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June 12, 2025

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

RE: File No. SR-FINRA-2025-001 (Proposed Rule Change to Exempt Certain Business Development Companies from FINRA Rules 5130 and 5131) – Response to Comments

Dear Ms. Countryman:

The Financial Industry Regulatory Authority, Inc. (“FINRA”) submits this letter to respond to comments that the Securities and Exchange Commission (“SEC” or “Commission”) received on the above-referenced rule filing. The proposed rule change would exempt certain business development companies (“BDCs”) from FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and from paragraph (b) (Spinning) of FINRA Rule 5131 (New Issue Allocations and Distributions) (“Proposal”).

Rule 5130 protects the integrity of the public offering process, and Rule 5131 addresses conflicts and abuses in the allocation and distribution of new issues, including prohibiting the practice of “spinning.”¹ Rule 5130(c), and, by reference, Rule 5131(b)(2), currently provide several general exemptions. The Proposal would create an exemption for non-traded BDCs,² thus treating them more similarly to traded BDCs and to investment

¹ Spinning is the allocation of new issues by a member firm to an account in which a covered person that is the member firm’s current, former or prospective investment banking client has a beneficial interest. The term “covered person” refers to 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. See Rule 5131(b)(1).

² In the Proposal and herein, “traded BDC” refers to a BDC with registered shares under the Securities Act of 1933 (“Securities Act”) that is publicly traded on a national securities exchange, “non-traded BDC” refers to a BDC with registered shares under the Securities Act that is not publicly traded, and “private BDC” refers

companies registered under the Investment Company Act of 1940 (“Investment Company Act”), both of which are exempt under paragraphs (c)(5) and (c)(1) of Rule 5130, respectively, and under Rule 5131(b) by reference.³

The Commission published the Proposal for public comment in the Federal Register on March 31, 2025.⁴ The Commission received two comment letters on the Proposal.⁵

The following are FINRA’s responses, by topic, to the commenters’ material comments.

I. General Support for Proposal

The commenters expressed general support for the Proposal. Specifically, ICI stated that it “supports rule amendments that foster increased development of BDC regulations and expanded investment access that benefits shareholders investing via BDCs.”⁶ Thus, ICI stated that it “supports adopting a new FINRA Rule 5130 and 5131 exemption that would expand access for non-traded BDCs seeking to invest in initial equity public offerings and align with existing exemptions currently available for SEC-registered investment companies and publicly listed companies.”⁷ Likewise, IPA indicated its strong support for the Proposal and specifically agreed with FINRA that by expanding access to initial public offerings (“IPOs”) through a highly regulated entity, the proposed rule change would maintain the integrity of the public offering process while facilitating vibrant capital markets.

II. Private BDCs

to a BDC that is offered in a private placement. The term “BDC” refers generally to all types of BDCs.

³ See Rule 5131(b)(2).

⁴ See Securities Exchange Act Release No. 102723 (March 25, 2025), 90 FR 14284 (March 31, 2025) (Notice of Filing of File No. SR-FINRA-2025-001).

⁵ See letter from Kevin Ercoline, Assistant General Counsel, Investment Company Institute, to Vanessa Countryman, Secretary, SEC, dated April 21, 2025 (“ICI”) and letter from Anya Coverman, President and CEO, Institute for Portfolio Alternatives, to Jill M. Peterson, Assistant Secretary, SEC, dated April 21, 2025 (“IPA”).

⁶ ICI.

⁷ ICI.

The Proposal did not extend the exemption to private BDCs. ICI stated that the proposed exemption should be expanded to cover private BDCs due to the similarities between private and non-traded BDCs. For example, ICI asserted that similar to non-traded BDCs, it is “difficult, if not impossible” for private BDCs to satisfy the representation requirements of Rule 5130 and 5131.⁸ ICI also noted that “beneficial shareholders in a private BDC can be widely dispersed with shares purchased through an intermediary.”⁹ In addition, ICI noted that private BDCs are subject to “extensive regulation by the SEC under the 1940 Act” and pointed out that privately offered closed-end funds could avail themselves of the exemption for investment companies registered under the Investment Company Act,¹⁰ but under the Proposal, privately offered BDCs could not.¹¹ In addition, ICI stated that extending the exemption to private BDCs would not impact the integrity of the public offering process because private BDCs are subject to the same investment limitations under Section 55(a) of the Investment Company Act as non-traded BDCs, and are therefore unlikely to be formed for the purpose of investing in new issues.

In response to ICI’s comments, FINRA is amending the proposal to include private BDCs. FINRA generally agrees with ICI that extending the exemption to private BDCs would not impact the integrity of the public offering process because private BDCs are subject to extensive regulation under the Investment Company Act, including the same investment limitations as non-traded BDCs.

As stated in the Partial Amendment No. 1, FINRA is amending the Proposal to exempt all BDCs as that term is defined in Section 2(a)(48) of the Investment Company Act provided that the BDC was not formed or maintained for the specific purpose of permitting restricted persons to invest in new issues. FINRA believes that, for purposes of this exemption, the express requirement that the BDC was not formed or maintained for the specific purpose of permitting restricted persons to invest in new issues would further preserve the integrity of the public offering process. FINRA notes that similar language currently appears in the exemption for foreign investment companies.¹²

⁸ ICI.

⁹ ICI.

¹⁰ See FINRA Rule 5130(c)(1).

¹¹ ICI.

¹² See Rule 5130(c)(6)(C). In Partial Amendment No. 1, FINRA proposes a conforming change to add “or maintained” to paragraph (C) of Rule 5130(c)(6) to make clear that a foreign investment company cannot be formed or maintained for the purpose of circumventing the prohibition.

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FINRA believes that the foregoing responds to the material issues raised by the commenters to the Proposal. If you have any questions, please contact me at (202) 728-8268, email: ilana.reid@finra.org.

Best regards,

/s/ Ilana Reid

Ilana Reid
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