

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="14"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2011"/> - * <input type="text" value="057"/> Amendment No. (req. for Amendments *) <input type="text" value="2"/>
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Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * <input type="text" value="Stan"/>	Last Name * <input type="text" value="Macel"/>
Title * <input type="text" value="Assistant General Counsel"/>	
E-mail * <input type="text" value="stan.macel@finra.org"/>	
Telephone * <input type="text" value="(202) 728-8056"/>	Fax <input type="text" value="(202) 728-8264"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By Vice President and Associate General Counsel
(Name *) (Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On October 4, 2011, FINRA filed with the Securities and Exchange Commission (“SEC” or “Commission”) SR-FINRA-2011-057, a proposed rule change to adopt FINRA Rule 5123 (Private Placements of Securities). The Commission published the proposed rule change for comment in the Federal Register on October 24, 2011.¹ The Commission received 16 comment letters in response to the proposed rule change.² On January 19, 2012, FINRA filed Partial Amendment No. 1 to the proposed rule change and a letter responding to comments (the “Response to Comments”).³ On January 26, 2012, the Commission published in the Federal Register a notice and order to solicit comments on Partial Amendment No. 1 from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (“Exchange Act”) to determine whether to approve or disapprove the proposed rule change, as modified by

¹ See Securities Exchange Act Release No. 65585 (October 18, 2011), 76 FR 65758 (October 24, 2011) (Notice of Filing of SR-FINRA-2011-057) (“Proposing Release”).

² See letters from Ryan Adams, Christine Lazaro, Esq., and Lisa Catalano, Esq., St. John's School of Law Securities Arbitration Clinic, dated November 10, 2011 (“St. John’s”); Ryan K. Bakhtiari, President, Public Investors Arbitration Bar Association, dated November 14, 2011 (“PIABA”); David T. Bellaire, Esq., Financial Services Institute, Inc., dated November 14, 2011 (“FSI”); Robert E. Buckholz, Chair, Committee on Securities Regulation, New York City Bar Association, dated November 9, 2011 (“NYC Bar”); Richard B. Chess, President, Real Estate Investment Securities Association, November 14, 2011 (“REISA”); Alicia M. Cooney, Managing Director, Monument Group, dated January 12, 2012 (“Monument”); Martel Day, Chairman, Investment Program Association, dated November 14, 2011 (“IPA”); Jack E. Herstein, President, North American Securities Administrators Association, Inc., dated November 17, 2011 (“NASAA”); Joan Hinchman, Executive Director, National Society of Compliance Professionals, dated November 14, 2011 (“NSCP”); William A. Jacobson, Associate Clinical Professor, and Carolyn L. Nguyen, Cornell Law School, dated November 14, 2011 (“Cornell”); Stuart J. Kaswell, Executive Vice President, Managed Funds Association, dated November 14, 2011 (“MFA”); William H. Navin, Senior Vice President, The Options Clearing Corporation, dated November 9, 2011 (“OCC”); Jeffrey W. Rubin, Chair, Federal Regulation of Securities Committee, American Bar Association, dated November 14, 2011 (“ABA”); Sullivan & Cromwell LLP, dated November 10, 2011 (“S&C”); Osamu Watanabe, Deputy General Counsel, Moelis & Co., dated November 28, 2011 (“Moelis”); and Donald S. Weiss, K&L Gates LLP, dated November 14, 2011 (“K&L Gates”).

³ See letter from Stan Macel, FINRA, to Elizabeth Murphy, Secretary, SEC, dated January 19, 2012; see also Partial Amendment No. 1 to SR-FINRA-2011-057, available on www.finra.org.

Partial Amendment No. 1.⁴ The Commission received nine letters in response to the January 26, 2012 notice and order.⁵ Contemporaneously with this Partial Amendment No. 2, FINRA is submitting by separate letter its rebuttal to comments submitted in response to the Commission's January 26, 2012 notice and order. As discussed in that letter, FINRA is filing this Partial Amendment No. 2 to revise certain proposed rule language.

First, FINRA is proposing to eliminate the disclosure requirement. As a result, Paragraph (a) of proposed Rule 5123 would contain only a filing requirement. Paragraph (a) would require each member that sells a security in a private placement (as defined therein) to: (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 used in connection with such sale within 15 calendar days of the date of first sale, and any material amendments to a previously-filed document within 15 calendar days of the date such document is provided to any investor; or (ii) indicate to FINRA that no such offering documents were used.

This requirement basically combines the filing requirements proposed in Partial Amendment No. 1, paragraphs (a) and (b) (addressing private placements with and without disclosure documents, respectively), while deleting the disclosure requirements therein. As a result, previously-proposed paragraph (b) would be eliminated and previous paragraphs (c) through (e) would be designated as paragraphs (b) through (d).

FINRA is also proposing to add clarifying language to the exemption for employees and affiliates in newly-designated paragraph (b)(1)(G) (formerly paragraph (c)(1)(G)). It would clarify the term "affiliates" by inserting directly following that term the clarifying language: ", as defined in Rule 5121,".

Finally, FINRA proposes to delete the Supplementary Material proposed in Partial Amendment No. 1. Supplementary Material .01 proposed adding a definition of "affiliate," which would have noted that the term has the same meaning as in Rule 5121. This would become redundant based on the proposed change to paragraph (b)(1)(G)

⁴ See Securities Exchange Act Release No. 66203 (January 20, 2012), 77 FR 4065 (January 26, 2012) (Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, etc.). The comment period closed on February 27, 2012.

⁵ See letters from Wesley A. Brown, Managing Director and Chief Compliance Officer, St. Charles Capital, dated February 26, 2012 ("St. Charles"); NYC Bar, dated February 24, 2012; Monument, dated February 27, 2012; William A. Jacobson, Associate Clinical Professor, and Eric Brooks, Cornell, dated February 27, 2012; MFA, dated February 27, 2012; Douglas Martin, dated February 1, 2012 ("Martin"); the Board of Directors of the National Investment Banking Association, dated February 27, 2012 ("NIBA"); Daniel Oschin, President, REISA, dated February 27, 2012; and S&C, dated February 23, 2012.

described above. Proposed Supplementary Material .02, regarding disclosure, would no longer be applicable since the disclosure requirement would be eliminated.

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 2, with the proposed changes in Partial Amendment No. 1 shown as if adopted. Proposed additions in this Partial Amendment No. 2 appear underlined; proposed deletions appear in brackets.

* * * * *

5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

* * * * *

5120. Offerings of Members' Securities

* * * * *

5123. Private Placements of Securities

(a) [Disclosure and]Filing Requirements[for Private Placements with Disclosure Documents]

[If a member or person associated with a]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”)[, and a] 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 [disclosure] offering document [“disclosure document” drafted by or on behalf of the issuer is] used in connection with such sale within 15 calendar days of the date of first sale, and any material amendments to a previously-filed document within 15 calendar days of the date such document is provided to any investor; or (ii) indicate to FINRA that no such offering documents were used.[, then:]

[(1) the member must provide the disclosure document to each investor (other than investors exempt under paragraph (c)) to whom it sells the security prior to sale;]

[(2) the disclosure document must include a description of the anticipated use of offering proceeds, the amount and type of offering expenses, and the amount and type of compensation provided or to be provided to sponsors, finders, consultants, and members and their associated persons in connection with the offering; and]

[(3) the disclosure document must be filed with FINRA either by each participating member or by a member designated to make such filing on behalf of members identified in the filing no later than 15 calendar days after the date of first sale. Any material amendments to the previously-filed disclosure document must be filed with FINRA no later than 15 calendar days after the date such document is provided to any investor.]

(b) [Filing Requirement for Private Placements without Disclosure Documents]

[If a member or person associated with a member sells a security in a private placement in which no disclosure document is used, then each member that sells securities in such private placement or a member acting on behalf of each such member must make a notice filing no later than 15 calendar days after the date of first sale identifying the private placement and the participating members and stating that no disclosure document was used.]

[(c)] 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 5122, 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(b)(8)(E);

(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(b)(7).

(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 associated person from the provisions of this Rule for good cause shown.

[••• Supplementary Material: -----]

[.01 Definition.]

[(a) “Affiliate” shall have the same meaning as in Rule 5121.]

[.02 Delivery of Disclosure Document To A Single Customer. The disclosure requirement in this Rule shall not require delivery of multiple copies of a disclosure document to a single customer. To the extent that disclosure is required, each member must deliver disclosure documents only to persons to whom it sells shares in the private placement.]

* * * * *

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined.

* * * * *

5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

* * * * *

5120. Offerings of Members' Securities

* * * * *

5123. Private Placements of Securities

(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 used in connection with such sale within 15 calendar days of the date of first sale, and any material amendments to a previously-filed document within 15 calendar days of the date such document is provided to any investor; or (ii) indicate to FINRA that no such offering documents were used.

(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));

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(7) offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in Rule 5110(b)(8)(E);

(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(b)(7).

(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.

* * * * *