

- (14) securities acquired as the result of a conversion of securities that were originally acquired prior to the review period;
- (15) securities acquired as the result of an exercise of options or warrants that were originally acquired prior to the review period;
- (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;
- (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 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).

(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.

¹ The current annual amount fixed by the Board of Governors is \$100.

Amended by SR-FINRA-2019-012. eff. Mar. 20, 2020 and Sept. 16, 2020.
 Amended by SR-FINRA-2020-007 eff. June 30, 2020.
 Amended by SR-FINRA-2014-006 eff. April 11, 2016.
 Amended by SR-FINRA-2014-003 eff. May 28, 2014.
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 Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
 Amended by SR-FINRA-2010-047 eff. Oct. 15, 2010.
 Amended by SR-FINRA-2009-062 eff. Oct. 19, 2009.
 Amended by SR-FINRA-2007-009 eff. Sep. 14, 2009.
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 Amended by SR-FINRA-2008-057 eff. Dec. 15, 2008.
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 Amended by SR-NASD-2006-068 eff. July 1, 2006.
 Amended by SR-NASD-2000-04 eff. March 22, 2004.
 Amended by SR-NASD-2003-139 eff. Oct. 15, 2003.
 Amended by SR-NASD-2003-75 eff. July 9, 2003.
 Amended by SR-NASD-2003-68 eff. April 7, 2003.
 Amended by SR-NASD-2001-46 eff. July 12, 2002.
 Amended by SR-NASD-2000-13 eff. April 16, 2001.
 Amended by SR-NASD-99-74 eff. June 20, 2000.
 Amended by SR-NASD-99-02 eff. Dec. 7, 1999.
 Amended by SR-NASD-99-01 eff. May 17, 1999.
 Amended by SR-NASD-98-81 eff. Dec. 21, 1998.
 Amended by SR-NASD-98-87 eff. Nov. 23, 1998.
 Amended by SR-NASD-97-38 eff. Dec. 15, 1997.
 Amended by SR-NASD-97-68 eff. Oct. 3, 1997.
 Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
 Amended by SR-NASD-97-18 eff. Mar. 14, 1997.
 Amended by SR-NASD-97-15 eff. Mar. 4, 1997.
 Amended by SR-NASD-95-29 eff. Jan. 1, 1996.
 Amended by SR-NASD-95-18 eff. June 19, 1995.
 Amended by SR-NASD-94-61 eff. Mar. 2, 1995.
 Amended by SR-NASD-94-64 eff. Feb. 9, 1995.
 Amended by SR-NASD-94-12 eff. Mar. 7, 1994.
 Amended by SR-NASD-93-13 eff. Feb. 1, 1994.
 Amended by SR-NASD-93-45 eff. Dec. 13, 1993.
 Corporate Financing Rule adopted by SR-NASD-91-19 eff. Apr. 15, 1992.

Replaced *Interpretation of the Board of Governors — Review of Corporate Financing*, Art. III, Sec. 1 of the Rules of Fair Practice, which was amended eff. May 4, 1971; June 17, 1971; Mar. 19, 1982; amended by SR-NASD-83-27 eff. May 31, 1983; Aug. 4, 1983; July 13, 1984; Sept. 12, 1985; amended by SR-NASD-86-6 eff. Mar. 1, 1986; Oct. 14, 1988; amended by SR-NASD-88-13 eff. Jan. 1, 1989.

Selected Notices: 75-14, 76-27, 81-16, 81-17, [83-12](#), [83-15](#), [83-43](#), [83-44](#), [84-37](#), [85-6](#), [86-27](#), [88-32](#), [88-88](#), [88-92](#), [90-10](#), [92-28](#), [93-84](#), [93-88](#), [94-82](#), [95-22](#), [95-73](#), [95-95](#), [97-80](#), [98-88](#), [99-17](#), [99-50](#), [00-53](#), [02-26](#), [03-53](#), [04-13](#), [08-57](#), [09-49](#), [14-22](#), [15-02](#), [20-10](#), [20-18](#).

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> [FINRA RULES](#) > [5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES](#)
> [5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION](#) > [5120. OFFERINGS OF MEMBERS' SECURITIES](#)

5121. Public Offerings of Securities With Conflicts of Interest

The Rule

Notices

(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 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 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 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;

(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) 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.

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 Amended by SR-FINRA-2014-003 eff. May 28, 2014.
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 Amended by SR-NASD-97-95 eff. Aug. 17, 1998.
 Amended by SR-NASD-97-38 eff. Dec. 15, 1997.
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 Amended by SR-NASD-96-17 eff. Aug 15, 1996.
 Amended by SR-NASD-92-46 eff. May 10, 1994.
 Amended by SR-NASD-94-12 eff. Mar. 7, 1994.
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 Amended by SR-NASD-87-21 eff. Mar. 29, 1988.
 Amended by SR-NASD-76-5 eff. May 19, 1977.
 Amended eff. Feb. 8, 1971; Dec. 29, 1971; Sept. 1, 1972; Mar. 21, 1972; Apr. 1, 1974; June 2, 1983; Feb. 22, 1984; Oct. 16, 1992; Jan. 28, 1993.

Selected Notices: 75-14, 77-13, 80-3, 80-39, [83-45](#), [86-28](#), [88-33](#), [88-89](#), [88-98](#), [88-100](#), [90-39](#), [92-57](#), [92-58](#), [94-45](#), [95-44](#), [96-53](#), [04-13](#), [09-49](#), [10-49](#), [20-10](#).

◀ 5120. OFFERINGS OF MEMBERS' SECURITIES

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5122. PRIVATE PLACEMENTS OF SECURITIES ISSUED BY MEMBERS ▶

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5122. Private Placements of Securities Issued by Members

The Rule

Notices

(a) Definitions

(1) Member Private Offering

A "member private offering" means a private placement of unregistered securities issued by a member or a control entity.

(2) Control Entity

A "control entity" means any entity that controls or is under common control with a member, or that is controlled by a member or its associated persons.

(3) Control

The term "control" means beneficial interest, as defined in [Rule 5130\(i\)\(1\)](#), of more than 50 percent of the outstanding voting securities of a corporation, or the right to more than 50 percent of the distributable profits or losses of a partnership or other non-corporate legal entity. Control will be determined immediately after the closing of an offering, and in the case of an offering with multiple intended closings, immediately following each closing.

(4) Private Placement

The term "private placement" means a non-public offering of securities conducted in reliance on an available exemption from registration under the Securities Act.

(b) Requirements

No member or associated person may offer or sell any security in a Member Private Offering unless the following conditions have been met:

(1) Disclosure Requirements

(A) If an offering has a private placement memorandum or term sheet, then such memorandum or term sheet must be provided to each prospective investor and must contain disclosures addressing:

- (i) intended use of the offering proceeds; and
- (ii) offering expenses and the amount of selling compensation that will be paid to the member and its associated persons.

(B) If an offering does not have a private placement memorandum or term sheet, then the member must prepare an offering document that contains the disclosures required in paragraph (b)(1)(A)(i) and (ii) and provide such document to each prospective investor.

(2) Filing Requirements

A member must file the private placement memorandum, term sheet, or other offering document, and any retail communication (as defined under Rule 2210) that promotes or recommends the member private offering with the Corporate Financing Department at or prior to the first time the document or retail communication is provided to any prospective investor. Any amendment(s) or exhibit(s) to the private placement memorandum, term sheet, other offering document or retail communication also must be filed with the Department within ten days of being provided to any investor or prospective investor.

(3) Use of Offering Proceeds

For each Member Private Offering, at least 85% of the offering proceeds raised must be used for business purposes, which shall not include offering costs, discounts, commissions or any other cash or non-cash sales incentives. The use of the offering proceeds also must be consistent with the disclosures required in paragraph (b)(1).

If, in connection with the offer and sale of any security in a Member Private Offering, a member or associated person discovers after the fact that one or more of the conditions listed above have not been met, the member or associated person must promptly conform the offering to comply with this Rule.

(c) Exemptions

The following Member Private Offerings are exempt from the requirements of this Rule:

- (1) offerings sold solely to:
 - (A) institutional accounts, as defined in [Rule 4512\(c\)](#);
 - (B) qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act;
 - (C) qualified institutional buyers, as defined in Securities Act Rule 144A;
 - (D) investment companies, as defined in Section 3 of the Investment Company Act;
 - (E) an entity composed exclusively of qualified institutional buyers, as defined in Securities Act Rule 144A; and
 - (F) banks, as defined in Section 3(a)(2) of the Securities Act.
- (2) offerings of exempted securities, as defined in Section 3(a)(12) of the Exchange Act;
- (3) offerings made pursuant to Securities Act Rule 144A or SEC Regulation S;
- (4) offerings in which a member acts primarily in a wholesaling capacity (i.e., it intends, as evidenced by a selling agreement, to sell through its affiliate broker-dealers, less than 20% of the securities in the offering);
- (5) offerings of exempt securities with short term maturities under Section 3(a)(3) of the Securities Act;
- (6) offerings of subordinated loans under SEA Rule 15c3-1, Appendix D (see NASD Notice to Members [02-32](#) (June 2002));
- (7) offerings of "variable contracts", as defined in [Rule 2320\(b\)](#);
- (8) offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in [Rule 5110\(h\)\(2\)](#) (D);
- (9) offerings of unregistered investment grade rated debt and preferred securities;
- (10) offerings to employees and affiliates of the issuer or its control entities;
- (11) offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;
- (12) offerings of securities of a commodity pool operated by a commodity pool operator, as defined under Section 1a(11) of the Commodity Exchange Act;
- (13) offerings of equity and credit derivatives, including OTC options; provided that the derivative is not based principally on the member or any of its control entities; and
- (14) offerings filed with the Department under Rules [2310](#), [5110](#) or [Rule 5121](#).

(d) Confidential Treatment

FINRA shall accord confidential treatment to all documents and information filed pursuant to this Rule and shall utilize such documents and information solely for the purpose of review to determine compliance with the provisions of applicable FINRA rules or for other regulatory purposes deemed appropriate by FINRA.

(e) Application for Exemption

Pursuant to the [Rule 9600](#) Series, FINRA may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

• • • Supplementary Material: -----

.01 Private Placement Memorandum. Nothing in this rule shall require a member to prepare a private placement memorandum. A member may satisfy the disclosure and filing requirements in the Rule with an offering document that does not meet the additional requirements of Securities Act Rule 502.

Amended by SR-FINRA-2022-022 eff. July 28, 2022.
Amended by SR-FINRA-2020-038. eff. Oct. 1, 2021.
Amended by SR-FINRA-2019-012. eff. Sept. 16, 2020.
Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
Amended by SR-FINRA-2009-078 eff. Dec. 14, 2009.
Amended by SR-FINRA-2009-062 eff. Oct. 19, 2009.
Amended by SR-FINRA-2009-046 eff. Aug. 17, 2009.
Adopted by SR-FINRA-2008-020 eff. June 17, 2009.

Selected Notice: [09-27](#), [17-17](#), [20-10](#), [21-26](#).

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> [FINRA RULES](#) > [5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES](#)
 > [5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION](#) > [5120. OFFERINGS OF MEMBERS' SECURITIES](#)

5123. Private Placements of Securities

The Rule

Notices

(a) Filing Requirements

Each member that sells a security in a non-public offering in reliance on an available exemption from registration under the Securities Act ("private placement") must: (i) submit to FINRA, or have submitted on its behalf by a designated member, a copy of any private placement memorandum, term sheet or other offering document, and any retail communication (as defined in Rule 2210) that promotes or recommends the private placement, including any materially amended versions thereof, used in connection with such sale within 15 calendar days of the date of first sale; or (ii) notify FINRA that no such offering documents or retail communications were used. Members must provide FINRA with the required documents, retail communications, or notification and related information, if known, by filing an electronic form in the manner prescribed by FINRA.

(b) Exemptions

The following private placements are exempt from the requirements of this Rule:

- (1) offerings sold by the member or person associated with the member solely to any one or more of the following:
 - (A) institutional accounts, as defined in [Rule 4512\(c\)](#);
 - (B) qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act;
 - (C) qualified institutional buyers, as defined in Securities Act Rule 144A;
 - (D) investment companies, as defined in Section 3 of the Investment Company Act;
 - (E) an entity composed exclusively of qualified institutional buyers, as defined in Securities Act Rule 144A;
 - (F) banks, as defined in Section 3(a)(2) of the Securities Act;
 - (G) employees and affiliates, as defined in [Rule 5121](#), of the issuer;
 - (H) knowledgeable employees as defined in Investment Company Act Rule 3c-5;
 - (I) eligible contract participants, as defined in Section 3(a)(65) of the Exchange Act; and
 - (J) accredited investors described in Securities Act Rule 501(a)(1), (2), (3) or (7).
- (2) offerings of exempted securities, as defined in Section 3(a)(12) of the Exchange Act;
- (3) offerings made pursuant to Securities Act Rule 144A or SEC Regulation S;
- (4) offerings of exempt securities with short term maturities under Section 3(a)(3) of the Securities Act and debt securities sold by members pursuant to Section 4(2) of the Securities Act so long as the maturity does not exceed 397 days and the securities are issued in minimum denominations of \$150,000 (or the equivalent thereof in another currency);
- (5) offerings of subordinated loans under SEA Rule 15c3-1, Appendix D (see NASD Notice to Members [02-32](#) (June 2002));
- (6) offerings of "variable contracts," as defined in [Rule 2320\(b\)\(2\)](#);
- (7) offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in [Rule 5110\(h\)\(2\)](#) (D);
- (8) offerings of non-convertible debt or preferred securities that meet the transaction eligibility criteria for registering primary offerings of non-convertible securities on Forms S-3 and F-3;
- (9) offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;

(10) offerings of securities of a commodity pool operated by a commodity pool operator, as defined under Section 1a(11) of the Commodity Exchange Act;

(11) business combination transactions as defined in Securities Act Rule 165(f);

(12) offerings of registered investment companies;

(13) standardized options, as defined in Securities Act Rule 238; and

(14) offerings filed with FINRA under Rules [2310](#), [5110](#), [5121](#) and [5122](#), or exempt from filing thereunder in accordance with [Rule 5110\(h\)\(1\)](#).

(c) Confidential Treatment

FINRA shall accord confidential treatment to all documents and information filed pursuant to this Rule and shall utilize such documents and information solely for the purpose of review to determine compliance with the provisions of applicable FINRA rules or for other regulatory purposes deemed appropriate by FINRA.

(d) Application for Exemption

Pursuant to the [Rule 9600](#) Series, FINRA may exempt a member or associated person from the provisions of this Rule for good cause shown.

Amended by SR-FINRA-2020-038. eff Oct. 1, 2021.
 Amended by SR-FINRA-2019-012. eff. Sept. 16, 2020.
 Amended by SR-FINRA-2013-026 eff. June 20, 2013.
 Adopted by SR-FINRA-2011-057 eff. Dec. 3, 2012.

Selected Notices: [12-40](#), [13-26](#), [17-17](#), [20-10](#) [21-26](#).

◀ [5122. PRIVATE PLACEMENTS OF SECURITIES ISSUED BY MEMBERS](#)

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[5130. RESTRICTIONS ON THE PURCHASE AND SALE OF INITIAL EQUITY PUBLIC OFFERINGS](#) ▶

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Oct 01, 2021 onwards

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- > FINRA RULES > 5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES
> 5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

5130. Restrictions on the Purchase and Sale of Initial Equity Public Offerings

The Rule

Notices

(a) General Prohibitions

(1) A member or a person associated with a member may not sell, or cause to be sold, a new issue to any account in which a restricted person has a beneficial interest, except as otherwise permitted herein.

(2) A member or a person associated with a member may not purchase a new issue in any account in which such member or person associated with a member has a beneficial interest, except as otherwise permitted herein.

(3) A member may not continue to hold new issues acquired by the member as an underwriter, selling group member or otherwise, except as otherwise permitted herein.

(4) Nothing in this paragraph (a) shall prohibit:

(A) sales or purchases from one member of the selling group to another member of the selling group that are incidental to the distribution of a new issue to a non-restricted person at the public offering price;

(B) sales or purchases by a broker-dealer of a new issue at the public offering price as part of an accommodation to a non-restricted person customer of the broker-dealer; or

(C) purchases by a broker-dealer (or owner of a broker-dealer), organized as an investment partnership, of a new issue at the public offering price, provided such purchases are credited to the capital accounts of its partners in accordance with paragraph (c)(4).

(b) Preconditions for Sale

Before selling a new issue to any account, a member must in good faith have obtained within the twelve months prior to such sale, a representation from:

(1) Beneficial Owners

the account holder(s), or a person authorized to represent the beneficial owners of the account, that the account is eligible to purchase new issues in compliance with this Rule; or

(2) Conduits

a bank, foreign bank, broker-dealer, or investment adviser or other conduit that all purchases of new issues are in compliance with this Rule.

A member may not rely upon any representation that it believes, or has reason to believe, is inaccurate. A member shall maintain a copy of all records and information relating to whether an account is eligible to purchase new issues in its files for at least three years following the member's last sale of a new issue to that account.

(c) General Exemptions

The general prohibitions in paragraph (a) of this Rule shall not apply to sales to and purchases by the following accounts or persons, whether directly or through accounts in which such persons have a beneficial interest:

(1) An investment company registered under the Investment Company Act;

(2) A common trust fund or similar fund as described in Section 3(a)(12)(A)(iii) of the Exchange Act, provided that:

(A) the fund has investments from 1,000 or more accounts; and

(B) the fund does not limit beneficial interests in the fund principally to trust accounts of restricted persons;

(3) An insurance company general, separate or investment account, provided that:

(A) the account is funded by premiums from 1,000 or more policyholders, or, if a general account, the insurance company has 1,000 or more policyholders; and

(B) the insurance company does not limit the policyholders whose premiums are used to fund the account principally to restricted persons, or, if a general account, the insurance company does not limit its policyholders principally to restricted persons;

(4) An account if the beneficial interests of restricted persons do not exceed in the aggregate 10% of such account;

(5) A publicly traded entity (other than a broker-dealer or an affiliate of a broker-dealer where such broker-dealer is authorized to engage in the public offering of new issues either as a selling group member or underwriter) that:

(A) is listed on a national securities exchange; or

(B) is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange;

(6) An investment company organized under the laws of a foreign jurisdiction, provided that:

(A) the investment company is listed on a foreign exchange for sale to the public or authorized for sale to the public by a foreign regulatory authority;

(B) no person owning more than 5% of the shares of the investment company is a restricted person, the investment company has 100 or more direct investors, or the investment company has 1,000 or more indirect investors; and

(C) the investment company was not formed for the specific purpose of permitting restricted persons to invest in new issues;

(7) An Employee Retirement Income Security Act benefits plan that is qualified under Section 401(a) of the Internal Revenue Code, provided that such plan is not sponsored solely by a broker-dealer;

(8) An employee retirement benefits plan organized under and governed by the laws of the United States or of a foreign jurisdiction, provided that such plan or family of plans:

(A) has, in aggregate, at least 10,000 plan participants and beneficiaries and \$10 billion in assets;

(B) is operated in a non-discriminatory manner insofar as a wide range of employees, regardless of income or position, are eligible to participate without further amendment or action by the plan sponsor;

(C) is administered by trustees or managers that have a fiduciary obligation to administer the funds in the best interests of the participants and beneficiaries; and

(D) is not sponsored solely by a broker-dealer;

(9) A state or municipal government benefits plan that is subject to state and/or municipal regulation;

(10) A tax exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code; or

(11) A church plan under Section 414(e) of the Internal Revenue Code.

(d) Issuer-Directed Securities

The prohibitions on the purchase and sale of new issues in this Rule shall not apply to securities that:

(1) are specifically directed in writing by the issuer, an affiliate of the issuer, or a selling shareholder, to persons that are restricted under the Rule; provided, however, that securities directed by an issuer, an affiliate of the issuer, or a selling shareholder, may not be sold to or purchased by:

(A) a broker-dealer; or

(B) an account in which any restricted person specified in paragraphs (i)(10)(B) or (i)(10)(C) of this Rule has a beneficial interest, unless such person, or a member of his or her immediate family, is an employee or director of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent, or of a franchisee of any of the foregoing entities. Also, for purposes of this paragraph (d) (1) only, a parent/subsidiary relationship is established if the parent has the right to vote 50% or more of a class of voting security of the subsidiary, or has the power to sell or direct 50% or more of a class of voting security of the subsidiary;

(2) are specifically directed in writing by the issuer, an affiliate of the issuer, or a selling shareholder, and are part of an offering in which no broker-dealer:

(A) underwrites any portion of the offering;

(B) solicits or sells any new issue securities in the offering; and

(C) has any involvement or influence, directly or indirectly, in the issuer's allocation decisions with respect to any of the new issue securities in the offering;

(3) are part of a program sponsored by the issuer or an affiliate of the issuer that meets the following criteria:

(A) the opportunity to purchase a new issue under the program is offered to at least 10,000 participants;

(B) every participant is offered an opportunity to purchase an equivalent number of shares, or will receive a specified number of shares under a predetermined formula applied uniformly across all participants;

(C) if not all participants receive shares under the program, the selection of the participants eligible to purchase shares is based upon a random or other non-discretionary allocation method; and

(D) the class of participants does not contain a disproportionate number of restricted persons as compared to the investing public generally; or

(4) are directed in writing to eligible purchasers who are otherwise restricted under the Rule as part of a conversion offering in accordance with the standards of the governmental agency or instrumentality having authority to regulate such conversion offering.

(e) Anti-Dilution Provisions

The prohibitions on the purchase and sale of new issues in this Rule shall not apply to an account in which a restricted person has a beneficial interest that meets the following conditions:

(1) the account has held an equity ownership interest in the issuer, or a company that has been acquired by the issuer in the past year, for a period of one year prior to the effective date of the offering;

(2) the sale of the new issue to the account shall not increase the account's percentage equity ownership in the issuer above the ownership level as of three months prior to the filing of the registration statement in connection with the offering;

(3) the sale of the new issue to the account shall not include any special terms; and

(4) the new issue purchased pursuant to this paragraph (e) shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

(f) Stand-by Purchasers

The prohibitions on the purchase and sale of new issues in this Rule shall not apply to the purchase and sale of securities pursuant to a stand-by agreement that meets the following conditions:

(1) the stand-by agreement is disclosed in the prospectus;

(2) the stand-by agreement is the subject of a formal written agreement;

(3) the managing underwriter(s) represents in writing that it was unable to find any other purchasers for the securities; and

(4) the securities sold pursuant to the stand-by agreement shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

(g) Under-Subscribed Offerings

Nothing in this Rule shall prohibit an underwriter, pursuant to an underwriting agreement, from placing a portion of a public offering in its investment account when it is unable to sell that portion to the public.

(h) Exemptive Relief

Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from this Rule to the extent that such exemption is consistent with the purposes of the Rule, the protection of investors and the public interest.

(i) Definitions

(1) "Beneficial interest" means any economic interest, such as the right to share in gains or losses. The receipt of a management or performance based fee for operating a collective investment account, or other fees for acting in a fiduciary capacity, shall not be considered a