

Required fields are shown with yellow backgrounds and asterisks.

Filing 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)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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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 action (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 action.

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

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.

(Title *)

Date Senior Vice President and Deputy General Counsel

By

(Name *)

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 EFFF website.

Form 19b-4 Information *

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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 *

Add Remove View

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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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

Add Remove View

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

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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

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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 July 26, 2019, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change, SR-FINRA-2019-022, to amend FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and FINRA Rule 5131 (New Issue Allocations and Distributions) to exempt additional persons and offerings, modify current exemptions to enhance regulatory consistency and address unintended operational impediments.

The Commission published the proposed rule change for comment in the Federal Register on August 8, 2019,¹ and received six comment letters in response.²

FINRA is submitting by separate letter its response to comments on the proposed rule change contemporaneously with this Partial Amendment No. 1. With this Partial Amendment No. 1, FINRA is including Exhibit 4, which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 1, and Exhibit 5, which reflects all proposed changes to the current rule text, as amended by this Partial Amendment No. 1.

As discussed in FINRA’s response to comments, this Partial Amendment No. 1 makes the following changes to the proposed rule change:

- amends proposed Rule 5130(i)(4) to remove the proposed limitation on portfolio managers of certain family investment vehicles;
- modifies proposed Rule 5130(c)(6) to provide that a foreign public investment company may not be formed for the specific purpose of permitting restricted persons to invest in new issues;

¹ See Securities Exchange Act Release No. 86558 (August 2, 2019), 84 FR 39029 (August 8, 2019) (Notice of Filing of File No. SR-FINRA-2019-022).

² See Letter from Robert E. Buckholz, Chair, Federal Regulation of Securities Committee, American Bar Association Business Law Section, to Vanessa Countryman, Secretary, SEC, dated August 27, 2019 (“ABA”); letter from Elliott R. Curzon, Dechert LLP, to Jill M. Peterson, Assistant Secretary, SEC, dated August 29, 2019 (“Dechert 1”); letter from Dechert LLP, to Jill M. Peterson, Assistant Secretary, SEC, dated August 29, 2019 (“Dechert 2”); letter from Gail C. Bernstein, General Counsel, Investment Adviser Association, to Vanessa Countryman, Secretary, SEC, dated August 29, 2019 (“IAA”); letter from Aseel M. Rabie, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, SEC, dated August 29, 2019 (“SIFMA”); and letter from Chris Peterson, to Vanessa Countryman, Secretary, SEC, dated September 13, 2019 (“Peterson”).

- revises proposed Rule 5130(c)(8) to also exclude employee retirement benefits plans organized in the United States that meet the proposed conditions;
- amends proposed Rule 5130(i)(9) to limit the proposed exclusion for foreign offerings to offerings that do not include shares that are concurrently registered for sale in the United States;
- adds proposed Rules 5130.01 and 5131.05 to clarify the application of the rules to independent allocations to non-U.S. persons by foreign non-member broker-dealers participating in an underwriting syndicate;
- revises current Rule 5131.01 and proposed Rules 5130(d)(1) and (d)(2) to clarify that the rules apply to securities directed by a single affiliate or a single selling shareholder;
- amends current Rule 5130(d)(1)(B) to expressly recognize employees or directors of affiliated franchisees;
- excepts certain transfers to immediate family members from current Rule 5131(d)(2)(B)'s public announcement requirement;
- amends current Rule 5131.03 to codify existing guidance regarding the disclosure of a release or waiver in a publicly filed registration statement;
- excludes from the definition of "new issue" in proposed Rule 5130(i)(9) offerings of a special purpose acquisition company ("SPAC");
- modifies proposed Rule 5130(i)(11) to include other types of sovereign investment vehicles; and
- amends proposed Rule 5130(i)(10)(E) to remove the reference to persons listed in Schedule C of Form BD (Uniform Application for Broker-Dealer Registration).

FINRA is also proposing in this Partial Amendment No. 1 to make a technical correction to proposed FINRA Rule 5130(i)(9) to replace the references to offerings made pursuant to Section 4(1), 4(2) or 4(6) of the Securities Act of 1933 ("Securities Act") with offerings made pursuant to Section 4(a)(1), 4(a)(2) or 4(a)(5) of the Securities Act.

Family Investment Vehicles

Proposed Rule 5130(i)(4) requires that where the beneficial owners of a family investment vehicle include family clients, which may include beneficial owners that are not family members, the person who has the sole authority to buy or sell securities for

such an entity must be an “immediate family member” as defined in Rule 5130(i)(5) or a “family member” as defined in Rule 202(a)(11)(G)-1(d)(6) under the Investment Advisers Act of 1940 (“Advisers Act”) for the entity to be considered a family investment vehicle for purposes of Rule 5130.

Dechert 1, Dechert 2 and SIFMA state that the proposed limitation ignores practical realities of how family offices operate and is contrary to FINRA’s stated goal of harmonizing Rule 5130 with the Advisers Act’s treatment of family offices. Dechert 1 and Dechert 2 state that family offices often hire investment professionals that are not family members to provide investment advice based on delegated authority. Moreover, they note that the Commission, in adopting the Family Office Rule under the Advisers Act, recognized that non-family members that are integral to the functioning of the family office, including investment professionals that are hired by the family office, should be able to invest alongside family members in order to align their interests with the interests of the family.

FINRA does not believe that the proposed limitation serves any meaningful purpose given the Commission’s express recognition that investment professionals that are non-family members may provide investment advice to family offices and invest together with family members in order to have aligned interests. In addition, FINRA’s current definition of “family investment vehicle” allows investments by non-family members in such an entity,³ without placing any limitations on the person with the authority to make investment decisions for the entity. Therefore, in this Partial Amendment No. 1, FINRA is revising proposed Rule 5130(i)(4) to remove the proposed limitation.

³ The definition of “immediate family member” under FINRA Rule 5130 includes any individual who is materially supported by the family, which could encompass non-family members. See FINRA Rule 5130(i)(5).

Foreign Public Investment Companies

Proposed Rule 5130(c)(6) provides that a foreign public investment company that is formed for the specific purpose of investing in new issues would not be eligible for an exemption. The ABA suggests that FINRA modify the proposed condition to provide that the investment company may not be formed for the specific purpose of permitting restricted persons to invest in new issues, which is more narrowly tailored to address the concerns Rule 5130 is designed to address while preserving a foreign public investment company's flexibility to make portfolio decisions. FINRA agrees with the comment by the ABA regarding the scope of the proposed condition regarding new issue investments by foreign public investment companies. In this Partial Amendment No. 1, FINRA is revising proposed Rule 5130(c)(6) to narrow the scope of the condition to provide that a foreign public investment company may not be formed for the specific purpose of permitting restricted persons to invest in new issues. This change also impacts an identical exemption in Rule 5131(b)(2).

Foreign Employee Retirement Benefits Plans

Proposed Rule 5130(c)(8) provides an exemption for foreign employee retirement benefits plans, subject to specified conditions. SIFMA requests that the proposed exemption be extended to employee retirement benefits plans organized in the United States that do not otherwise qualify for an exemption under the current provisions of Rule 5130 relating to Employee Retirement Income Security Act benefits plans and state or municipal government benefits plans. FINRA agrees with SIFMA's comment, which is also consistent with FINRA staff's prior exemptive relief to such plans. In this Partial Amendment No. 1, FINRA is revising proposed Rule 5130(c)(8) to extend the exemption to employee retirement benefits plans organized in the United States that meet the proposed conditions. In addition, this change impacts a corresponding exemption to Rule 5131(b)(2).

Foreign Offerings

Proposed Rule 5130(i)(9) excludes from the definition of "new issue" offerings made under Regulation S of the Securities Act or otherwise made outside of the United States or its territories. SIFMA and the ABA request that FINRA clarify the scope of the exclusion, including in situations where shares offered and sold in a foreign offering are concurrently registered for sale in the United States or where foreign non-member broker-dealers participating in an underwriting syndicate independently allocate shares to non-U.S. persons.

The proposed blanket exclusion from the definition of "new issue" is limited to a foreign offering, pursuant to Regulation S or otherwise, where shares in the offering are not concurrently registered for sale in the United States. While shares in a foreign offering that are concurrently registered for sale in the United States would not be categorically excluded from the definition of "new issue" under Rules 5130 and 5131, FINRA does not believe that the concerns the rules are designed to address are implicated

where foreign non-member broker-dealers that are participating in an underwriting syndicate with members are independently allocating new issues to non-U.S. persons.

In this Partial Amendment No. 1, FINRA is revising proposed Rule 5130(i)(9) to clarify that the exclusion for foreign offerings does not extend to shares of such offerings that are concurrently registered for sale in the United States. This change will also impact the definition of “new issue” under Rule 5131.⁴ This Partial Amendment No. 1 also adds Supplementary Material .01 to Rule 5130 and Supplementary Material .05 to Rule 5131 to clarify that the rules are not intended to restrict new issue allocations to non-U.S. persons by foreign non-member broker-dealers participating in the underwriting syndicate, provided that such allocation decisions are not made at the direction or request of a member or an associated person of a member.

Issuer-Directed Securities

Proposed Rules 5130(d)(1) and (d)(2) expand the exclusion for issuer-directed securities to allocations directed by affiliates and selling shareholders of the issuer, which is consistent with the issuer-directed provision in current Rule 5131.01.

SIFMA requests that FINRA revise current Rule 5131.01 and proposed Rules 5130(d)(1) and (d)(2) to clarify that a single affiliate or a single selling shareholder may direct securities. The ABA requests that FINRA also amend current Rule 5130(d)(1)(B), which relates to issuer-directed allocations to broker-dealer personnel, or members of their immediate family, who are employees or directors of the issuer, the issuer’s parent, or a subsidiary of the issuer or the issuer’s parent, to expressly recognize employees or directors of franchisees of such entities.

In response to the comments, in this Partial Amendment No. 1, FINRA is revising current Rule 5131.01 and proposed Rules 5130(d)(1) and (d)(2) to make a technical change to clarify that the issuer-directed provisions apply to securities directed by a single affiliate or a single selling shareholder. Further, in this Partial Amendment No. 1, FINRA is amending current Rule 5130(d)(1)(B) to expressly recognize employees or directors of a franchisee in a franchisor/franchisee relationship.

Lock-Up Agreements

Current Rule 5131(d)(2) requires that any lock-up agreement applicable to the officers and directors of an issuer entered into in connection with a new issue stipulate that, at least two business days before the release or waiver of any lock-up or other restriction on the transfer of the issuer’s shares, the book-running lead manager must notify the issuer of the impending release or waiver and the impending release or waiver must be announced through a major news service. The rule provides an exception where the release or waiver is for a transfer that is not for consideration and where the transferee

⁴ Rule 5131(e)(7) defines the term “new issue” by reference to Rule 5130(i)(9).

has agreed in writing to be bound by the same lock-up agreement terms in place for the transferor.

The ABA suggests that FINRA eliminate the “consideration” element for purposes of the exception to the rule. By way of example, the ABA notes that it may be difficult to ascertain whether a transfer is for “consideration” in certain situations involving transfers to immediate family members. The ABA also requests that FINRA codify guidance published in Regulatory Notice 10-60 (November 2010) regarding disclosure of a release or waiver in a publicly filed registration statement.

FINRA continues to believe that the lack of consideration (that is, where there is no exchange of something of value) is relevant for purposes of satisfying the exception to the public announcement requirement under Rule 5131(d)(2). However, FINRA agrees with the ABA that it may be difficult to determine whether a transfer is for consideration in situations involving transfers to immediate family members. Moreover, FINRA does not believe that a transfer of securities to an immediate family member who is subject to the same lock-up restrictions as the transferor necessitates a public announcement. Therefore, in this Partial Amendment No. 1, FINRA is amending current Rule 5131(d)(2)(B) to extend the exception to transfers to immediate family members as defined in Rule 5130(i)(5), provided that the transferee has agreed in writing to be bound by the same lock-up agreement terms in place for the transferor. In addition, in this Partial Amendment No. 1, FINRA is amending current Rule 5131.03 to provide that the disclosure of a release or waiver in a publicly filed registration statement in connection with a secondary offering satisfies the requirement for an announcement through a major news service, which codifies the prior guidance published in Regulatory Notice 10-60.

SPACs

Rule 5130(i)(9) currently excludes from the definition of “new issue” offerings of business development companies, direct participation programs and real estate investment trusts. FINRA excluded offerings of these entities based on the fact that their securities typically commence trading at the public offering price with little potential for trading at a premium because their assets at the time the initial public offering trades consist of the capital they have raised through the offering process. Moreover, if there is a premium, it is generally small.

A SPAC is a blind pool that offers units in an SEC-registered initial public offering (“IPO”) to investors for the purpose of completing an acquisition of an existing private company in the future. The IPO consists of common stock of the SPAC and typically includes a warrant to purchase common stock of the SPAC in the event that the SPAC completes an acquisition. The SPAC has generally 18 months to 24 months after the IPO to find a suitable target and sign a purchase agreement to acquire the target company. SPACs are generally focused on a particular industry segment, and they hire management in those areas to explore and evaluate acquisition opportunities.

The money raised by a SPAC from the issuance of units in an IPO is deposited in a trust account that is funded with an amount of money equaling the total of the proceeds

from the IPO (less certain offering expenses). Because a SPAC's assets at the time of the IPO consist of the capital raised through the offering process (less certain offering expenses), there is little potential for SPACs to trade at a premium at the time of the IPO prior to signing an acquisition or merger agreement with a suitable target company. Moreover, SPACs rarely trade at a premium, and if there is a premium, it is generally small.

The ABA requests that FINRA consider excluding offerings of SPACs from the definition of "new issue" because such offerings have similar trading characteristics to offerings of other entities that FINRA has already excluded from the definition of "new issue," including offerings of registered closed-end investment companies, business development companies, direct participation programs and real estate investment trusts.

FINRA agrees that offerings of SPACs have similar characteristics to other offerings that are currently excluded from the definition of "new issue" and, thus, offerings of SPACs should also be excluded. In this Partial Amendment No. 1, FINRA is revising proposed Rule 5130(i)(9) to exclude offerings of SPACs. As noted above, this change will also impact the definition of "new issue" under Rule 5131 because the term has the same meaning under both rules.

Owners of Broker-Dealers

Proposed Rule 5130(i)(10)(E) excludes sovereign entities from the scope of owners of broker-dealers. Proposed Rule 5130(i)(11) defines a "sovereign entity" as a sovereign nation or a pool of capital or an investment fund owned or controlled by a sovereign nation and created for the purpose of making investments on behalf of the sovereign nation. The ABA requests that FINRA make a technical change to the proposed definition to also include other vehicles owned or controlled by a sovereign nation that are created for the purpose of making investments for the benefit of the sovereign nation. FINRA is revising proposed Rule 5130(i)(11) in this Partial Amendment No. 1 to make this technical change.

Rule 5130(i)(10)(E) currently includes as restricted persons any person listed, or required to be listed, in Schedule C of Form BD that has an ownership interest above specified thresholds. FINRA (then NASD) originally included the reference to Schedule C because it shows any additions, deletions and other changes to Schedules A and B of Form BD. SIFMA requests that the reference to Schedule C be removed from Rule 5130(i)(10)(E) because it is superfluous. In this Partial Amendment No. 1, FINRA is deleting from proposed Rule 5130(i)(10)(E) the reference to persons listed in Schedule C of Form BD because currently the changes made on Schedule C are reflected in the Central Registration Depository system through the composite Schedules A and B.

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is underlined; proposed deletions in this Partial Amendment No. 1 are in brackets.

* * * * *

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

(a) through (b) No Change.

(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) through (5) No Change.

(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 [investing] permitting restricted persons to invest in new issues;

(7) No Change.

(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 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, [its] an affiliate[s] of the issuer, or a selling shareholder[s], to persons that are restricted under the Rule; provided, however, that securities directed by an issuer, [its] an affiliate[s] of the issuer, or a selling shareholder[s], 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, [its] an affiliate[s] of the issuer, or a selling shareholder[s], 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) No Change.

(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) through (h) No Change.

(i) Definitions

(1) through (3) No Change.

(4) "Family investment vehicle" means a legal entity that is beneficially owned solely by one or more of the following persons:

(A) immediate family members;

(B) family members, as defined under Rule 202(a)(11)(G)-1 of the Investment Advisers Act; or

(C) family clients, as defined under Rule 202(a)(11)(G)-1 of the Investment Advisers Act.

[However, where the beneficial owners of an entity include family clients, the person who has the sole authority to buy or sell securities for such an entity must be an immediate family member, as defined in paragraph (i)(5) of the Rule, or a family member, as defined under Rule 202(a)(11)(G)-1 of the Investment

Advisers Act, for the entity to be considered a family investment vehicle under the Rule.]

(5) through (8) No Change.

(9) “New issue” means any initial public offering of an equity security as defined in Section 3(a)(11) of the Exchange Act, made pursuant to a registration statement or offering circular. New issue shall not include:

(A) offerings made [under Regulation S of the Securities Act or otherwise made outside of the United States or its territories, or offerings made] pursuant to an exemption under Section 4(a)(1), 4(a)(2) or 4(a)(5)[(6)] of the Securities Act, or Securities Act Rule 504 if the securities are “restricted securities” under Securities Act Rule 144(a)(3), or Rule 144A or Rule 505 or Rule 506 adopted thereunder, or offerings made under Regulation S of the Securities Act or otherwise made outside of the United States or its territories unless the securities offered and sold in the Regulation S offering or other offering made outside of the United States are also registered for sale in the United States under the Securities Act in connection with a concurrent initial public offering of an equity security in the United States;

(B) through (I) No Change.

(J) offerings of a special purpose acquisition company subject to Securities and Exchange Commission rules and regulations, a business development company as defined in Section 2(a)(48) of the Investment Company Act, a direct participation program as defined in Rule 2310(a) or

a real estate investment trust as defined in Section 856 of the Internal Revenue Code.

(10) “Restricted person” means:

(A) through (D) No Change.

(E) Persons Owning a Broker-Dealer

(i) through (ii) No Change.

[(iii) Any person listed, or required to be listed, in Schedule C of a Form BD that meets the criteria of subparagraphs (E)(i) and (E)(ii) above;]

[(iv)] iii Any person that directly or indirectly owns 10% or more of a public reporting company listed, or required to be listed, in Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or other than with respect to a limited business broker-dealer);

[(v)] iv Any person that directly or indirectly owns 25% or more of a public reporting company listed, or required to be listed, in Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or other than with respect to a limited business broker-dealer);

[(vi)] v An immediate family member of a person specified in subparagraphs (E)(i) through [(v)] iv unless the person owning the broker-dealer:

- a. does not materially support, or receive material support from, the immediate family member;
- b. is not an owner of the member, or an affiliate of the member, selling the new issue to the immediate family member; and
- c. has no ability to control the allocation of the new issue.

[(vii)] (vi) Subparagraphs (E)(i) through [(v)] (iv) shall not apply to a sovereign entity.

(11) “Sovereign entity” means a sovereign nation or a pool of capital or an investment fund or other vehicle owned or controlled by a sovereign nation and created for the purpose of making investments on behalf or for the benefit of the sovereign nation.

(12) “Sovereign nation” means a sovereign nation or its political subdivisions, agencies or instrumentalities.

(j) No Change.

••• Supplementary Material: -----

.01 Application to Foreign Non-Member Broker-Dealers Participating in an Underwriting Syndicate. The prohibitions on the purchase and sale of new issues in this Rule shall not apply to a foreign non-member broker-dealer that is participating in an underwriting syndicate for the sale of a new issue (which underwriting syndicate may include a member affiliate of the non-member broker-dealer) and allocating new issue

securities to a non-U.S. person, provided that such allocation decision is not made at the direction or request of a member or an associated person of a member.

5131. New Issue Allocations and Distributions

(a) No Change.

(b) Spinning

(1) No Change.

(2) The prohibitions in this paragraph shall not apply to allocations of shares of a new issue to any account described in Rule 5130(c)(1) through (3) and (5) through (11), or to any other account in which the beneficial interests of executive officers and directors of the company and persons materially supported by such executive officers and directors in the aggregate do not exceed 25% of such account.

(c) No Change.

(d) New Issue Pricing and Trading Practices

In a new issue:

(1) No Change.

(2) Lock-Up Agreements. Any lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer entered into in connection with a new issue shall provide that:

(A) Any lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer shall provide that such restrictions will apply to their issuer-directed shares; and

(B) At least two business days before the release or waiver of any lock-up or other restriction on the transfer of the issuer's shares, the book-running lead manager will notify the issuer of the impending release or waiver and announce the impending release or waiver through a major news service, except where the release or waiver is effected solely to permit a transfer of securities that is not for consideration or that is to an immediate family member as defined in Rule 5130(i)(5) and where the transferee has agreed in writing to be bound by the same lock-up agreement terms in place for the transferor;

(3) through (4) No Change.

(e) Definitions

(1) through (2) No Change.

(3) "Covered non-public company" means any non-public company, except for an unaffiliated charitable organization, satisfying the following criteria:

(i) income of at least \$1 million in the last fiscal year or in two of the last three fiscal years and shareholders' equity of at least \$15 million; (ii) shareholders' equity of at least \$30 million and a two-year operating history; or (iii) total assets and total revenue of at least \$75 million in the latest fiscal year or in two of the last three fiscal years.

(4) through (9) No Change.

(f) No Change.

••• **Supplementary Material:** -----

.01 Issuer Directed Allocations. The prohibitions of paragraph (b) above shall not apply to allocations of securities that are directed in writing by the issuer, [its] an affiliate[s] of the issuer, or a selling shareholder[s], so long as the member has no involvement or influence, directly or indirectly, in the allocation decisions of the issuer, [its] an affiliate[s], or a selling shareholder[s] with respect to such issuer-directed securities.

.02 No Change.

.03 Lock-up Announcements. For the purposes of this Rule, the requirement that the book-running lead manager announce the impending release or waiver of a lock-up or other restriction on the transfer of the issuer's shares shall be deemed satisfied where such announcement is made by the book-running lead manager, another member or the issuer, so long as such announcement otherwise complies with the requirements of paragraph (d)(2) of this Rule. In addition, the disclosure of a release or wavier in a publicly filed registration statement in connection with a secondary offering satisfies the requirement for an announcement through a major news service.

.04 Anti-Dilution Provisions. The prohibitions of paragraph (b) above shall not apply to an account in which an executive officer or director of a public company or a covered non-public company, or a person materially supported by such executive officer or director, has a beneficial interest that meets the following conditions:

(a) 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;

(b) the allocation 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;

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

(d) the new issue allocated pursuant to this Supplementary Material .04 shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

.05 Application to Foreign Non-Member Broker-Dealers Participating in an

Underwriting Syndicate. The prohibitions of paragraph (b) above shall not apply to a foreign non-member broker-dealer that is participating in an underwriting syndicate for the sale of a new issue (which underwriting syndicate may include a member affiliate of the non-member broker-dealer) and allocating new issue securities to a non-U.S. person, provided that such allocation decision is not made at the direction or request of a member or an associated person of a member.

* * * * *

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change, as amended by this Partial Amendment No. 1. Proposed new language is underlined; proposed deletions are in brackets.

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5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

* * * * *

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

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

(a) through (b) No Change.

(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) through (5) No Change.

(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; [and]

(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) No Change.

(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;

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

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

[(10)](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) No Change.

(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) through (h) No Change.

(i) Definitions

(1) through (3) No Change.

(4) "Family investment vehicle" means a legal entity that is beneficially owned solely by one or more of the following persons:

(A) immediate family members[:];

(B) family members, as defined under Rule 202(a)(11)(G)-1 of the Investment Advisers Act; or

(C) family clients, as defined under Rule 202(a)(11)(G)-1 of the Investment Advisers Act.

(5) through (8) No Change.

(9) "New issue" means any initial public offering of an equity security as defined in Section 3(a)(11) of the Exchange Act, made pursuant to a registration statement or offering circular. New issue shall not include:

(A) offerings made pursuant to an exemption under Section 4(a)(1), 4(a)(2) or 4(a)(5)[(6)] of the Securities Act, or Securities Act Rule

504 if the securities are “restricted securities” under Securities Act Rule 144(a)(3), or Rule 144A or Rule 505 or Rule 506 adopted thereunder, or offerings made under Regulation S of the Securities Act or otherwise made outside of the United States or its territories unless the securities offered and sold in the Regulation S offering or other offering made outside of the United States are also registered for sale in the United States under the Securities Act in connection with a concurrent initial public offering of an equity security in the United States;

(B) through (I) No Change.

(J) offerings of a special purpose acquisition company subject to Securities and Exchange Commission rules and regulations, a business development company as defined in Section 2(a)(48) of the Investment Company Act, a direct participation program as defined in Rule 2310(a) or a real estate investment trust as defined in Section 856 of the Internal Revenue Code.

(10) “Restricted person” means:

(A) through (D) No Change.

(E) Persons Owning a Broker-Dealer

(i) through (ii) No Change.

[(iii) Any person listed, or required to be listed, in Schedule C of a Form BD that meets the criteria of subparagraphs (E)(i) and (E)(ii) above;]

[(iv)] iii Any person that directly or indirectly owns 10% or more of a public reporting company listed, or required to be listed, in Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or other than with respect to a limited business broker-dealer);

[(v)] (iv) Any person that directly or indirectly owns 25% or more of a public reporting company listed, or required to be listed, in Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or other than with respect to a limited business broker-dealer);

[(vi)] (v) An immediate family member of a person specified in subparagraphs (E)(i) through [(v)] (iv) unless the person owning the broker-dealer:

- a. does not materially support, or receive material support from, the immediate family member;
- b. is not an owner of the member, or an affiliate of the member, selling the new issue to the immediate family member; and
- c. has no ability to control the allocation of the new issue.

(vi) Subparagraphs (E)(i) through (iv) shall not apply to a sovereign entity.

(11) “Sovereign entity” means a sovereign nation or a pool of capital or an investment fund or other vehicle owned or controlled by a sovereign nation and created for the purpose of making investments on behalf or for the benefit of the sovereign nation.

(12) “Sovereign nation” means a sovereign nation or its political subdivisions, agencies or instrumentalities.

(j) No Change.

••• Supplementary Material: -----

.01 Application to Foreign Non-Member Broker-Dealers Participating in an

Underwriting Syndicate. The prohibitions on the purchase and sale of new issues in this Rule shall not apply to a foreign non-member broker-dealer that is participating in an underwriting syndicate for the sale of a new issue (which underwriting syndicate may include a member affiliate of the non-member broker-dealer) and allocating new issue securities to a non-U.S. person, provided that such allocation decision is not made at the direction or request of a member or an associated person of a member.

5131. New Issue Allocations and Distributions

(a) No Change.

(b) Spinning

(1) No Change.

(2) The prohibitions in this paragraph shall not apply to allocations of shares of a new issue to any account described in Rule 5130(c)(1) through (3) and (5) through [(10)] (11), or to any other account in which the beneficial interests of executive officers and directors of the company and persons materially supported

by such executive officers and directors in the aggregate do not exceed 25% of such account.

(c) No Change.

(d) New Issue Pricing and Trading Practices

In a new issue:

(1) No Change.

(2) Lock-Up Agreements. Any lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer entered into in connection with a new issue shall provide that:

(A) Any lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer shall provide that such restrictions will apply to their issuer-directed shares; and

(B) At least two business days before the release or waiver of any lock-up or other restriction on the transfer of the issuer's shares, the book-running lead manager will notify the issuer of the impending release or waiver and announce the impending release or waiver through a major news service, except where the release or waiver is effected solely to permit a transfer of securities that is not for consideration or that is to an immediate family member as defined in Rule 5130(i)(5) and where the transferee has agreed in writing to be bound by the same lock-up agreement terms in place for the transferor;

(3) through (4) No Change.

(e) Definitions

(1) through (2) No Change.

(3) “Covered non-public company” means any non-public company, except for an unaffiliated charitable organization, satisfying the following criteria:

(i) income of at least \$1 million in the last fiscal year or in two of the last three fiscal years and shareholders’ equity of at least \$15 million; (ii) shareholders’ equity of at least \$30 million and a two-year operating history; or (iii) total assets and total revenue of at least \$75 million in the latest fiscal year or in two of the last three fiscal years.

(4) through (9) No Change.

(f) No Change.

••• **Supplementary Material:** -----

.01 Issuer Directed Allocations. The prohibitions of paragraph (b) above shall not apply to allocations of securities that are directed in writing by the issuer, [its] an affiliate[s] of the issuer, or a selling shareholder[s], so long as the member has no involvement or influence, directly or indirectly, in the allocation decisions of the issuer, [its] an affiliate[s], or a selling shareholder[s] with respect to such issuer-directed securities.

.02 No Change.

.03 Lock-up Announcements. For the purposes of this Rule, the requirement that the book-running lead manager announce the impending release or waiver of a lock-up or other restriction on the transfer of the issuer’s shares shall be deemed satisfied where such announcement is made by the book-running lead manager, another member or the issuer, so long as such announcement otherwise complies with the requirements of paragraph (d)(2) of this Rule. In addition, the disclosure of a release or wavier in a

publicly filed registration statement in connection with a secondary offering satisfies the requirement for an announcement through a major news service.

.04 Anti-Dilution Provisions. The prohibitions of paragraph (b) above shall not apply to an account in which an executive officer or director of a public company or a covered non-public company, or a person materially supported by such executive officer or director, has a beneficial interest that meets the following conditions:

(a) 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;

(b) the allocation 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;

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

(d) the new issue allocated pursuant to this Supplementary Material .04 shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

.05 Application to Foreign Non-Member Broker-Dealers Participating in an Underwriting Syndicate. The prohibitions of paragraph (b) above shall not apply to a foreign non-member broker-dealer that is participating in an underwriting syndicate for the sale of a new issue (which underwriting syndicate may include a member affiliate of the non-member broker-dealer) and allocating new issue securities to a non-U.S. person,

provided that such allocation decision is not made at the direction or request of a member or an associated person of a member.

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