DEALMAKER

August 4, 2023

Financial Industry Regulatory Authority
Corporate Financing Department
9509 Key West Avenue
Rockville, MD 20850

RE: Rule 5110 and Regulatory Notice 20-22

To Whom It May Concern:

As members of the Association of Online Investment Platforms (AOIP), we are pleased to see so many recent changes moving through the House and Senate. Despite a helpful increase to $75 million per Regulation A+ offering per 12-month period, with the recent Harmonization Adoption, we remain supportive of a further increase of the Regulation A+ offering cap to continue to attract high-quality issuers and investors to this forum. We also support legislation aimed at reducing predatory financing and shorts for small caps once issuers go public and standardized review times for FINRA “No objection” letters under Corporate Financing Rule 5110 in connection with Regulation A+ filings. Standardized review times reduce the review burden for broker-dealers and are particularly important, given current delays are causing significant timing challenges for issuers seeking financing.

There is more work still to do regarding the governance of FINRA-member broker-dealer fees, which is still currently based on FINRA’s 1992 fee model (“Fee Model”). This governance does not take into account the blended services model many service providers have implemented since 2012’s JOBS Acts adoption; these models are responsive to issuer-clients’ greatest pain point: that a Regulation A+ offering was simply too complex and too costly to conduct.

The 30+ year-old Fee Model assumes that issuers will hire a broker-dealer to conduct a road show led by registered representatives and management (i.e., in-person meetings), and that all other services will be provided by unaffiliated entities. In reality, the issuer-clients are demanding more technology, simplicity, and blended services being offered by a limited number of providers. As readers of this letter likely know, Regulation A+ offerings are primarily conducted via online forums hosted by regulated intermediaries. Therefore, the assumptions of the Fee Model, adopted before the widespread adoption of the internet, do not contemplate the costs associated with an offering for such services, such as building efficient technology, broker-dealer sales/compliance, digital marketing services, and transfer agency being provided by broker-dealer affiliated entities, in addition to the legal fees, compiling fees, and audit costs. When the services are offered by broker-dealer affiliated entities, it aggregates all of the offering related fees for these services into underwriting compensation (as defined in FINRA Rule 5110), with few if any exceptions.

Continuing to support the Fee Model, which is not reflective of today’s vastly different services model, has two systemic negative impacts on the space. First, it discourages technology development, raising the cost of capital for issuers and impeding innovation. Second, the fee caps

make it difficult or impossible for licensed broker-dealers to offer blended services—which ultimately pushes activity to non-regulated parties, which are under much less regulatory scrutiny and therefore, may act with less care and compliance.

After the AOIP's careful consideration of:

(1) Rule 5110 and the proposing and adopting releases related thereto;
(2) FINRA Notice to Members 92-53 and Regulatory Notice 20-22;
(3) The Form 1-A Regulation A Offering Statement; and
(4) discussions with industry participants and our members,

We are proposing modifications to the existing rules around compensation and fees for underwriting, including the need in our industry for certain payments to be made before filing, and for online investment platforms to utilize industry-standard software-as-a-service (SaaS) fees to offer safe, efficient, and compliant digital services that benefit issuers and investors alike.

1. Fee Model Updates

Introduction & Rationale

We recognize that the business models used by online industry participants differ greatly from the business models utilized by most brokerage firms, both in 1992 and today. Some of the key strategies our participants use, and the core services our participants offer, did not exist in 1992, and today are generally offered by third parties, if at all.

The offering of these services by the broker-dealer's affiliated companies would provide FINRA as well as investors with the advantage of a degree of oversight as to the services and the charges, as well as allow for the more efficient delivery of services to the Issuer. However, if 1992 maximum underwriting compensation standards are required to be utilized, the provision of such services, while beneficial to issuers engaged in capital raising, as well as to the investing public, ***would not be profitable for online investment platforms, the prominent players in the space***. Consequently, the enforcement of these fee limits ultimately encourages disintermediation from regulated entities and promotes unregulated firms, whose fees are subject to no maximum compensation or specific disclosure requirement in connection to the offering process, to provide services to Issuers. The result is a greatly increased risk of firms without an obligation to fair disclosure and retail investors paying more and receiving less protection in these offerings.

We look forward to continued discussions about how these proposed innovative services can be offered in a manner providing online broker-dealers and their affiliates with a reasonable rate of return on the cost of providing them.

AOIP is hereby submitting its framework for underwriting compensation charges and charges related to the offering to better reflect the actual work carried out by investment platforms, broker-dealers, and third-party providers. We believe that the arrangements between investment platforms and issuers will be more clearly explained by this framework and will provide the context necessary to understand and support our proposed modifications to the rule.

Fees for Filing and Documentation Preparation

Many services offered by broker-dealers require payment in advance of SEC filing. This is because the actual work carried out prior to launching an offering is extensive, time-consuming, and highly valuable to the Issuer. We have included a more fulsome description of the work, which includes:

Due Diligence Review

- Performing due diligence review of Issuer, Officers, Directors, and applicable beneficial owners;

Consulting on the Issuer's Self-Directed Electronic Road Show Presentation and Delivery

- Consulting on Issuer's platform's analytic and communication tools;
- Analysis and advice related to white-labeled platform customization;
- Consulting with the Issuer to assist in integrating API/webhooks to extend data and data analytics tools into landing pages and to integrate Issuer's own community;
- Consulting with Issuer on optimizing question customization to enhance the efficiency of potential investor responses to the electronic roadshow;
- Consulting with Issuer regarding the Issuer's landing page design to maximize viewer response;
- Providing advice regarding current market conditions and prior self-directed capital raises to assist the Issuer's decision-making process regarding the structure and pricing of the offering;
- Consulting with the Issuer on the selection of web hosting services for the electronic roadshow;
- Consulting with the Issuer on completing the campaign template page;
- Advising the Issuer on compliance of roadshow and other marketing material and other communications with the public with applicable legal standards and requirements;
- Advising the Issuer on the content of Form 1-A and any revisions;
- Advising the Issuer on how to configure the platform and link between prospective investors and the Issuer to enhance the prospective investor experience; and
- Providing extensive review, training, and advice to Issuer and Issuer personnel on how to configure and use the electronic platform powered by DealMaker.tech on which the Issuer's electronic roadshow is presented.

This advance is payable upon execution of the agreement. To the extent any such services are not provided, the value thereof will be returned to the Issuer as required by Rule 5110(g)(4)(A).

Consideration of Technology Solutions Required by Issuers to Successfully Complete Regulation A Offerings

In order to optimize the use of the Regulation A+ exemption, we have seen issuers have the best success by using the full length of the offering period. Issuers also frequently choose to undertake a "Test the Waters" campaign, which requires a great deal of work by online platforms to help develop those materials. Because work related to a "Test the Waters" campaign must be completed before issuance of the No Objection Letter, this work must and should be compensated.

Also, when an issuer prepares its offering platform structure well in advance, the Issuer is in a position to know its audience and potential shareholders and use data analytics to support its offering in the early periods of its soft launch. These analytics can be used to identify the greatest potential areas of interest for the particular offering. Soft launches allow issuers to manage costs associated with the offering, leading to better control of costs and more money left for the issuer to develop the business.

By using purpose-built technology solutions designed for these offerings, Issuers have unmatched control over their costs, funnels, and investor list, especially in the case of a self-hosted, self-directed capital raise. Any framework that does not permit issuers to follow this same practice would negatively impact such issuers and the cost of the offering. Having combined solutions is more

desirable for the industry as a whole and more economically efficient. However, when the fees owing for technology solutions are considered “underwriting compensation”, and are lumped together with general Broker-Dealer compensation, issuers suffer because certain of the above-described services cannot be offered prior to the commencement of the Offering, because they are considered unreasonable in line with total underwriting compensation.

Fees For Digital Technology Investor Subscription Access

Leveraging technology to digitize the capital raise process also requires compensation. Software as a Service (SaaS) fees are typically structured based on usage: the more one uses (or the longer one uses it), the higher the cost. Similar to equity crowdfunding portals, a white-labeled technology solution hosts the offering, collects the investor subscription information, and provides many key services throughout the life of the offering that warrants compensation prior to the completion of the offering.

The activities being carried out in association with this fee include (but are not limited to):

- Reviewing prospective investor information, including identity verification, performing AML (Anti-Money Laundering) and other compliance background checks, and providing the Issuer with information regarding each investor in order to enable the Issuer to determine whether to accept such investor into the Offering;
- If necessary, discussions with the Issuer regarding additional information or clarification on an Issuer-invited investor;
- Coordinating with third-party agents and vendors in connection with the performance of services;
- Reviewing each investor’s subscription agreement to confirm such investor’s participation in the offering and provide a recommendation to the Issuer whether or not to accept the subscription agreement for the investor’s participation;
- Assigning and retaining a dedicated account manager;
- Offering continued advice to the Issuer on compliance of marketing material and other communications with the public with applicable legal standards and requirements;
- Consulting with the Issuer regarding any material changes to the Form 1-A which may require an amended filing which must be provided to the SEC and all participating intermediaries; and
- Reviewing of third-party provider work product with respect to compliance with applicable rules and regulations.

Considering the significant expenditure of time and resources required to offer these services, it is our position that compensation allowable to subsection (g)(4)(A) of Rule 5110 should be expanded. New fees and compensation structures must be taken into consideration to keep up with the times. The unintended consequences of rigidity to the letter from a 1992 rule is that digital innovation in the space will stall and innovators will not be fairly compensated for their work and the technology they built.

2. Increases to the Allowable Offering Size

Larger offering sizes will ultimately increase the understanding and use of the exemptions and the sophistication of the ecosystem. This will lead to a reduction of costs for all parties, including early-stage companies. Right now early-stage companies are bearing the bulk of the burden for development in the space. With an increased offering size from $75 million to $150 million, larger and more mature issuers will be attracted to use Regulation A. This will increase the pool of investable opportunities available to retail investors.

A recent study from Italy shows that 23% of the companies that raised through ECFs are still growing and 9.8% of the companies are listed on the stock exchange or acquired by more relevant national and international groups. Combine that success with the fact that Funding rounds in the US have decreased by approximately 26% - this reduced availability of capital for mid-cap and growth-stage companies is hindering capital formation and startup growth. The results are that as of 2022, of the 72,560 startups incorporated in the USA, only 16,464 received VC backing (or 23%).

3. Streamlining Rule 5110 Review Burden

Current FINRA Rule 5110 filing requirements are numerous, time consuming and make it harder for young companies to access capital. FINRA may take upwards of five (5) months to approve Regulation A offerings following a submission, which is almost half of the maximum 12-month offering period. If the approval process takes 5 months and the raise is limited to a maximum of $75 million, businesses of all sizes cannot efficiently raise capital because they continue to accumulate the costs of running the business during this time, without access to additional capital to do so. The lengthy process also makes it more difficult for investors to find small business investment opportunities, while applications are "pending" with FINRA. Furthermore, it places an undue burden on issuers who cannot reasonably predict when they will be able to have access to funds. For early or growth-stage issues, these delays can be catastrophic. Most equity-based crowdfunding offerings are made by relatively young companies; over 60% of companies making an offering were less than five years old at the time of their offering, so a delay of 5 months can mean life or death of that company.

Regulation A offerings should be exempt from FINRA Rule 5110 filing requirements, which were originally intended for much larger, traditional underwriting transactions. For Regulation A offerings, we propose that the FINRA Rule 5110 filing requirements could be replaced with or streamlined by a simplified form and list of due diligence and/or disclosure requirements. Alternatively, if the current filing requirements are left in place, FINRA filing approvals (or rejections) should be made within a mandatory period - we propose this period should not exceed sixty (60) days.

Finally, when communicating with issuers or intermediaries regarding FINRA Rule 5110 filing requirements or document request, we respectfully request that FINRA reduce its response time to match the SEC's review requirement (approximately twenty (20) business days.)

Investor protection is not impacted by the proposed changes to FINRA Rule 5110 because FINRA conducts its review of underwriting activities concurrent with the SEC's review of issuers', registration statements, state filings, and other relevant documents and disclosures.

Sincerely,

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