

The following are my public comments regarding the proposed revisions to Finra Rule 5122:

Please revise the language at Section 5122(b)(3) "Use of Offering Proceeds" to make it easier to understand. It is confusing as drafted. The first sentence starts: "For each private placement at least 85% of the offering proceeds raised may not be used" It is difficult to apply this standard to real life situations when drafted this way. Also, I object to the Rule's concept of "ex post" review. This "light touch" of regulation will have the opposite effect because broker-dealers, issuers and their counsel will want some confirmation from Finra staff that their filed materials are ok. Having filed the material and paid for the printing of the offering memorandum, the issuer deserves a comfort letter from Finra to relieve the anxiety that there may be a surprise call from Finra requiring some revision of the deal structure and related disclosure material. Without such notification, Finra staff will be bombarded by phone calls. You should avoid this problem early rather than later. Also, I believe that Finra is getting its "nose under the tent" and this ex-post review will eventually become "a priori" review. The rule should be revised to be a merit review rule now because that is what it appears destined to become. Finally, the use of Offering Proceeds language contained in Rule 5122(b)(3) needs to ban a technique that is currently used to circumvent similar "use of proceeds" restrictions in the registered offering arena. I am referring to the practice of converting commissions which would exceed the permissible amount into wages paid by the issuer (or its affiliate) by employing the sales person and changing her job description to a non-sales functionary.

This revised rule will help investors gain confidence in Regulation D exempt offerings and encourage issuers to utilize the services of broker-dealers.

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