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October 30, 2019

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Via Email to rule-comments@sec.gov

Re: File No. SR-FINRA-2019-022 (Proposed Rule Change 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))

Dear Ms. Countryman:

This letter is being submitted by Financial Industry Regulatory Authority, Inc. ("FINRA") in response to comments submitted to the Securities and Exchange Commission ("SEC" or "Commission") regarding the above-referenced rule filing,[1] a proposed rule change to amend Rules 5130 and 5131 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, and received six comment letters in response.[2] The majority of commenters expressed support for the goals of the proposed rule change, but they also requested certain clarifications and changes to further the objectives of the proposed rule change. The following are FINRA's responses, by topic, to the commenters' material concerns.

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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 Partial Amendment No. 1 for a list of comments received and abbreviations assigned to commenters.

Family Investment Vehicles

Proposed Rule 5130(i)(4) defines a "family investment vehicle" as a legal entity that is beneficially owned solely by one or more of the following persons: (1) "immediate family members" as defined under Rule 5130(i)(5); (2) "family members" as defined under Rule 202(a)(11)(G)-1(d)(6) of the Investment Advisers Act of 1940 ("Advisers Act"); or (3) "family clients" as defined under Advisers Act Rule 202(a)(11)(G)-1(d)(4). FINRA proposed this change to better align with the Advisers Act's treatment of family offices.

Proposed Rule 5130(i)(4), however, includes a caveat requiring 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 Advisers Act Rule 202(a)(11)(G)-1(d)(6) for the entity to be considered a family investment vehicle for purposes of Rule 5130. FINRA included this limitation to ensure that the interests of the person who has the authority to buy or sell securities for the entity is closely aligned with the interests of the family where the entity includes beneficial owners that are non-family members.

Dechert 1, Dechert 2 and SIFMA support expanding the definition of "family investment vehicle" to encompass the definitions of "family members" and "family clients" under the Advisers Act. They state, however, that the proposed limitation ignores practical realties 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, as reflected in the Partial Amendment No. 1, FINRA is revising proposed Rule 5130(i)(4) to remove the proposed limitation.

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[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 the following two alternative methods to establish that a foreign public investment company is widely held for purposes of Rule 5130 and, thus, eligible for an exemption: (1) the investment company has 100 or more direct investors; or (2) the investment company has 1,000 or more indirect investors. FINRA proposed these alternative conditions to address operational issues faced by a foreign public investment company in determining whether any particular investor owns more than five percent of its shares, which is one of the current conditions for the foreign public investment company exemption. Proposed Rule 5130(c)(6) also provides that a foreign public investment company that is formed for the specific purpose of investing in new issues would not be eligible for the exemption. The proposed changes also impact an identical exemption in Rule 5131(b)(2).

The IAA requests that FINRA remove all quantitative criteria, including the current five percent condition, from proposed Rule 5130(c)(6). The IAA notes that foreign public investment companies are highly regulated in their local jurisdictions and that FINRA should treat them in the same manner as U.S.-registered investment companies for purposes of Rule 5130. The IAA also states that Volcker Rule regulations do not include quantitative criteria in defining "foreign public funds." The ABA supports the addition of the proposed alternative quantitative conditions, but it requests that FINRA revise the proposed condition relating to new issue investments by a foreign public investment company to provide that the investment company may not be formed for the specific purpose of permitting restricted persons to invest in new issues. SIFMA also supports the addition of the proposed alternative conditions, but it requests that FINRA remove altogether the proposed condition relating to new issue investments.

FINRA believes that it is appropriate to include quantitative conditions for purposes of providing a blanket exemption or exclusion from the requirements of Rule 5130.[4] This is consistent with other exemptions and exclusions under Rule 5130. Further, FINRA believes that the proposed alternative conditions (100 or more direct investors or 1,000 or more indirect investors), which are supported by other commenters, are reasonable and are narrowly tailored to address the operational concerns originally raised by industry participants. However, FINRA will continue to monitor the impact of Rules 5130 and 5131 on foreign public investment companies and may consider additional amendments if necessary. FINRA agrees with the comment by the ABA regarding the scope of the proposed condition regarding new issue investments by foreign public investment companies. As stated in the Partial Amendment No. 1, FINRA is revising 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.

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4 See, e.g., FINRA Rule 5130(d)(3) (providing an exclusion for securities distributed as part of a program where, among other conditions, the opportunity to purchase new issues under the program is offered to at least 10,000 participants).

Foreign Employee Retirement Benefits Plans

Proposed Rule 5130(c)(8) provides an exemption for a foreign employee retirement benefits plan that, among other conditions, has at least 10,000 plan participants and beneficiaries and $10 billion in assets. FINRA is adding a corresponding exemption to Rule 5131(b)(2). This is a codification of several exemptions that FINRA staff has previously granted through exemptive letters. The exemptive relief was based on, among other things, the extensive number of participants and beneficiaries in, and significant assets of, the exempted foreign plans. In addition, based on similar conditions, FINRA staff has granted exemptive relief to employee retirement benefits plans organized in the United States that do not otherwise qualify for an exemption under the provisions of Rule 5130 relating to Employee Retirement Income Security Act benefits plans and state or municipal government benefits plans.

The IAA requests that FINRA revise proposed Rule 5130(c)(8) by removing the thresholds for plan participants, beneficiaries and assets. The IAA notes that the proposed thresholds are arbitrary and would exclude foreign plans that fall just below the thresholds. The IAA also states that the other conditions in the proposed rule are sufficiently robust to satisfy the objectives of Rule 5130 and that Volcker Rule regulations do not include participant or asset thresholds in defining "foreign pension or retirement funds." SIFMA supports the adoption of the proposed exemption for foreign employee retirement benefits plans, but it requests that FINRA reduce from 10,000 to 1,000 the threshold for plan participants and beneficiaries. Further, SIFMA suggests that the proposed exemption be extended to domestic employee retirement benefits plans.

As discussed above, consistent with other exemptions and exclusions under Rule 5130, FINRA believes that it is appropriate to include quantitative conditions for purposes of providing a blanket exemption or exclusion from the requirements of the rule. FINRA also believes that the proposed thresholds for foreign plan participants, beneficiaries and assets are reasonable and consistent with the prior exemptive relief granted to such plans by FINRA staff, which FINRA is now proposing to codify. With respect to foreign plans that fall just below the proposed thresholds, FINRA staff retains the authority to grant exemptive relief on a case-by-case basis depending on the facts and circumstances. Further, FINRA will continue to monitor the impact of Rules 5130 and 5131 on foreign employee retirement benefits plans and may consider additional amendments if necessary. Finally, as stated in the Partial Amendment No. 1, FINRA is revising proposed Rule 5130(c)(8) to provide similar relief to employee retirement benefits plans organized in the United States that meet the proposed conditions, which is also consistent with the prior relief granted by FINRA staff to such plans through exemptive letters.

Foreign Offerings

Proposed Rule 5130(i)(9) excludes from the definition of "new issue" offerings made under Regulation S of the Securities Act of 1933 ("Securities Act") or otherwise made

outside of the United States or its territories. The proposed exclusion also applies to the definition of "new issue" under Rule 5131.[5]

SIFMA and the ABA support an exclusion for foreign offerings, but they 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. However, 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, 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. The Partial Amendment No. 1 revises proposed Rule 5130(i)(9) to limit the exclusion to a foreign offering that does not include shares that are concurrently registered for sale in the United States. The Partial Amendment No. 1 also adds supplementary material to Rules 5130 and 5131 to clarify that the rules do not prevent independent allocations to non-U.S. persons by foreign non-member broker-dealers participating in the underwriting syndicate.

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.

While SIFMA and the ABA support this change, they request further clarifying revisions. 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 affiliated franchisees. In addition, the ABA requests that FINRA clarify that restricted persons that are not eligible for issuer-directed allocations under Rule 5130(d) would still be eligible for a new issue allocation if they qualify for an exemption under Rule 5130, such as the de minimis exemption under Rule 5130(c)(4).

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[5] Rule 5131(e)(7) defines the term "new issue" by reference to Rule 5130(i)(9).

FINRA agrees with the clarifying revisions suggested by SIFMA and the ABA and, as stated in the Partial Amendment No. 1, FINRA is revising the proposed rule change to incorporate these suggestions. With respect to the ABA's comment regarding restricted persons that are not eligible for issuer-directed allocations under Rule 5130(d), such persons would still be eligible for a new issue allocation if they otherwise qualify for an exemption under Rule 5130, including the de minimis exemption under Rule 5130(c)(4).

Sovereign Entities

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 supports the exclusion of sovereign entities, but it asks that FINRA revise the definition to also include other types of sovereign investment vehicles. FINRA is revising proposed Rule 5130(i)(11), as reflected in the Partial Amendment No. 1, to make this change.

Anti-Dilution

Current Rule 5130(e) allows a restricted person that is an existing equity owner of an issuer to purchase shares of the issuer in a public offering in order to maintain the restricted person's equity ownership position, subject to the following conditions: (1) the restricted person has held an equity ownership interest in the issuer for a period of one year prior to the effective date of the offering; (2) the sale of the new issue does not increase the restricted person's percentage equity ownership in the issuer above the ownership level as of three months prior to the filing of the registration statement in connection with the offering; (3) the sale of the new issue to the restricted person does not include any special terms; and (4) the purchased shares are not sold, transferred, assigned, pledged or hypothecated for three months following the effective date of the offering. Proposed Rule 5131.04 provides similar relief to executive officers and directors of public companies and covered non-public companies who are subject to the prohibition on spinning set forth in Rule 5131(b).

The ABA supports the addition of proposed Rule 5131.04, but it questions the need for a lock-up condition in the proposed rule and in current Rule 5130(e). The ABA notes that FINRA (then NASD) previously eliminated a similar lock-up condition from the issuer-directed provision to provide issuers flexibility in determining lock-ups. The ABA also asks that FINRA clarify whether the acquisition date of convertible securities, options and warrants may be taken into account for purposes of satisfying the required one-year holding period prior to the effective date of the offering and whether such securities may be included in the calculation of the person's equity ownership in the issuer for the three-month period prior to the filing of the registration statement.

FINRA believes that the lock-up condition ensures that restricted persons under Rule 5130, and executive officers and directors subject to Rule 5131(b), that are non-bona fide investors do not take advantage of the anti-dilution provision to circumvent the restrictions of

these rules. With respect to convertible securities, options and warrants, FINRA believes that it would be appropriate to take such securities into account for purposes of determining whether a person satisfies the one-year holding period and the three-month equity ownership calculation period under the rules, provided that the person had the ability to convert or exercise such securities during the course of the applicable period.

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

The ABA requests that FINRA clarify whether the public announcement requirement applies to lock-up agreements that have not otherwise been publicly disclosed and whether the requirement applies to releases or waivers that are granted before the effective date of the offering. The ABA also requests that FINRA clarify whether the requirement applies to releases or waivers that relate solely to mechanical or technical provisions of the lock-up agreement but do not actually permit the transfer of the securities. Further, the ABA requests that FINRA clarify whether the two-business day requirement should be calculated by reference to the first date on which the securities subject to the lock-up may be transferred. In addition, 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. Finally, the ABA asks 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.

The public announcement requirement under Rule 5131(d)(2) applies to a release or waiver of any lock-up or other restriction on the transfer of securities subject to a lock-up agreement that has been publicly disclosed. If the lock-up agreement has been publicly disclosed, any release or waiver of any lock-up or other restriction on the transfer of securities would be subject to the public announcement requirement, even if the offering is not yet effective. However, in such cases, the public announcement requirement may be satisfied through a public filing that otherwise meets the timing requirements of the rule. With respect to the timing of the public announcement, the announcement should be made two business days prior to the impending release or waiver that permits an officer or director to transfer securities subject to the lock-up agreement. Further, the public announcement requirement applies to a release or waiver of any lock-up or other restriction on the transfer of securities, and not releases or waivers that relate to mechanical or technical provisions of the lock-up agreement.

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, as stated in the 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, as reflected in the 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 is a codification of the guidance published in Regulatory Notice 10-60.

Representations and Recordkeeping

Rule 5130 imposes a verification requirement with respect to those accounts that receive new issue allocations. The initial verification of an account's status under the rule must be through a positive written affirmation, but members are permitted to conduct subsequent verifications of an account's status through the use of negative response letters. Rule 5130 also permits the use of electronic communications in accordance with the standards adopted by the SEC and FINRA for the use of such communications. The rule requires that a member maintain a copy of all records and information relating to whether an account is eligible to purchase new issues in its files for at least three years following the member's last sale of a new issue to that account.

Rule 5131(b) relating to spinning does not impose a verification requirement for accounts that receive new issue allocations. Rather, where an executive officer or director of a company subject to the rule (or a person materially supported by such executive officer or director) has a beneficial interest in an account, the rule requires that a member allocating new issues to the account be able to identify the company on whose behalf such executive officer or director serves to determine whether the company is a current, recent or prospective investment banking client of the member. If the member is unable to obtain such information for an account, it has to resort to restricting new issue allocations to the account.

Rule 5131.02(a) mitigates the burden on a member of having to independently obtain the required information under Rule 5131(b) by allowing the member to obtain a written representation from the account regarding whether the account is beneficially owned by an executive officer or a director of a company subject to the rule or a person materially supported by such executive officer or director and if so, the company on whose behalf such executive officer or director serves. Based on that information, the member can then determine whether the company is a current, recent or prospective investment banking client of the member. Rule 5131.02(b) further mitigates the burden on a member of having to

obtain required information relating to indirect beneficial owners of funds by providing a limited exception from the spinning provision, subject to specified conditions. Rule 5131.02 imposes recordkeeping requirements similar to those under Rule 5130.

SIFMA and the ABA request that FINRA eliminate the verification requirement in Rule 5130 and instead allow firms to rely on a representation in the same manner as provided in Rule 5131.02(a). They note that the current requirement could result in technical violations of Rule 5130, even where the member can demonstrate that the allocation is otherwise in compliance with the rule. In addition, they request that FINRA add to Rule 5130 a provision similar to Rule 5131.02(b) addressing the treatment of indirect beneficial owners of funds. SIFMA also requests that FINRA confirm that members may maintain required records for purposes of Rules 5130 and 5131.02 in a standard manner described in its comment letter.

FINRA notes that Rules 5130 and 5131(b) serve different purposes and, thus, the rules have different provisions relating to account representations as described above. Rule 5130 is intended to ensure that members make bona fide public offerings. Rule 5131(b) is intended to address spinning concerns, which is narrower in scope. FINRA continues to believe that it is appropriate to impose a verification requirement for purposes of Rule 5130. In addition, FINRA does not believe that it is necessary to add to Rule 5130 a provision similar to Rule 5131.02(b). FINRA adopted Rule 5131.02(b) to address the difficulties of obtaining specific company-related information from indirect beneficial owners of funds who are executive officers or directors of covered companies.

Finally, for purposes of compliance with Rules 5130 and 5131.02, members have the flexibility to adopt a means of recordkeeping consistent with Rule 17a-4 under the Securities Exchange Act of 1934 ("Exchange Act"). FINRA does not believe that it is necessary to adopt a prescriptive standard as suggested by SIFMA. However, FINRA staff has previously provided guidance on the use of particular methods to comply with the recordkeeping requirements of the rules. FINRA staff will continue to consider such requests in the future.

Returned Shares

SIFMA requests that FINRA reconsider amending current Rule 5131(d)(3) relating to the treatment of returned shares to permit members to sell returned shares that are trading at a premium in the secondary market, regardless of whether there is an existing syndicate short position, subject to specified conditions. Based on discussions with SEC staff regarding the potential impact of any changes to the returned shares provision on the application of Regulation M under the Exchange Act, FINRA has determined not to make any changes to this provision.

Other Comments

Specified owners of broker-dealers are restricted persons under Rule 5130. The ABA requests guidance on the application of the rule to entities, other than a broker-dealer, that are

beneficially owned by such restricted persons. All accounts in which such restricted persons have a beneficial interest, including subsidiaries and other entities in which they have a beneficial interest, also would be restricted, unless the account itself is entitled to an exemption, such as the de minimis exemption under Rule 5130(c)(4).

The term "broker-dealer" is not defined in Rule 5130. The ABA asks whether the term includes foreign broker-dealers that are operating pursuant to an applicable exemption from registration, such as an exemption pursuant to Rule 15a-6 under the Exchange Act. For purposes of Rule 5130, the term "broker-dealer" includes foreign broker-dealers that are operating based on an exemption under the Exchange Act.

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. These exclusions also apply to the definition of "new issue" under Rule 5131 because, as noted above, the term "new issue" has the same meaning under both rules. 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. For similar reasons, the ABA believes that offerings of special purpose acquisition companies ("SPACs") should also be excluded from Rules 5130 and 5131. FINRA agrees. As stated in the Partial Amendment No. 1, FINRA is revising proposed Rule 5130(i)(9) to exclude offerings of SPACs.

Rule 5130(i)(10)(E) currently includes as restricted persons any person listed, or required to be listed, in Schedule C of Form BD (Uniform Application for Broker-Dealer Registration) 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. As stated in the 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.

Rules 5130 and 5131(b) both include an exception for accounts in which persons subject to the restrictions in the rules have a de minimis beneficial interest. Rule 5130(c)(4) includes a 10 percent de minimis exemption, whereas Rule 5131(b)(2) includes a 25 percent de minimis exemption. SIFMA requests that FINRA increase the threshold in Rule 5130(c)(4) from 10 percent to 25 percent, similar to Rule 5131(b)(2). As discussed above, Rules 5130 and 5131(b) serve different purposes. FINRA believes that a more limited exception is consistent with the broader purposes of Rule 5130.

FINRA Rule 5131(a) prohibits a member from offering or threatening to withhold shares it allocates in a new issue as consideration or inducement for the receipt of

compensation that is excessive in relation to the services provided by the member. To address any potential uncertainty regarding the term "excessive," SIFMA requests that FINRA amend Rule 5131 to expressly state that an assessment of whether compensation is excessive will be based on all of the relevant facts and circumstances including, where applicable, the level of risk and effort involved in the transaction and the rates generally charged for the same or similar services. While FINRA agrees with this statement, FINRA continues to believe that the current language, which refers to "compensation that is excessive in relation to the services provided," is most appropriate in that it affords FINRA the necessary flexibility in addressing the range of potential improper arrangements that may arise. As we previously stated when the provision was adopted, we do not believe it is necessary to include rule text stating that an assessment of whether compensation is "excessive" will be based upon all of the relevant facts and circumstances.

Rule 5130(i)(10)(C) currently treats as restricted persons, with respect to the security being offered, a finder or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants and financial consultants. The rule also treats as a restricted person an immediate family member of a finder or fiduciary if the finder or fiduciary materially supports, or receives support from, the immediate family member. SIFMA asks that such finders and fiduciaries be removed from the categories of restricted persons because of, among other things, the compliance challenges of determining the status of such persons in relation to each offering. Alternatively, SIFMA requests that FINRA amend the issuer-directed provision under current Rule 5130(d)(1)(B) to remove the limitation on such finders and fiduciaries. FINRA continues to believe that finders and fiduciaries are industry insiders with respect to offerings for which they are acting in those capacities and, thus, should continue to be subject to the restrictions and limitations set forth in Rule 5130.

Rule 5130(i)(10)(D) currently treats as restricted persons any person who has the authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment advisor or collective investment account (as defined in Rule 5130). The rule also treats as a restricted person an immediate family member of such person if the person materially supports, or receives support from, the immediate family member. SIFMA asks that FINRA amend the heading of paragraph (i)(10)(D), which is "portfolio managers," or the description of the specified activities to clarify that a person with the title of portfolio manager (or similar title) who does not otherwise have the authority to buy or sell securities is not a restricted person. FINRA does not believe that it is necessary to make this change. The paragraph headings under Rule 5130 are included for ease of reference and organizational purposes and do not affect the meaning, application or scope of the paragraphs.

Finally, Peterson suggests that FINRA replace the term "spinning" in the heading of Rule 5131(b) with a different term, such as "gifting." With respect to the proposed exception from Rule 5131(b) for executive officers and directors of charitable organizations, Peterson states that FINRA's assertion that the potential for investment banking conflicts of interest in

such situations is small is mistaken. Peterson also suggests that the scope of restricted persons should be expanded rather than contracted.

FINRA does not believe that it is necessary to amend the heading of Rule 5131(b). The term "spinning" is a commonly understood industry term referring to the allocation of new issues by a firm to executive officers and directors of the firm's current, former or prospective investment banking clients. Further, similar to Rule 5130, the paragraph headings under Rule 5131 are included for ease of reference and organizational purposes and do not affect the meaning, application or scope of the paragraphs. The current inclusion of executive officers and directors of certain charitable organizations is an unintended consequence of the definition of a "covered non-public company" under the rule. In adopting Rule 5131, FINRA did not intend the spinning prohibition to apply to executive officers or directors of a charitable organization. Moreover, FINRA continues to believe that charitable organizations are not likely to generate significant investment banking business relative to traditional investment banking clients and, thus, there is a low risk, if any, that improper incentives would motivate a member's decision to allocate shares to the account of executive officers or directors of such organizations. FINRA also continues to believe that the scope of persons that are subject to the restrictions and limitations of both Rule 5130 and Rule 5131, as amended by the proposed rule change, is appropriately tailored to achieve the purposes of these rules.

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FINRA believes that the foregoing responds to the material issues raised by the commenters to the rule filing. If you have any questions, please contact me at (202) 728-8902, email: afshin.atabaki@finra.org. The fax number of the Office of General Counsel is (202) 728-8264.

Best regards,

/s/ Afshin Atabaki

Afshin Atabaki
Associate General Counsel