, FINRA
Joseph Sheirer, Senior Vice President, Corporate Financing & Advertising Regulation, FINRA
Micah Hauptman, Associate General Counsel, Office of General Counsel, FINRA
Matthew Vitek, Associate General Counsel, Office of General Counsel, FINRA

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40 *See* FINRA Regulatory Notice 25-06 (March 20, 2025), *available at* https://www.finra.org/rules-guidance/notices/25-06.

41 *See* Proposed Rule Change to Amend the FINRA Capital Acquisition Broker Rules (June 4, 2025), *available at* https://www.finra.org/sites/default/files/2025-06/SR-FINRA-2025-005.pdf. FINRA also proposed this amendment in FINRA Regulatory Notice 20-04 (January 30, 2020), *available at* https://www.finra.org/rules-guidance/notices/20-04.

42 *See* Proposed Rule Change to Amend the FINRA Capital Acquisition Broker Rules (June 4, 2025), *available at* https://www.finra.org/sites/default/files/2025-06/SR-FINRA-2025-005.pdf.

Jennifer Piorko Mitchell
June 18, 2025

EXHIBIT A
FINRA Rule 5110

Below is the text of FINRA Rule 5110. Proposed new language is bolded and blue; proposed deletions are in strikethrough and red.

FINRA Rule 5110

(a) Requirements for Public Offerings

(1) General

(A) No member or person associated with a member shall participate in a public offering in which the terms and conditions relating thereto, including the aggregate amount of underwriting compensation, are unfair or unreasonable pursuant to this Rule or inconsistent with any By-Law or any rule or regulation of FINRA.

(B) Any member acting as a managing underwriter or in a similar capacity must notify the other members participating in the public offering if informed of an opinion by FINRA that the underwriting terms and arrangements are unfair and unreasonable and the proposed terms and arrangements have not been appropriately modified.

(C) No member may engage in the distribution or sale of securities in any public offering required to be filed by this Rule~~,~~ **or** Rule 2310 ~~or Rule 5121~~ unless:

(i) documents and information specified in paragraph (a)(4) have been filed with FINRA; and

(ii) FINRA has provided an opinion that it has no objection to the proposed underwriting terms and arrangements.

(2) Offerings Required to be Filed

All public offerings in which a member participates must be filed with FINRA for review, except as exempted from the filing requirement under paragraph (h).

(3) Timely Filing Requirements

(A) A member that participates in a public offering that is required to be filed under paragraph (a)(2) must file the documents and information specified in paragraph (a)(4):

(i) no later than three business days after any documents are filed with or submitted to:

a. the SEC, including confidential filings or submissions; or

b. any state securities commission or other similar U.S. regulatory authority; or

(ii) if not filed with or submitted to any such regulatory authority, at least 15 business days prior to the commencement of sales.

(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.

(4) Documents and Information Required to be Filed

(A) The following documents required to be filed under paragraph (a) must be filed in FINRA's Public Offering System for review by providing the SEC document identification number if available:

(i) the registration statement, offering circular, offering memorandum, notification of filing, notice of intention, application for conversion, and any other document used to offer securities to the public;

(ii) all documents relevant to the underwriting terms and arrangements, including any proposed underwriting agreement, agreement among underwriters, selected dealer’s agreement, agency agreement, purchase agreement, letter of intent, engagement letter, consulting agreement, partnership agreement, underwriter's warrant agreement, or escrow agreement, provided that industry-standard master forms of agreement need not be filed unless otherwise specifically requested by FINRA;

(iii) if amendments to any documents previously filed contain changes that impact the underwriting terms and arrangements for the public offering, marked pages showing the changes to such document;

(iv) the final registration statement declared effective by the SEC, or the equivalent final offering document, the notice of effectiveness issued by the SEC or any other U.S. regulatory authority, the executed form of the final distribution-related documents and any other document submitted to FINRA for review, each if applicable; and

(v) all requests for withdrawal filed with or submitted to the SEC or any other U.S. regulatory authority, including any correspondence submitted to the SEC for the withdrawal of confidential filings or submissions.

(B) Any member filing documents with FINRA pursuant to paragraph (a)(4)(A) must file the following information with respect to the offering in FINRA's Public Offering System:

(i) an estimate of the maximum public offering price;

(ii) an estimate of the maximum value for each item of underwriting compensation;

(iii) a representation as to whether any officer or director of the issuer and any beneficial owner of 10% or more of any class of the issuer's equity and equity-linked securities is an associated person or affiliate of a participating member;

(iv) a description of any securities of the issuer acquired and beneficially owned by any participating member during the review period, provided that:

a. non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction related to the public offering must be filed and also accompanied by a representation that a registered principal or senior manager of the participating member has determined if the transaction was or will be entered into at a fair price;

b. non-convertible or non-exchangeable debt securities and derivative instruments need not be filed if acquired in a transaction that is unrelated to the public offering; and

c. securities if acquired in accordance with Supplementary Material .01(b) need not be filed.

(v) if applicable, a representation of compliance with all of the criteria for any exception from underwriting compensation provided in paragraph (d); and

(vi) a detailed explanation and all documents related to the modification of any information or representation previously provided to FINRA during the review period, whether or not FINRA has issued a no objections opinion.

(C) In the event an offering filed pursuant to this Rule is not completed according to the terms of an agreement entered into by the issuer and a participating member, any member receiving underwriting compensation must provide written notification to FINRA of all underwriting compensation received or to be received pursuant to paragraph (g)(5), including a copy of any agreement governing the arrangement.

(D) FINRA will provide confidential treatment to all documents and information filed pursuant to this Rule and use such documents and information solely for regulatory purposes.

(E) Notwithstanding paragraph (a)(4)(A) and (B), with respect to a shelf offering, the following documents and information must be filed in FINRA's Public Offering System for review:

(i) the registration statement number; and

(ii) if requested by FINRA, other documents and information set forth in paragraph (a)(4)(A) and (B).

(b) Disclosure Requirements for Underwriting Compensation

(1) A description of each item of underwriting compensation received or to be received by a participating member must be disclosed in the section on distribution arrangements in the prospectus or similar document.

(2) Any underwriting compensation consisting of a commission or discount to the public offering price must be disclosed on the cover page of the prospectus or similar document. If the underwriting compensation includes items of compensation in addition to the commission or discount disclosed on the cover page of the prospectus or similar document, a footnote to the offering proceeds table on the cover page of the prospectus or similar document shall include a cross-reference to the section on distribution arrangements.

(c) Valuation of Underwriting Compensation

(1) Limitation on Securities Received Upon Exercise or Conversion of Another Security

A participating member may not receive a security (including securities in a unit), a warrant for a security, or a security convertible into another security as underwriting compensation in connection with a public offering unless:

(A) the security received or the security underlying the warrant or convertible security received is identical to the security offered to the public or to a security with a bona fide public market; or

(B) the security can be accurately valued, as required by paragraph (g)(1) of this Rule.

(2) Valuation of Non-Convertible Securities

Non-convertible securities received as underwriting compensation will have a compensation value based on:

(A) the difference between:

(i) either the market price per security on the date of acquisition, or, if no bona fide public market exists for the security, the public offering price per security; and

(ii) the per security cost;

(B) multiplied by the number of securities received or to be received as underwriting compensation;

(C) divided by the offering proceeds; and

(D) multiplied by one hundred.

(3) Valuation of Convertible Securities

Options, warrants or convertible securities ("warrants") shall have a compensation value based on the following formula:

(A) the public offering price per security multiplied by .65;

(B) minus the resultant of the exercise or conversion price per warrant less either:

(i) the market price per security on the date of acquisition, where a bona fide public market exists for the security; or

(ii) the public offering price per security;

(C) divided by two;

(D) multiplied by the number of securities underlying the warrants;

(E) less the total price paid for the warrants;

(F) divided by the offering proceeds; and

(G) multiplied by one hundred;

(H) provided, however, that, notwithstanding paragraph (c)(4) of this Rule, such warrants shall have a compensation value of at least .2% of the offering proceeds for each amount of securities that is up to 1% of the securities being offered to the public (excluding securities subject to an overallotment option).

(4) Reduction in Valuation

If a participating member wishes to reduce the proposed maximum value of any securities received as underwriting compensation, it may do so by voluntarily agreeing to lock-up such securities for successive 180-day periods (in addition to the initial lock-up period required by paragraph (e) of this Rule if applicable). Each additional 180-day period will reduce the proposed maximum value attributable to such securities by 10%.

(5) Valuation of Securities Acquired in Connection with a Fair Price Non-Convertible or Non-Exchangeable Debt or Derivative Instrument

Any non-convertible or non-exchangeable debt or derivative instrument acquired or entered into at a "fair price" as defined in Supplementary Material .06(b) and underwriting compensation received in or receivable in the settlement, exercise or other terms of such non-convertible or non-exchangeable debt or derivative instrument shall not have a compensation value for purposes of determining underwriting compensation. If the actual price for the non-convertible or non-exchangeable debt or derivative instrument is not a fair price, compensation will be calculated pursuant to this paragraph (c) or based on the difference between the fair price and the actual price

(d) Securities Acquisitions Not Considered Underwriting Compensation

Securities acquired in transactions that meet the requirements of this paragraph (d) are excluded from underwriting compensation and not subject to the lock-up requirements of paragraph (e)(1), provided that the member does not condition its participation in the public offering on an acquisition of securities in a transaction that meets the requirements of this paragraph and any securities acquired are acquired at the same price and with the same terms as the securities purchased by all other investors.

(1) Purchases and Loans by Certain Affiliates — Securities of the issuer purchased in a private placement or received as compensation in connection with the provision of a loan or credit facility ~~before the required filing date of the public offering pursuant to paragraph (a)~~ by a participating member’s affiliate, if:

(A) the affiliate is a separate and distinct legal person from any member participating in the offering and is not registered as a broker-dealer;

(B) the investment or loan was made subject to the evaluation of individuals who have a contractual or fiduciary duty to select investments and loans based on the risks and rewards to the

affiliate and not based on opportunities for the member participating in the offering to earn investment banking revenues;

(C) the affiliate does not receive investment banking fees paid to any participating member for underwriting public offerings;

(D) the affiliate, directly or through a subsidiary it controls, is primarily engaged in the business of making investments in or loans to other companies or is an entity that has been newly formed by such affiliate; and

(E) the affiliate either:

i. manages capital contributions or commitments of $100 million or more, at least $75 million of which has been contributed or committed by persons that are not participating members;

ii. manages capital contributions or commitments of $25 million or more, at least 75% of which has been contributed or committed by persons that are not participating members;

iii. is an insurance company as defined in Section 2(a)(13) of the Securities Act or is a foreign insurance company that has been granted an exemption under this Rule; or

iv. is a bank.

(2) Investments in and Loans to Certain Issuers — Securities of the issuer purchased in a private placement or received as compensation in connection with the provision of a loan or credit facility ~~before the required filing date of the public offering pursuant to paragraph (a)~~ by a participating member's affiliate if:

(A) the affiliate:

(i) manages capital contributions or commitments of at least $50 million;

(ii) is a separate and distinct legal person from any member participating in the offering and is not registered as a broker-dealer;

(iii) does not receive investment banking fees paid to any participating member for underwriting public offerings; and

(iv) directly or through a subsidiary it controls, is primarily engaged in the business of making investments in or loans to other companies or is an entity that has been newly formed by such affiliate;

(B) institutional investors beneficially own at least 33% of the issuer's total equity securities, calculated immediately prior to the transaction; and

(C) the transaction was approved by a majority of the issuer's board of directors (if the issuer has a board of directors) and a majority of any institutional investors, or the designees of institutional investors, that are board members.

(3) Private Placements with Institutional Investors — Securities of the issuer purchased in, or received as compensation for services provided in connection with, a private placement ~~before the required filing date of the public offering pursuant to paragraph (a)~~ if:

(A) institutional investors, none of whom is an affiliate of a member participating in the offering purchase at least 51% of the total number of securities sold in the private placement at the same time and on the same terms;

(B) an institutional investor was the lead negotiator or, if the terms were not negotiated, was the lead investor with the issuer to establish or approve the terms of the private placement; and

(C) the participating members did not, in the aggregate, purchase or receive as compensation more than 40% of the "total number of securities sold in the private placement" (excluding purchases by any affiliate qualified under paragraph (d)(1)).

(4) Co-Investments with Certain Regulated Entities — Securities of the issuer acquired in a private placement ~~before the required filing date of the public offering pursuant to paragraph (a)~~ by a participating member if at least 15% of the total number of securities sold in the private placement were acquired, at the same time and on the same terms, by one or more entities that is an open-end investment company not traded on an exchange, and no such entity is an affiliate of a FINRA member participating in the offering.

(e) Lock-Up Restriction on Securities

(1) Lock-Up Restriction

(A) Any underwriting compensation consisting of securities must not be sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities for a period of 180 days beginning on the date of commencement of sales of the public equity offering, except as provided in paragraph (e)(2).

(B) The lock-up restriction must be disclosed in the section on distribution arrangements in the prospectus or similar document.

(2) Exceptions to Lock-Up Restriction

Notwithstanding paragraph (e)(1):

(A) the lock-up restriction will not apply:

(i) if the security is required to be transferred by operation of law or by reason of reorganization of the issuer;

(ii) if the aggregate amount of securities of the issuer beneficially owned by a participating member does not exceed 1% of the securities being offered;

(iii) to a security of an issuer that meets the registration requirements of SEC Registration Forms S-3, F-3 or F-10;

(iv) to a non-convertible or non-exchangeable debt security acquired in a transaction related to the public offering;

(v) to a derivative instrument acquired in connection with a hedging transaction related to the public offering and at a fair price;

(vi) if the security was acquired in a transaction that met the requirements of paragraph (d);

(vii) if the security is beneficially owned on a pro-rata basis by all equity owners of an investment fund, provided that no participating member manages or otherwise directs investments by the fund, and participating members in the aggregate do not own more than 10% of the equity in the fund;

(viii) if the security was received as underwriting compensation, and is registered and sold as part of a firm commitment offering; or

(ix) to a security that is “actively-traded” (as defined in Rule 101(c)(1) of SEC Regulation M).

(B) the following will not be prohibited:

(i) the transfer of any security to any member participating in the offering and its officers or partners, its registered persons or affiliates, if all transferred securities remain subject to the lock-up restriction in paragraph (e)(1) for the remainder of the 180-day lock-up period;

(ii) the exercise or conversion of any security, if all securities received remain subject to the lock-up restriction in paragraph (e)(1) for the remainder of the 180-day lock-up period; or

(iii) the transfer or sale of the security back to the issuer in a transaction exempt from registration with the SEC.

(f) Non-Cash Compensation

(1) Definitions

The terms "compensation," "non-cash compensation" and "offeror" as used in this paragraph (f) shall have the following meanings:

(A) “Compensation” shall mean cash compensation and non-cash compensation.

(B) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of securities that is not cash compensation, including, but not limited to, merchandise, gifts and prizes, travel expenses, meals and lodging.

(C) "Offeror" shall mean an issuer, an adviser to an issuer, an underwriter and any affiliated person of such entities.

(2) Restrictions on Non-Cash Compensation

In connection with the sale and distribution of a public offering of securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided below. Non-cash compensation arrangements must be consistent with the applicable requirements of SEA Rule 15l-1 ("Regulation Best Interest") and are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors[1] and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by paragraph (f)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which shall mean an office of the issuer or affiliate thereof, the office of the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(iv) the payment or reimbursement by the issuer or affiliate of the issuer is not conditioned by the issuer or an affiliate of the issuer on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (f)(2)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a company that controls a member company and the member's associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (f)(2)(D).

A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by paragraphs (f)(2)(C) through (E). The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with paragraphs (f)(2)(C) through (E).

(g) Unreasonable Terms and Arrangements

Without limiting the requirements of paragraph (a)(1)(A), the following terms and arrangements are prohibited:

(1) receipt of any underwriting compensation, including in the form of securities, for which a value cannot be determined;

(2) any accountable expense allowance that includes payment for general overhead, salaries, supplies, or similar expenses incurred in the normal conduct of business;

(3) any non-accountable expense allowance in excess of 3% of offering proceeds;

(4) any underwriting compensation paid prior to the commencement of sales of the public offering, except:

(A) an advance against accountable expenses actually anticipated to be incurred, which must be reimbursed to the issuer to the extent not actually incurred; or

(B) advisory or consulting fees for services provided in connection with the offering that subsequently is completed according to the terms of an agreement entered into by an issuer and a participating member;

(5) any underwriting compensation in connection with a public offering that is not completed according to the terms of an agreement entered into by an issuer and a participating member, except

(A) the reimbursement of accountable expenses actually incurred by the participating member; and

(B) a termination fee or a right of first refusal, as set forth in a written agreement entered into by an issuer and a participating member, provided that:

(i) the agreement specifies that the issuer has a right of "termination for cause," which shall include the participating member's material failure to provide the underwriting services contemplated in the written agreement;

(ii) an issuer's exercise of its right of "termination for cause" eliminates any obligations with respect to the payment of any termination fee or provision of any right of first refusal;

(iii) the amount of any termination fee must be reasonable in relation to the underwriting services contemplated in the agreement and any fees arising from underwriting services provided under a right of first refusal must be customary for those types of services; and

(iv) the issuer shall not be responsible for paying the termination fee unless an offering or other type of transaction (as set forth in the agreement) is consummated within two years of the date the engagement is terminated by the issuer;

(6) any right of first refusal to participate in the distribution of a future public offering, private placement or other financing that:

(A) has a duration of more than three years from the commencement of sales of the public offering or the termination date of the engagement between the issuer and member; or

(B) has more than one opportunity to waive or terminate the right of first refusal in consideration of any payment or fee;

(7) any payment or fee to waive or terminate a right of first refusal to participate in a future public offering, private placement or other financing that is not paid in cash;

~~(8) the receipt of underwriting compensation consisting of any option, warrant or convertible security that:~~

~~(A) is exercisable or convertible more than five years from the commencement of sales of the public offering;~~

~~(B) has more than one demand registration right at the issuer's expense;~~

~~(C) has a demand registration right with a duration of more than five years from the commencement of sales of the public offering;~~

~~(D) has a piggyback registration right with a duration of more than seven years from the commencement of sales of the public offering;~~

~~(E) has anti-dilution terms that allow the participating members to receive more shares or to exercise at a lower price than originally agreed upon at the time of the public offering, when the public shareholders have not been proportionally affected by a stock split, stock dividend, or other similar event; or~~

~~(F) has anti-dilution terms that allow the participating members to receive or accrue cash dividends prior to the exercise or conversion of the security;~~

(9) when proposed in connection with the distribution of a public offering of securities on a "firm commitment" basis, any overallotment option providing for the overallotment of more than 15% of the amount of securities being offered, computed excluding any securities offered pursuant to the overallotment option;

(10) the receipt by a participating member of any compensation in connection with the exercise or conversion of any warrant, option, or convertible security offered in the public offering if:

(A) the market price of the security into which the warrant, option, or convertible security is exercisable or convertible is lower than the exercise or conversion price;

(B) the warrant, option, or convertible security is held in a discretionary account at the time of exercise or conversion, except where prior specific written approval for exercise or conversion is received from the customer;

(C) the compensation arrangements are not disclosed in the offering documents provided to security holders at the time of exercise or conversion;

(D) the exercise or conversion is not solicited by the participating members; and

(11) for a member to participate with an issuer in the public offering of securities if the issuer hires persons primarily for the purpose of solicitation, marketing, distribution or sales of the offering, except in compliance with Section 15(a) of the Exchange Act or SEA Rule 3a4-1 and applicable state law.

(h) Exemptions

(1) Offerings Exempt from Filing

Documents and information related to the following public offerings need not be filed with FINRA for review, ~~unless subject to the provisions of Rule 5121(a)(2)~~, provided that the following public offerings must comply with this Rule and, if applicable, Rules 2310 and 5121:

(A) securities offered by a bank, foreign bank, corporate issuer, foreign government or foreign government agency that has outstanding unsecured non-convertible debt with a term of issue of at least four years or unsecured non-convertible preferred securities that are investment

grade rated, as defined in Rule 5121(f)(8), or are outstanding securities in the same series that have equal rights and obligations as investment grade rated securities, provided that an initial public offering of equity is required to be filed;

(B) ~~investment grade rated~~ non-convertible debt securities and non-convertible preferred securities;

(C) offerings of securities registered with the SEC on registration statement Forms S-3, F-3, or F-10~~, provided that the registrant is an experienced issuer~~;

(D) investment grade rated financing instrument-backed securities;

(E) exchange offers where:

(i) the securities to be issued or the securities of the company being acquired are listed, or convertible into securities that are listed, on a national securities exchange as defined in Section 6 of the Exchange Act; or

(ii) the company issuing securities qualifies to register securities with the SEC on registration statement Forms S-3, F-3, or F-10 ~~and is an experienced issuer~~;

(F) public offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act; and

(G) offerings of securities issued by a pooled investment vehicle, whether formed as a trust, partnership, corporation, limited liability company or other collective investment vehicle, that is not registered as an investment company under the Investment Company Act and has a class of equity securities listed for trading on a national securities exchange and that may be created or redeemed on any business day at their net asset value per share.

(2) Offerings Not Subject to Filing and Rule Compliance

The following offerings are not subject to this Rule, Rule 2310 and Rule 5121 including not being required to file documents and information for review:

(A) securities of "open-end" investment companies as defined in Section 5(a)(1) of the Investment Company Act;

(B) securities of any "closed-end" investment company as defined in Section 5(a)(2) of the Investment Company Act that makes periodic repurchase offers pursuant to Rule 23c-3(b) under

the Investment Company Act and offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) of SEC Regulation C;

(C) variable contracts as defined in Rule 2320(b)(2);

(D) modified guaranteed annuity contracts and modified guaranteed life insurance policies, which are deferred annuity contracts or life insurance policies the value of which are guaranteed if held for specified periods, and the nonforfeiture value of which are based upon a market-value adjustment formula for withdrawals made before the end of any specified period;

(E) insurance contracts not otherwise included in paragraph (h)(2)(C) and (D);

(F) municipal securities as defined in Section 3(a)(29) of the Exchange Act;

(G) tender offers made pursuant to SEC Regulation 14D or Rule 13e-4 under the Exchange Act;

(H) securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Utility Holding Company Act;

(I) securities of a subsidiary or other affiliate distributed by a company in a spin-off or reverse spin-off or similar transaction to its existing security holders exclusively as a dividend or other distribution;

(J) securities registered with the SEC in connection with a merger or acquisition transaction or other similar business combination, except for any exchange offer, merger and acquisition transaction, or other similar corporate reorganization involving an issuance of securities that results in the direct or indirect public ownership of the member;

(K) securities of a unit investment trust as defined in Section 4(2) of the Investment Company Act;

(L) offerings of securities by a “closed-end” investment company as defined in Section 5(a)(2) of the Investment Company Act that is operated as a tender offer fund, provided that the fund:

(i) makes continuous offerings pursuant to Securities Act Rule 415;

(ii) prices its securities at least quarterly;

(iii) limits the total amount of compensation paid to participating members to the amount permitted by the sales charge limitations of Rule 2341, in which case the underwriting compensation provisions of Rule 5110 will not apply;

(iv) makes at least two repurchase offers per calendar year for its securities pursuant to SEA Rule 13e-4 and Schedule TO under the Exchange Act; ~~and~~

(v) does not list its securities on a national securities exchange**; and**

(M) offerings of securities by well-known seasoned issuers as defined in Securities Act Rule 405.

(i) Requests for Rule 9600 Exemption from Rule 5110

Pursuant to the Rule 9600 Series, FINRA, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally grant an exemption from any provision of this Rule to the extent that such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(j) Definitions

The definitions in Rule 5121 are incorporated herein by reference. For purposes of this Rule, the following terms have the meanings stated below:

(1) Associated Person

The term "associated person" has the meaning defined in Article I, Section (rr) of the FINRA By-Laws.

(2) Bank

The term "bank" means a bank as defined in Section 3(a)(6) of the Exchange Act, a branch or agency in the United States of a foreign bank that is supervised and examined by a federal or state banking authority and otherwise meets the requirements of Section 3(a)(6) of the Exchange Act, or a foreign bank that has been granted an exemption under this Rule and shall refer only to the regulated entity, not its subsidiaries or other affiliates.

(3) Company

The term “company” means a corporation, a partnership, an association, a joint stock company, a trust, a fund, or an organized group of persons whether incorporated or not; including any receiver, trustee in bankruptcy or similar official, or liquidating agent of any of the foregoing.

(4) Compensation

The term "compensation" means cash compensation and non-cash compensation.

(5) Effective Date

The term “effective date” means the date on which an issue of securities becomes legally eligible for distribution to the public.

~~**(6) Experienced Issuer**~~

~~The term “experienced issuer” means an entity that has:~~

~~(A) a reporting history of 36 calendar months immediately preceding the filing of the registration statement; and~~

~~(B) at least $150 million aggregate market value of voting stock held by non-affiliates; or alternatively the aggregate market value of the voting stock held by non-affiliates of the issuer is $100 million or more and the issuer has had an annual trading volume of such stock of three million shares or more.~~

(7) Equity-Linked Securities

The term “equity-linked securities” means any security that is convertible or exchangeable into an equity security.

(8) Immediate Family

The term “immediate family” means:

(A) the spouse or child of an associated person of a member; and

(B) any relative who either lives in the same household as, has a business relationship with, provides material support to, or receives material support from, an associated person of a member, including, but not limited to, a parent, sibling, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(9) Independent Financial Adviser

The term “independent financial adviser” means a member or a person affiliated or associated with a member that provides advisory or consulting services to the issuer and is neither engaged in, nor affiliated or associated with any entity that is engaged in, the solicitation or distribution of the offering.

(10) Institutional Investor

For the purposes of paragraph (d), the term “institutional investor” means any person that has an aggregate of at least $50 million invested in securities in its portfolio or under management, including investments held by its wholly owned subsidiaries; provided that no participating members manage the institutional investor's investments ~~or have an equity interest in the institutional investor, either individually or in the aggregate, that exceeds 5% for a publicly owned entity or 1% for a nonpublic entity~~.

(11) Insurance Company

For the purposes of paragraph (d), the term “insurance company” refers only to the regulated entity, not its subsidiaries or other affiliates.

(12) Issuer

The term “issuer” means a registrant or other person that is offering its securities to the public, any selling security holder offering securities to the public, any affiliate of the registrant or such other person or selling security holder, and the officers or general partners, and directors thereof, but does not include a participating member unless the participating member is itself the registrant or a selling security holder offering its own beneficially held securities to the public.

(13) Offering Proceeds

The term “offering proceeds” means the proceeds of all the securities offered in the public offering by participating members, not including securities subject to an overallotment option, securities to be received by the participating members, or underlying securities.

(14) Overallotment Option

The term “overallotment option” means an option granted by the issuer to the participating members for the purpose of offering additional shares to the public in connection with the distribution of the public offering.

(15) Participating Member

The term “participating member” means any FINRA member that is participating in a public offering, any affiliate or associated person of the member, and any immediate family, but does not include the issuer.

(16) Participate, Participation or Participating

The terms “participate,” “participation” or “participating” in a public offering means involvement in the preparation of the offering document or other documents, involvement in the distribution of the offering, furnishing of customer or broker lists for solicitation, or providing advisory or consulting services to the issuer related to the offering, but do not include:

(A) the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion pursuant to SEA Rule 13e-3; and

(B) advisory or consulting services provided to the issuer by an independent financial adviser.

(17) Person

The term “person” means any natural person, partnership, corporation, company, association, or other legal entity.

(18) Public Offering

The term "public offering" means any primary or secondary offering of securities made in whole or in part in the United States pursuant to a registration statement, offering circular or similar offering document including exchange offers, rights offerings, and offerings of securities made pursuant to a merger or acquisition except for:

(A) securities exempt from registration with the SEC pursuant to the provisions of Sections 4(a)(1), 4(a)(2) or 4(a)(5) of the Securities Act;

(B) securities exempt from registration with the SEC pursuant to Rule 504 of SEC Regulation D if the securities are restricted securities under Securities Act Rule 144(a)(3) or Rule 506 of SEC Regulation D;

(C) securities exempt from registration with the SEC pursuant to Securities Act Rule 144A or SEC Regulation S; or

(D) securities which are defined as “exempted securities” in Section 3(a)(12) of the Exchange Act.

(19) Required Filing Date

(A) The term “required filing date” means the dates referenced in paragraph (a)(3); and

(B) For a public offering exempt from filing under paragraph (h), the term “required filing date” means the date the public offering would have been required to be filed with FINRA but for the exemption.

(20) Review Period

The term “review period” means:

(A) for a firm commitment offering **not made pursuant to Securities Act Rule 415**, the ~~180~~ **60**-day period preceding the **first public filing of the registration statement with the SEC** ~~required filing date~~ through the ~~60~~ **30**-day period following the effective date of the offering;

(B) for a best efforts offering **not made pursuant to Securities Act Rule 415**, the ~~180~~ **60**-day period preceding the **first public filing of the registration statement with the SEC** ~~required filing date~~ through the ~~60~~ **30**-day period following the final closing of the offering; and

(C) for a firm commitment or best efforts takedown or any other continuous offering made pursuant to Securities Act Rule 415, the ~~180~~ **60**-day period preceding the ~~required filing date of~~ **commencement of sales in** the takedown or continuous offering through the ~~60~~ **30**-day period following the final closing of the takedown or continuous offering.

(21) Total Equity Securities

For the purposes of paragraph (d), the term "total equity securities" means the aggregate of the total shares of:

(A) common stock outstanding of the issuer; and

(B) common stock of the issuer underlying all convertible securities outstanding that convert without the payment of any additional consideration.

(22) Underwriting Compensation

Jennifer Piorko Mitchell
June 18, 2025

The term "underwriting compensation" means any payment, right, interest, or benefit received or to be received by a participating member from any source for underwriting, allocation, distribution, advisory and other investment banking services in connection with a public offering. In addition, underwriting compensation shall include finder's fees, underwriter's counsel fees, and securities.

• • • Supplementary Material: ----------

.01 Underwriting Compensation

(a) The following are examples of payments or benefits that are considered underwriting compensation:

(1) discounts or commissions;

(2) fees and expenses paid or reimbursed to, or paid on behalf of, the participating members, including but not limited to road show fees and expenses and due diligence expenses;

(3) fees and expenses of participating members' counsel paid or reimbursed to, or paid on behalf of, the participating members (except for reimbursement of "blue sky" fees);

(4) finder's fees paid or reimbursed to, or paid on behalf of, the participating members;

(5) wholesaling fees and expenses;

(6) financial consulting and advisory fees;

(7) common or preferred stock, options, warrants, and other equity securities, including debt securities convertible to or exchangeable for equity securities, beneficially owned, as defined in Rule 5121 by the participating members the value of which is determined pursuant to this Rule, and acquired during the review period, as defined in this Rule, except that any such securities purchased during the review period by a participating member in a public offering at the public offering price and on the same terms as all others purchasing in the public offering that are not participating members shall not be deemed underwriting compensation;

(8) sales incentive items;

(9) any right or rights of first refusal provided to any participating member to participate in future public offerings, private placements or other financings, **will be considered underwriting compensation but will have no compensation value** ~~the value of which will be 1% of the~~

~~offering proceeds or a dollar amount contractually agreed to by the issuer and the participating member to waive the right of first refusal~~;

(10) compensation to be received by a participating member or by any person nominated by the participating member as an advisor to the issuer's board of directors in excess of that received by other members of the board of directors;

(11) any compensation to be received by the participating members as a result of the exercise or conversion of warrants, options, convertible securities, or similar securities distributed as part of the public offering within 12 months following the commencement of sales;

(12) fees of a qualified independent underwriter required by Rule 5121;

(13) any compensation paid to any participating member in connection with a prior proposed public offering that was not completed, if the member firm participates in the revised public offering, except that accountable expenses received pursuant to paragraph (g)(5)(A) shall not be deemed underwriting compensation; and

(14) non-cash compensation, such as gifts, training and education expenses, sales incentives, and business entertainment expenses.

(b) Participating members may receive payments from an issuer or another source during the review period that may be unrelated to a particular offering. Such payments generally would not be deemed to be underwriting compensation. The following list, while not comprehensive, provides examples of payments that are not deemed to be underwriting compensation:

(1) printing costs; SEC, "blue sky" and other registration fees; FINRA filing fees; fees of independent financial advisers; and accountant's fees, and other fees and expenses customarily borne by an issuer, whether or not paid by or through a participating member;

(2) cash compensation **or non-cash compensation** for providing services for a private placement or for providing or arranging for a loan, credit facility, or for services in connection with a merger or acquisition **or other similar strategic transaction**;

(3) records management and advisory fees and expenses in connection with the conversion of the issuer from a mutual holding company to a stock holding company;

(4) payment or reimbursement of legal costs resulting from a contractual breach or misrepresentation by the issuer;

(5) compensation for providing brokerage, trust and insurance services to the issuer that is received in the ordinary course of business;

(6) fees for commercial banking services, which does not require registration as a broker-dealer, provided to the issuer in the ordinary course of business;

(7) compensation for providing services in a prior or concurrent public offering separately filed or exempt from filing pursuant to this Rule;

(8) a right of first refusal that is provided to a participating member in connection with a prior financing if the right of first refusal does not extend beyond the initial closing of the public offering currently under review or if the right of first refusal has already been included as underwriting compensation in a prior or concurrent public offering;

(9) dividends paid to shareholders of a class of the issuer's securities when participating members are shareholders of that class;

(10) securities of the issuer pledged as collateral for a bona fide loan;

(11) listed securities purchased in public market transactions;

(12) compensation received through any stock bonus, pension, employee benefit plan, or profit-sharing plan that qualifies under Section 401 of the Internal Revenue Code or a similar plan, including, but not limited to, an employee benefit plan as defined in Securities Act Rule 405 or a compensatory benefit plan or compensatory benefit contract exempt from registration pursuant to Securities Act Rule 701;

(13) securities acquired by an investment company registered under the Investment Company Act;

(14) securities acquired as the result of a conversion of securities that were originally acquired prior to the review period **or were acquired during the review period but were not underwriting compensation**;

(15) securities acquired as the result of an exercise of options or warrants that were originally acquired prior to the review period **or were acquired during the review period but were not underwriting compensation**;

(16) securities acquired as the result of a stock-split, a pro-rata rights or similar offering where the securities upon which the acquisition is based were acquired prior to the review period **or were acquired during the review period but were not underwriting compensation**;

(17) securities acquired as the result of a right of preemption that was granted prior to the review period;

(18) securities acquired in order to prevent dilution of a long-standing interest in the issuer, if:

(A) the amount of securities does not increase a member's percentage ownership of the same generic class of securities of the issuer or of the class of securities underlying a convertible security calculated immediately prior to the investment; and

(B) an initial purchase of securities of the issuer was made at least **60 days preceding the first public filing of the registration statement with the SEC** ~~two years preceding the required filing date~~ and a second purchase was made before the review period;

(19) non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction that is unrelated to the public offering;

(20) securities acquired subsequent to the issuer's initial public offering in a transaction exempt from registration under Securities Act Rule 144A;

(21) securities acquired in the secondary market by a participating member that is a broker-dealer in connection with the performance of bona fide customer facilitation activities and bona fide market making activities; provided that securities acquired from the issuer will be considered "underwriting compensation" if the securities were not acquired at a fair price (taking into account, among other things customary commissions, mark-downs and other charges); ~~and~~

(22) securities acquired pursuant to a governmental or court-approved proceeding or plan of reorganization as a result of action by the government or court (e.g., bankruptcy or tax court proceeding)**; and**

(23) securities acquired from a person, as defined in FINRA Rule 5110(j)(17), other than the registrant or other person that is offering its securities to the public, or person acting on behalf of such registrant or other person that is offering its securities to the public.

(c) Definitions

(1) The term “listed securities” means securities that are traded on the national securities exchanges identified in Securities Act Rule 146, on markets registered with the SEC under Section 6 of the Exchange Act, and on any "designated offshore securities market" as defined in Rule 902(b) of SEC Regulation S.

(2) The term “right of pre-emption” means the right of a shareholder to acquire additional securities in the same company in order to avoid dilution when additional securities are issued, pursuant to: (A) any option, shareholder agreement, or other contractual right entered into at the time of purchase of securities; (B) the terms of the securities purchased; (C) the issuer’s charter or by-laws; or (D) the domestic law of a foreign jurisdiction that regulates the issuance of the securities.

~~**.02 Venture Capital Transactions and Significantly Delayed Offerings.** Notwithstanding paragraph (d), in the event that an offering is significantly delayed and the issuer needs funding pending consummation of the public offering, FINRA may exclude from underwriting compensation any securities acquired in a transaction that otherwise meets the requirements in paragraph (d), but occurs after the required filing date. To determine whether an acquisition of securities that occurs after the required filing date may be excluded from underwriting compensation, FINRA will consider the following factors, as well as any other relevant factors and circumstances:~~

~~(a) the length of time between the required filing of the registration statement or similar document and the date of the transaction in which securities were acquired;~~

~~(b) the length of time between the date of the transaction in which the securities were acquired and the anticipated commencement of the public offering; and~~

~~(c) the nature of the funding provided, including, but not limited to the issuer’s need for funding before the public offering.~~

~~**.03 Underwriting Compensation Securities Acquired Other than from the Issuer.** Notwithstanding paragraph (j)(22), FINRA may exclude securities acquired from a third-party entity from underwriting compensation. To determine whether an acquisition of securities from a third-party entity may be excluded from underwriting compensation, FINRA will consider the following factors, as well as any other relevant factors and circumstances:~~

~~(a) the nature of the relationship between the issuer and the third party, if any;~~

~~(b) the nature of the transactions in which the securities were acquired, including, but not limited to, whether the transactions are engaged in as part of the participating member's ordinary course of business; and~~

~~(c) any disparity between the price paid and the offering price or market price.~~

.04 Underwriting Compensation Resulting from Issuer Directed Sales Programs. Notwithstanding paragraph (j)(15) and (22), FINRA may exclude from underwriting compensation securities acquired by a participating member's associated persons or their immediate family pursuant to an issuer directed sales program. To determine whether an acquisition of securities by a participating member's associated persons or their immediate family pursuant to an issuer directed sales program may be excluded from underwriting compensation, FINRA will consider the following factors, as well as any other relevant factors and circumstances:

(a) the existence of a pre-existing relationship between the issuer and the person acquiring the securities;

(b) the nature of the relationship; and

(c) whether the securities were acquired on the same terms and at the same price as other similarly-situated persons participating in the directed sales program.

.05 Disclosure of Underwriting Compensation. A description of each item of underwriting compensation received or to be received by a participating member must be disclosed in the section on distribution arrangements in the prospectus (or other similar offering document). The description shall include the dollar amount ascribed to each individual item of compensation. When securities are acquired by a participating member, material terms and arrangements of the acquisition must also be disclosed in the section on distribution arrangements in the prospectus (or other similar offering document) when applicable, such as exercise terms, demand and piggyback registration rights and lock-up periods that may apply. Similarly, if underwriting compensation consists of a right of first refusal to participate in the distribution of a future public offering, private placement or other financing, the description should reference the existence of such right and its duration.

.06 Non-Convertible or Non-Exchangeable Debt Securities and Derivatives

(a) Non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction related to the public offering and at a fair price, will be considered underwriting

compensation but will have no compensation value. Non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction related to the public offering but not at a fair price, will be considered underwriting compensation and subject to the normal valuation requirements of this Rule.

(b) The term “derivative instrument” means any "eligible OTC derivative instrument" as defined in SEA Rule 3b-13(a)(1), (2) and (3). The term “fair price” means the participating members have priced a derivative instrument or non-convertible or non-exchangeable debt security in good faith; on an arm’s length, commercially reasonable basis, and in accordance with pricing methods and models and procedures used in the ordinary course of their business for pricing similar transactions. A derivative instrument or other security received as compensation for providing services for the issuer, for providing or arranging a loan, credit facility, merger, acquisition or any other service, including underwriting services will not be deemed to be entered into or acquired at a fair price.

.07 Venture Capital Transactions. The determination of whether a securities acquisition may be excluded from underwriting compensation pursuant to paragraph (d) is to be made at the time of the securities acquisition.

Jennifer Piorko Mitchell
June 18, 2025

EXHIBIT B
FINRA Rule 5121

Below is the text of FINRA Rule 5121. Proposed new language is bolded and blue; proposed deletions are in strikethrough and red.

(a) Requirements for Participation in Certain Public Offerings

No member that has a conflict of interest may participate in a public offering unless the offering complies with subparagraph (1) or (2).

(1) There must be prominent disclosure of the nature of the conflict of interest in the prospectus, offering circular or similar document for the public offering, and one of the following conditions must be met:

(A) ~~the~~ **any** member(s) primarily responsible for managing the public offering does not have a conflict of interest, is not an affiliate of any member that does have a conflict of interest, and meets the requirement of paragraph (f)(12)(E);

(B) the securities offered have a bona fide public market; or

(C) the securities offered are **non-convertible debt securities or** are investment grade rated or are securities in the same series that have equal rights and obligations as investment grade rated securities.

(2) (A) A qualified independent underwriter has participated in the preparation of the registration statement and the prospectus, offering circular, or similar document and has exercised the usual standards of "due diligence" in respect thereto; and

(B) there must be prominent disclosure in the prospectus, offering circular or similar document for the offering of:

(i) the nature of the conflict of interest;

(ii) the name of the member acting as qualified independent underwriter; and

(iii) a brief statement regarding the role and responsibilities of the qualified independent underwriter.

(b) Escrow of Proceeds; Net Capital Computation

(1) All proceeds from a public offering by a member of its securities shall be placed in a duly established escrow account and shall not be released therefrom or used by the member in any manner until the member has complied with subparagraph (2) hereof.

(2) Any member offering its securities pursuant to this Rule shall immediately notify FINRA when the public offering has been terminated and settlement effected and shall file with FINRA a

computation of its net capital computed pursuant to the provisions of SEA Rule 15c3-1 (the net capital rule) as of the settlement date. If at such time its net capital ratio as so computed is more than 10:1 or, net capital fails to equal 120 percent of the minimum dollar amount required by Rule 15c3-1 or, in the event the member calculates its net capital requirement using the alternative standard (set forth in Rule 15c3-1(a)(1)(ii)), its net capital is less than seven percent of aggregate debit items as computed in accordance with Rule 15c3-3a, all monies received from sales of securities of the public offering must be returned in full to the purchasers thereof and the offering withdrawn, unless the member has obtained from the SEC a specific exemption from the net capital rule. Proceeds from the sales of securities in the public offering may be taken into consideration in computing net capital ratio for purposes of this paragraph.

(3) Any member offering its securities pursuant to this Rule shall disclose in the registration statement, offering circular or similar document a date by which the offering is reasonably expected to be completed and the terms upon which the proceeds will be released from the escrow account described in paragraph (b)(1).

(c) Discretionary Accounts

Notwithstanding NASD Rule 2510, no member that has a conflict of interest may sell to a discretionary account any security with respect to which the conflict exists, unless the member has received specific written approval of the transaction from the account holder and retains documentation of the approval in its records.

~~**(d) Application of Rule 5110**~~

~~Any public offering subject to paragraph (a)(2) is subject to Rule 5110,whether or not the offering would be otherwise exempted from the filing or other requirements of that rule.~~

(e) Requests for Exemption from Rule 5121

Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member unconditionally or on specified terms from any or all of the provisions of this Rule that it deems appropriate.

(f) Definitions

The definitions in Rule 5110 are incorporated herein by reference. For purposes of this Rule, the following words shall have the stated meanings:

(1) Affiliate

The term "affiliate" means an entity that controls, is controlled by or is under common control with a member.

(2) Beneficial Ownership

The term "beneficial ownership" means the right to the economic benefits of a security.

(3) Bona Fide Public Market

The term "bona fide public market" means a market for a security of an issuer that has been reporting under the Exchange Act for at least 90 days and is current in its reporting requirements, and whose securities are traded on a national securities exchange with an Average Daily Trading Volume (as provided by SEC Regulation M) of at least $1 million, provided that the issuer's common equity securities have a public float value of at least $150 million.

(4) Common Equity

The term "common equity" means the total number of shares of common stock outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company.

(5) Conflict of Interest

The term "conflict of interest" means, if at the time of a member's participation in an entity's public offering, any of the following applies:

(A) the securities are to be issued by the member;

(B) the issuer controls, is controlled by or is under common control with the member or the member's associated persons;

(C) at least ~~five~~ **ten** percent of the net offering proceeds, not including underwriting compensation, are intended to be:

(i) used to reduce or retire the balance of a loan or credit facility extended by the member, its affiliates and its associated persons, in the aggregate; or

(ii) otherwise directed to the member, its affiliates and associated persons, in the aggregate; or

(D) as a result of the public offering and any transactions contemplated at the time of the public offering:

(i) the member will be an affiliate of the issuer;

(ii) the member will become publicly owned; or

(iii) the issuer will become a member or form a broker-dealer subsidiary.

(6) Control

(A) The term "control" means:

(i) beneficial ownership of 10 percent or more of the outstanding common equity of an entity, including any right to receive such securities within 60 days of the member's participation in the public offering;

(ii) the right to 10 percent or more of the distributable profits or losses of an entity that is a partnership, including any right to receive an interest in such distributable profits or losses within 60 days of the member's participation in the public offering; **or**

~~(iii) beneficial ownership of 10 percent or more of the outstanding preferred equity of an entity, including any right to receive such preferred equity within 60 days of the member's participation in the public offering; or~~

(~~iv~~ **iii**) the power to direct or cause the direction of the management or policies of an entity.

(B) The term "common control" means the same natural person or entity controls two or more entities.

(7) Entity

For purposes of the definitions of affiliate, conflict of interest and control under this Rule, the term "entity":

(A) includes a company, corporation, partnership, trust, sole proprietorship, association or organized group of persons; and

(B) excludes the following:

(i) an investment company registered under the Investment Company Act;

(ii) a "separate account" as defined in Section 2(a)(37) of the Investment Company Act;

(iii) a "real estate investment trust" as defined in Section 856 of the Internal Revenue Code; or

(iv) a "direct participation program" as defined in Rule 2310.

(8) Investment Grade Rated

The term "investment grade rated" refers to securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

(9) Net Offering Proceeds

The term “net offering proceeds” means offering proceeds less all expenses of issuance and distribution.

(10) Preferred Equity

The term "preferred equity" means the aggregate capital invested by all persons in the preferred securities outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company.

(11) Prominent Disclosure

A member may make "prominent disclosure" for purposes of paragraphs (a)(1) and (a)(2)(B) by:

(A) providing the notation "(Conflicts of Interest)" following the listing of the Plan of Distribution in the Table of Contents section required in Item 502 of SEC Regulation S-K, and by providing such disclosures in the Plan of Distribution section required in Item 508 of SEC Regulation S-K and any Prospectus Summary section required in Item 503 of SEC Regulation S-K; or

(B) for an offering document not subject to SEC Regulation S-K, by providing disclosure on the front page of the offering document that a conflict exists, with a cross-reference to the discussion within the offering document and in the summary of the offering document if one is included.

(12) Qualified Independent Underwriter

The term "qualified independent underwriter" means a member:

(A) that does not have a conflict of interest and is not an affiliate of any member that has a conflict of interest;

(B) that does not beneficially own as of the date of the member's participation in the public offering, more than 5% of the class of securities that would give rise to a conflict of interest, including any right to receive any such securities exercisable within 60 days;

(C) that has agreed in acting as a qualified independent underwriter to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act, specifically including those inherent in Section 11 thereof; and

(D) that has served as underwriter in at least three public offerings of a similar size and type during the three-year period immediately preceding the filing of the registration statement or the date of first sale in an offering without a registration statement. This requirement will be deemed satisfied if, during the past three years, the member:

(i) with respect to a proposed public offering of debt securities, has acted as sole underwriter or book-running lead or co-manager of at least three public offerings of debt securities each with gross proceeds of not less than 25% of the anticipated gross proceeds of the proposed offering; and

(ii) with respect to a proposed public offering of equity securities, has acted as sole underwriter or book-running lead or co-manager of at least three public offerings of equity securities (or of securities convertible into equity securities), each with gross proceeds of not less than 50% of the anticipated gross proceeds of the proposed offering.

(E) none of whose associated persons who function in a supervisory capacity who is responsible for organizing, structuring or performing due diligence with respect to corporate public offerings of securities:

(i) has been convicted within ten years prior to the filing of the registration statement or the preparation of an offering circular in an offering without a registration statement of a violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder, in connection with a registered or unregistered offering of securities;

(ii) is subject to any order, judgment, or decree of any court of competent jurisdiction entered within ten years prior to the filing of the registration statement, or the preparation of an offering circular in an offering without a registration statement, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder in connection with a registered or unregistered offering of securities; or

(iii) has been suspended or barred from association with any member by an order or decision of the SEC, any state, FINRA or any other self-regulatory organization within ten years prior to the filing of the registration statement, or the preparation of an offering circular in an offering without a registration statement, for any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules, or regulations promulgated thereunder, or the anti-fraud rules of any self-regulatory organization in connection with a registered or unregistered offering of securities.

(13) Registration Statement

The term "registration statement" means a registration statement as defined by Section 2(a)(8) of the Securities Act; notification on Form 1A filed with the SEC pursuant to the provisions of Securities Act Rule 252; or any other document, by whatever name known, initiating a registration or similar process for an issue of securities which is required to be filed by the laws or regulations of any federal or state agency.

~~**(14) Subordinated Debt**~~

~~The term "subordinated debt" includes (A) debt of an issuer which is expressly subordinate in right of payment to, or with a claim on assets subordinate to, any existing or future debt of such issuer; or (B) all debt that is specified as subordinated at the time of issuance. Subordinated debt shall not include short-term debt with maturity at issuance of less than one year and secured debt and bank debt not specified as subordinated debt at the time of issuance.~~