Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2025 - * 005
Amendment No. (req. for Amendments *)

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) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Amend the FINRA Capital Acquisition Broker Rules

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 * Lisa Last Name * Horrigan

Title * Associate General Counsel

E-mail * lisa.horrigan@finra.org

Telephone * (202) 728-8332 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 06/04/2025

By Victoria Crane
(Name *)

(Title *)
Vice President & Associate General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Victoria.Crane@finra.org
Digitally signed by Victoria.Crane@finra.org
Date: 2025.06.04 14:24:49 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 *

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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 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 Advanced 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 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

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FINRA-2025-005 Exhibit 2a.pdf
FINRA-2025-005 Exhibit 2b.docx
FINRA-2025-005 Exhibit 2c.pdf

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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FINRA-2025-005 Exhibit 5.docx

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.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act," "Exchange Act" or "SEA"),[1] the Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") proposed amendments to the FINRA Capital Acquisition Broker ("CAB") Rules ("CAB Rules"), which are discussed in greater detail below.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the rule change in a Regulatory Notice.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Overview

CABs are broker-dealers that help promote capital formation through specified functions, essentially acting as placement agents for sales of unregistered securities to institutional investors; acting as intermediaries in connection with the change of control

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[1] 15 U.S.C. 78s(b)(1).

of privately held companies; and advising companies and private equity funds on capital raising and corporate restructuring.[2] Member firms that meet the CAB criteria may elect to be governed by the CAB Rules. CABs' specified functions do not include broader broker-dealer activities, such as accepting customers' trading orders, carrying customer accounts, handling customers' funds or securities, or engaging in proprietary trading or market-making.[3]

Given their limited institutional business model, CABs are subject to fewer restrictions on particular activities (such as advertising) and are not subject to sales practice requirements for particular products that CABs do not offer, such as variable insurance contracts or investment company securities.

CAB Supervisory Requirements

CABs are subject to less extensive supervisory requirements than non-CAB member firms; however, pursuant to CAB Rule 311, CABs are subject to FINRA's core supervisory requirements. By subjecting CABs to specified provisions of FINRA Rule 3110, CAB Rule 311 requires CABs to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and applicable FINRA rules. A CAB's supervisory system must provide, at a minimum:

- The establishment and maintenance of written procedures as required by FINRA Rule 3110;

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2 See CAB Rule 016(c)(1).

3 See CAB Rule 016(c)(2).

- The designation, where applicable, of an appropriately registered principal with authority to carry out the CAB's supervisory responsibilities for each type of business in which it engages for which registration as a broker-dealer is required;
- The registration and designation as a branch office or office of supervisory jurisdiction ("OSJ") of each location, including the CAB's main office, that meets the definitions contained in Rule 3110(f);
- The designation of one or more appropriately registered principals in each OSJ and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the CAB;
- The assignment of each registered person to an appropriately registered representative(s) or principal(s) who shall be responsible for supervising that person's activities; and
- The use of reasonable efforts to determine that all supervisory personnel are qualified, either by virtue of experience or training, to carry out their assigned responsibilities.[4]

CABs also must establish, maintain, and enforce written procedures to supervise the CAB's and its associated persons' activities that are reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules. Such procedures must include procedures for the review of incoming and outgoing written

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[4] See CAB Rule 311(a); see also FINRA Rules 3110(a)(1) through (6).

(including electronic) correspondence to properly identify and handle in accordance with firm procedures, customer complaints, and internal or external communications that require review under FINRA rules and federal securities laws.[5] CABs also must ascertain the good character, business reputation, qualifications, and experience of an applicant before the CAB applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.[6] Consistent with FINRA Rule 3110, CABs have the flexibility to tailor their supervisory systems to their limited business models.

CABs must designate and specifically identify to FINRA one or more principals to serve as chief compliance officer.[7] In addition, CABs are subject to FINRA Rules 3220 (Influencing or Rewarding Employees of Others), 3240 (Borrowing from or Lending to Customers), and 3270 (Outside Business Activities of Registered Persons).[8]

CABs are not subject to all of the same supervisory requirements that apply to non-CAB member firms, however. For instance, there is no requirement for CAB representatives and principals to participate in annual interviews with firm compliance personnel, for a CAB to conduct annual reviews of the businesses in which it engages, or for a CAB to conduct periodic inspections of its OSJ, branch, and non-branch offices.[9]

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5 See CAB Rule 311(a); see also FINRA Rules 3110(b)(1), (b)(4), (b)(5), and (b)(7).

6 See CAB Rule 311(a) and FINRA Rule 3110(e).

7 See CAB Rule 313.

8 See CAB Rules 322, 324, and 327.

9 See CAB Rule 311(a) and FINRA Rule 3110(c).

CABs also are not subject to FINRA Rule 3110's requirement for members to adopt and implement procedures for the review of securities transactions that are effected for specified accounts of the member, its associated persons, and other related persons.[10]

Growth of CAB Membership

The CAB Rules became effective on April 14, 2017.[11] A firm may elect CAB status either by stating in its new member application that it intends to operate as a CAB, or if the firm is already registered as a broker-dealer, by amending its membership agreement to state that it will operate as a CAB going forward.[12]

The number of member firms that have elected CAB status has grown gradually since the CAB Rules became effective. During 2017, 44 member firms elected CAB status.[13] As of the end of 2024, the number of members that have elected CAB status had grown to 65 firms.[14] Some existing members that initially elected CAB status

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10 See CAB Rule 311(a) and FINRA Rule 3110(d).

11 See Regulatory Notice 16-37 (October 2016). See also Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (Order Approving File No. SR-FINRA-2015-054).

12 See CAB Rules 112 and 116.

13 Thirty-eight of these firms were already member firms at the time the CAB Rules took effect and elected CAB status as permitted by CAB Rule 116(b). CAB Rule 116(b) provides a means by which an existing FINRA member can elect CAB status without having to file an application for approval of change in ownership, control, or business operations pursuant to FINRA Rule 1017. Six firms elected CAB status as part of their new member application in 2017. See generally CAB Rules 111-115.

14 Thirty-three of these firms were existing member firms that elected CAB status pursuant to CAB Rule 116(b), and 32 firms elected CAB status as part of their initial application.

subsequently amended their membership agreements to revert to non-CAB status.[15] A few former CABs have filed a Form BDW and withdrawn their broker-dealer registration entirely.

Modernization of FINRA Capital Raising Rules

Adoption of the CAB Rules is one of a number of steps taken by FINRA to modernize its regulation of members' participation in capital-raising activities and to increase efficiency and reduce unnecessary burdens on the capital-raising process without compromising important protections for investors. The rules were intended to improve efficiency and reduce regulatory burdens by reducing the range of rules that apply to CABs given their limited activities and institutional business model, while maintaining necessary investor protections. FINRA believes that the CAB Rules continue to meet these goals, thereby supporting capital formation, particularly with regard to private placement activities.

FINRA notes that there has been tremendous growth in the number and dollar amount of unregistered securities offerings in the U.S. For example, an analysis of data derived from all initial Regulation D ("Reg D") filings finds that the number of deals increased from 22,853 in 2015 to 32,554 in 2024 and the dollar value of these deals

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15 During the first year after an existing member elects CAB status pursuant to CAB Rule 116(b), the member may terminate its CAB status and continue operations as a non-CAB broker-dealer member without having to file an application for approval of a material change in business operations pursuant to FINRA Rule 1017. The CAB must file a request to amend its membership agreement to provide that the member agrees to comply with all FINRA Rules and execute an amended membership agreement that imposes the same limitations on the member's activities that existed prior to the member's election of CAB status. See CAB Rule 116(d).

doubled during this time period.[16] To protect investors in these markets, FINRA has in place both examination programs[17] and filing requirements[18] for specified members that engage in these activities to help ensure that they are complying with applicable SEC and FINRA standards and, per Regulation Best Interest ("Reg BI"), that recommendations of unregistered securities are in the best interest of retail customers.[19] FINRA's oversight applies to members that are registered broker-dealers and funding portals. While FINRA currently does not have data that would enable it to calculate the percentage of all private

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16 See SEC Report, Market Statistics of Exempt Offerings under Regulations A, D, and Crowdfunding March 2025 (published April 28, 2025), https://www.sec.gov/files/dera-offering-reg-d-cf-2504.pdf. While initial Reg D filings indicate substantial increases between 2015 to 2024, in both number of deals and their dollar value (with a peak in 2021 in terms of number of filings and 2023 in terms of their dollar value), it is possible that the amendments to the initial Reg D filings would result in an increase to the aggregate amount.

17 See, e.g., 2025 FINRA Annual Regulatory Oversight Report, https://www.finra.org/sites/default/files/2025-01/2025-annual-regulatory-oversight-report.pdf.

18 See FINRA Rule 5122 (Private Placements of Securities Issued by Members) and FINRA Rule 5123 (Private Placements of Securities). CABs are not subject to these rules' filing requirements. Under the current CAB Rules, CABs may only act as placement agents on behalf of issuers in connection with the sale of newly-issued unregistered securities to institutional investors, as defined under CAB Rule 016(i), or on behalf of an issuer or control person in connection with a change of control of a privately-held company. See CAB Rule 016(c)(1)(F). The term "institutional investor" under the CAB Rules includes, among other things, many of the same types of persons who are investing in private offerings that are excluded from filing under FINRA Rules 5122 and 5123. See, e.g., FINRA Rules 5122(c)(1)(A), (B), and 5123(b)(1)(A) and (B) (exempting from filing private offerings sold solely to institutional accounts as defined in FINRA Rule 4512(c) and qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 ("ICA")). Nevertheless, FINRA believes that its examinations and oversight of CABs protect investors through the review and monitoring of CABs' activities, including private placements.

19 17 CFR 240.15*l*-1.

placements conducted through registered broker-dealers, it believes generally that only a fraction of private placement deals are conducted through registered broker-dealers.[20] FINRA believes that most of the remaining private placements are conducted through either the issuer of the securities or an intermediary that is not registered as a broker-dealer and therefore not subject to broker-dealer regulation by FINRA and the SEC. FINRA believes that investors would benefit if more private placements were conducted through CABs and thus subject to regulatory oversight.

Industry Engagement on Proposed Changes to CAB Rules

In December 2017, the FINRA Board of Governors ("Board") approved the creation of an advisory committee to the Board called the Capital Acquisition and Placement Broker Committee ("CAP Committee"). The Board's resolutions instructed the CAP Committee to: (1) make recommendations to FINRA on SEC and FINRA policies that affect the activities of CABs and non-CAB broker-dealer members that have similar business models; and (2) propose to FINRA, for its consideration and decision, new initiatives, new rules, or amendments to the CAB Rules and to FINRA Rules that

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[20] For example, a 2020 white paper published by the SEC Division of Economic and Risk Analysis found that in the total population of Reg D offerings filed with the Commission between 2009 and 2015, fewer than 20 percent of issuers, on average, reported using an intermediary. Among a sample of 210 cases that the white paper analyzed, of the 154 cases that involved use of an intermediary, only 40 percent of these intermediaries were broker-dealers. See Rachita Gullapalli, Division of Economic and Risk Analysis, SEC, Misconduct and Fraud in Unregistered Offerings (August 2020) at 24, https://www.sec.gov/files/misconduct-and-fraud-unregistered-offerings.pdf. Moreover, FINRA analysis finds that only around 10 percent of new Reg D offerings during 2013-2022 involved at least one FINRA-registered broker-dealer. This analysis is based on initial Reg D filings and may underestimate the true number of intermediaries in such cases where an issuer decided to engage a finder or a placement agent after the initial Reg D filing.

apply to non-CAB broker-dealer members that have similar business models. The CAP Committee included both individuals registered with CABs and those registered with non-CAB broker-dealer members that have similar business models.[21]

FINRA subsequently published Regulatory Notice 20-04 requesting comment on several proposed amendments to the CAB Rules. As stated in Regulatory Notice 20-04, FINRA believed that the proposed amendments would "make [the CAB Rules] more useful to CABs without reducing investor protection." Regulatory Notice 20-04 and the comments received are discussed in greater detail below.

Overview of Proposed Amendments

FINRA has determined to amend the CAB Rules as part of its ongoing efforts to ensure that FINRA rules are effective and efficient and its rules relating to the capital-raising process support efficient capital formation.[22] FINRA believes that the proposed amendments are reasonable in light of the experience gained since adoption of the CAB Rules, as well as changes in the regulatory environment, such as the Commission's adoption and implementation of Reg BI and Form CRS,[23] which have added investor protections that did not exist at the time the CAB Rules were adopted.

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21 The CAP Committee met several times during 2018 and 2019 to discuss these issues, and pursuant to the Board's enabling resolutions, terminated as an advisory committee in December 2019.

22 See, e.g., Regulatory Notice 25-06 (March 2025) (requesting comment on modernizing FINRA rules, guidance and processes to facilitate capital formation, including the CAB Rules) and Regulatory Notice 17-14 (April 2017) (requesting comment on FINRA rules impacting capital formation).

23 See 17 CFR 240.17a-14.

As a result of the CAP Committee meetings, as well as ongoing engagement with industry members, including in the context of Regulatory Notice 20-04, FINRA believes that the current CAB Rules include limitations on CABs' activities that may be unnecessarily restrictive and have unintended consequences. The proposed rule change is designed to remedy such challenges. If the Commission approves these proposed changes, non-CAB broker-dealer members or firms that are eligible for an exemption from broker-dealer registration under the Exchange Act[24] may be encouraged to elect CAB status, thereby benefitting these firms and investors alike.

First, FINRA is proposing to expand the pool of permissible investors for sales of newly-issued unregistered securities under the CAB Rules to include "eligible employees" (under the proposed amended CAB Rules definition of "institutional investor"). The proposed definition of "eligible employee" includes "Knowledgeable Employees" under Investment Company Act ("ICA") rules for private fund issuers,[25] and specified officers, directors, and employees of issuers other than private funds. Such investors have the expertise and knowledge about the issuer, and the resources to retain counsel and advisors, if necessary, to understand the risks of their investment. As such, these investors do not raise the same investor protection concerns as, for example, retail investors[26] who are not officers, directors or employees of the issuer, or other

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24 See infra note 29 and accompanying text.

25 See infra notes 35-37 and accompanying text.

26 The CAB rules do not define "retail investor." For purposes of this discussion, that term is intended to include investors that are not "institutional investors" under CAB Rule 016(i). See infra notes 33-34 and accompanying text. It should be noted that "retail investor" for purposes of this discussion, and the terms "retail customer" and "retail investor" under Reg BI and Form CRS, respectively, are not

institutional investors. Reg BI and Form CRS provide an additional layer of investor protection to the extent any eligible employee receives a recommendation of any securities transaction or investment strategy involving securities from a broker-dealer or its associated person, and uses the recommendation primarily for personal, family, or household purposes under Reg BI, or receives services primarily for personal, family, or household purposes under Form CRS. Thus, FINRA does not believe that this proposed expansion would materially impact investor protection.

Second, FINRA is proposing to allow CABs to act as placement agents or finders for secondary transactions of unregistered securities in the limited circumstance where both the seller and purchaser of such unregistered securities are institutional investors and the sale qualifies for an exemption from registration under the Securities Act of 1933 ("Securities Act") (e.g., Securities Act Rules 144 or 144A). FINRA believes that the proposed conditions would allow CABs to offer a wider range of services to their clients without materially impacting investor protection because proposed CAB Rule 016(c)(1)(H) would not permit CABs to act as a placement agent or finder in connection with a secondary transaction sale of unregistered securities to persons other than institutional investors. FINRA also believes that this proposed change may help promote capital formation. A commenter on Regulatory Notice 20-04 noted that secondary

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coterminous. For example, a natural person with $50 million in assets, and who uses a recommendation of a securities transaction for personal, family, or household purposes, would be an "institutional investor" under the CAB Rules, but would be a "retail customer" under Reg BI and a "retail investor" under Form CRS.

market liquidity for investors in exempt primary offerings of an issuer is integral to capital formation in the primary offering market.[27]

Third, FINRA is proposing to permit CAB associated persons to participate in private securities transactions ("PSTs"), subject to the same requirements that apply to associated persons of non-CAB broker-dealer members who participate in PSTs. As discussed in greater detail below, CAB Rule 328's express prohibition on PSTs, as defined in FINRA Rule 3280(e),[28] often creates logistical and other business-related difficulties, for example, for firms that have created two separate affiliates that effect securities transactions depending on whether a transaction may be effected through an exempt merger and acquisition broker ("M&A Broker").[29] To the extent that an

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27 See NYSBA Letter. All references to commenters are to the comment letters as listed in Exhibit 2b. See Exhibit 2b for a list of abbreviations assigned to commenters.

28 "Private securities transaction" means any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities which are not registered with the Commission. The term excludes transactions subject to FINRA Rule 3210's notification requirements, transactions among immediate family members for which no associated person receives any selling compensation, and personal transactions in investment company and variable annuity securities. See FINRA Rule 3280(e).

29 The Consolidated Appropriations Act of 2023 amended Section 15 of the Exchange Act to create a new registration exemption for specified merger and acquisition brokers. Under this exemption, a person may effect a securities transaction in connection with the transfer of ownership of a privately held company without registering as a broker or dealer under the Exchange Act, provided that the person and transaction meet specified conditions, which in many respects align with those contained in a prior SEC staff no-action letter. These amendments became effective on March 29, 2023. See Pub. L. No. 117-328, Division AA, Section 501, codified at 15 U.S.C. 78o(b)(13) ("M&A Brokers Exemption"). See also M&A Brokers, 2014 SEC No-Act. Lexis 92 (January 31, 2014) ("M&A Brokers Letter"). Prior to March 29, 2023, firms relied upon the

associated person of the registered broker-dealer affiliate is also an employee of the exempt M&A Broker affiliate, any securities transaction effected through the M&A Broker in which the associated person participated would be considered a PST. Since CAB Rule 328 prohibits associated persons of CABs from participating in PSTs, this structure does not work for such firms. Furthermore, FINRA has interpreted FINRA Rule 3280 to apply to many of the investment advisory activities of members' associated persons.[30] FINRA believes that a strict prohibition on PSTs is not necessary to achieve the goals of the CAB Rules.

FINRA believes that the proposed rule change increases efficiency by remedying some of the challenges CABs face under the current CAB Rules and promotes capital formation by reducing the regulatory burden on CABs. In addition, FINRA believes that the proposed rule change is reasonably designed to protect investors because it does not materially impact the limited institutional business model of CABs and may enhance regulation in this space. By addressing some of the challenges and burdens that have been identified since adoption of the CAB Rules, the proposed rule change may encourage some non-members and current FINRA broker-dealer members that conduct a

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M&A Brokers Letter to effect securities transactions through this structure. The SEC staff withdrew the M&A Brokers Letter on March 29, 2023.

30 See Notice to Members 94-44 (June 1994) ("NtM 94-44"). As discussed in NtM 94-44, if an individual is registered as both a representative of a member firm and as an investment adviser ("IA") or investment adviser representative and conducts their IA activities away from their member firm employer, the representative may be subject to Rule 3280. In particular, if the representative's participation goes beyond the mere recommendation of a securities transaction, such as where he or she enters an order on behalf of an IA client with a brokerage firm other than the member with which they are registered, or with another entity, and receives any compensation for the overall advisory services, the representative would be viewed as participating in a PST.

limited range of corporate financing activities to register as a CAB. These include, for example, firms that have relied on the M&A Brokers Letter (prior to March 29, 2023) or the M&A Brokers Exemption (subsequent to March 29, 2023) to conduct limited securities activities without registering as a broker under the Exchange Act.[31] FINRA membership could benefit such firms by allowing them to expand their securities business and engage in the expanded range of activities permitted under the CAB Rules. In turn, increased regulatory oversight of these firms by FINRA and the SEC would further enhance investor protection. Firms that are currently FINRA members that elect CAB status as a result of the proposed rule change could benefit from lower compliance costs associated with maintaining FINRA membership.

Finally, FINRA believes that the proposed rule change is reasonable in light of Reg BI and Form CRS, which provide an additional layer of investor protection that was not available at the time the CAB Rules were adopted.

The specific proposed amendments are discussed in greater detail below.

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[31] FINRA does not have data that would enable it to estimate the number, if any, of such firms. However, some comments received on Regulatory Notice 20-04 suggest that this could be a possible outcome, for example:

> I believe the coordination [with the M&A Brokers Letter] will result in more firms opting for the CAB platform and thus performing M&A activities from start to finish under FINRA's jurisdiction, which will result in stronger investor protections.

See M&R Letter.

Proposed Amendments to CAB Rules

Sales of Newly-Issued Unregistered Securities

Currently, a CAB may act as a placement agent or finder (1) on behalf of an issuer in connection with a sale of newly-issued unregistered securities to "institutional investors" or (2) on behalf of an issuer or a control person in connection with a change of control of a privately-held company.[32] FINRA proposes to expand the scope of such permissible activity by broadening the definition of "institutional investor" for purposes of the CAB Rules to include any "eligible employee" under new CAB Rule 016(i)(8). As discussed below, FINRA believes that "eligible employees" do not raise the same investor protection concerns as retail investors and as such, this proposed expansion will not materially impact investor protection.

The term "institutional investor" for purposes of the CAB Rules[33] includes, among others, banks, investment companies, large employee benefit plans, and "qualified

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32 See CAB Rule 016(c)(1)(F).

33 CAB Rule 016(i) currently defines "institutional investor" as any: (1) bank, savings and loan association, insurance company or registered investment company; (2) governmental entity or subdivision thereof; (3) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans; (4) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans; (5) other person (whether a natural person, corporation, partnership, trust, family office or otherwise) with total assets of at least $50 million; (6) person meeting the definition of "qualified purchaser" as that term is defined in Section 2(a)(51) of the ICA; and (7) any person acting solely on behalf of any such institutional investor.

purchasers" under the ICA.[34] FINRA proposes to broaden the definition of institutional investor to include "eligible employees" as defined in new CAB Rule 016(m). The term would include specified officers, directors, and employees of issuers or control persons for which the CAB has provided services as permitted under subparagraphs (F) and (G) of CAB Rule 016(c)(1).

First, "eligible employee" would include any "Knowledgeable Employee," as defined in ICA Rule 3c-5,[35] with respect to services provided to an issuer that is a

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34 The term "qualified purchaser" includes, among others, any natural person, family-owned company or specified trust that owns not less than $5,000,000 in investments, and any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments. See ICA section 2(a)(51), 15 U.S.C. 80a-2(a)(51).

35 Specifically, under ICA Rule 3c-5(a)(4), the term "Knowledgeable Employee" with respect to any Covered Company means any natural person who is: (i) an Executive Officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company or an Affiliated Management Person of the Covered Company; or (ii) an employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company, other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, provided that such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months. Under ICA Rule 3c-5, shares beneficially owned by knowledgeable employees are excluded for purposes of determining whether a private fund is excluded from the definition of "investment company" under ICA sections 3(c)(1) or 3(c)(7). See ICA Rule 3c-5(b).

Covered Company, as defined in ICA Rule 3c-5,[36] or services provided to an "Affiliated Management Person" of such Covered Company, as defined in ICA Rule 3c-5,[37] under proposed CAB Rule 016(m)(1). The Commission adopted ICA Rule 3c-5 as directed by Congress pursuant to the National Securities Markets Improvements Act of 1996 ("NSMIA").[38] The Commission stated that the purpose of this provision of NSMIA "appears to be to allow private funds to offer persons who participate in the funds' management the opportunity to invest in the fund as a benefit of employment."[39]

As noted above, the CAB definition of "institutional investor" currently includes qualified purchasers as defined under the ICA. ICA Rule 3c-5 permits Knowledgeable Employees of private funds and certain of their affiliates to invest in such funds to the same extent as other qualified purchasers, even if an employee does not fall within the definition of that term. Thus, the inclusion of ICA Rule 3c-5 Knowledgeable Employees in the CAB definition of "eligible employee" would align the scope of persons to whom a CAB may sell private fund securities under the CAB Rules with the scope of investors

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36 "Covered Company" includes companies that would be investment companies under the ICA but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the ICA. See 17 CFR 270.3c-5(a)(2), (a)(5), and (a)(6).

37 Under ICA Rule 3c-5(a)(1), the term Affiliated Management Person "means an affiliated person, as such term is defined in section 2(a)(3) of the [Investment Company] Act [15 U.S.C. 80a-2(a)(3)], that manages the investment activities of a Covered Company. For purposes of this definition, the term 'investment company' as used in section 2(a)(3) of the Act includes a Covered Company."

38 See NSMIA section 209(d)(3), Pub. L. 104-290, 110 Stat. 3416, 3436 (1996).

39 See ICA Release No. 22405 (December 18, 1996), 61 FR 68100, 68102 & n.25 (December 26, 1996).

permitted to invest in private funds under the ICA relying on the exclusion from the definition of "investment company" provided by section 3(c)(7) of the ICA.

Second, the term "eligible employee" would include specified officers, directors, or employees of an issuer that is not a Covered Company as defined in ICA Rule 3c-5,[40] under proposed CAB Rule 016(m)(2). Thus, the CAB Rules would permit CABs to act as a placement agent or finder in connection with sales to persons who hold similar positions to Knowledgeable Employees at issuers that are not private funds. In this regard, it is common for officers, directors, and other employees of issuers that are not private funds to invest in those companies' securities, either through stock options that are paid to such persons as compensation, or as part of a private offering of securities. FINRA believes that the proposed expansion of CABs' permissible activities to include sales to eligible employees is appropriate because they are likely to understand and appreciate any risks and limitations associated with investing in the issuer's securities. Eligible employees likely have the expertise and knowledge about the issuer, and the resources to retain counsel and financial advisers, if necessary, to evaluate a potential investment. Accordingly, they do not raise the same investor protection concerns as, for example, retail investors. Eligible employees would still have to qualify to invest in securities of a private company under the federal securities laws. Thus, for example, they

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40 Specifically, this sub-category of "eligible employee" includes the president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer that is not a Covered Company as defined in ICA Rule 3c-5.

could invest in unregistered securities pursuant to Securities Act Regulation D, such as by meeting the definition of "accredited investor."[41]

These proposed changes are consistent with CABs' limited institutional business model because they would not expand permissible sales to allow CABs to sell newly issued unregistered securities to retail investors who are not eligible employees. If the CAB recommends a securities transaction to an eligible employee who qualifies as a retail customer under Reg BI, or a retail investor for purposes of Form CRS, the CAB will be required to comply with the requirements of Reg BI and Form CRS.[42] FINRA believes that the additional protections that Reg BI and Form CRS provide will help

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41 See Securities Act Regulation D, 17 CFR 230.500 et seq.

42 Reg BI establishes a standard of conduct for broker-dealers and their associated persons when they make a recommendation to a retail customer of any securities transaction or investment strategy involving securities. Reg BI aligns the standard of conduct with retail customers' reasonable expectations by requiring broker-dealers, among other things, to act in the retail customer's best interest at the time a recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interests of the retail customer; and to address conflicts of interest by establishing, maintaining, and enforcing policies and procedures reasonably designed to identify and fully and fairly disclose material facts about conflicts of interest, and in instances where disclosure is insufficient to reasonably address the conflict, to mitigate or, in certain instances, eliminate the conflict. See Regulation Best Interest: The Broker-Dealer Standard of Conduct, Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019). In addition, a broker-dealer making a recommendation to a retail investor of any securities transaction or investment strategy involving securities must provide a brief relationship summary prior to, or at the time of, the recommendation. The relationship summary is intended to inform retail investors about the types of client and customer relationships and services the firm offers; the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services; whether the firm and its financial professionals currently have reportable legal or disciplinary history; and how to obtain additional information about the firm. See Form CRS Relationship Summary; Amendments to Form ADV, Securities Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492 (July 12, 2019).

ensure that any such securities recommendations are in the eligible employees' best interests, and that such employees will receive disclosures concerning the CAB required by Form CRS. Accordingly, FINRA does not believe that this proposed change will have a material impact on investor protection.[43]

Secondary Transactions

CABs currently may not act as placement agents in connection with secondary transactions involving unregistered securities, except when the transaction is in connection with the change of ownership or control of a privately-held company.[44] FINRA proposes also to allow CABs to act as placement agents or finders for secondary transactions of unregistered securities in the limited circumstance where both the seller and purchaser of such unregistered securities are institutional investors for purposes of the CAB Rules and the sale qualifies for an exemption from registration under the Securities Act (e.g., Securities Act Rules 144 or 144A).[45]

FINRA believes that this proposed change is appropriate and would not have a material impact on investor protection, particularly in light of the implementation of Reg BI and Form CRS following adoption of the CAB Rules. As discussed above, CABs would only be permitted to act as a placement agent or finder in a secondary transaction

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43 FINRA is also proposing to make a technical change to the definition of "institutional investor" by deleting the word "any" at the beginning of CAB Rule 016(i)(7). This deletion is appropriate because "any" already appears in the introductory clause of Rule 016(i). FINRA also is moving the word "and" from the end of Rule 016(i)(6) to the end of Rule 016(i)(7) due to the addition of proposed Rule 016(i)(8).

44 See CAB Rules 016(c)(1)(F) and (G).

45 See proposed CAB Rule 016(c)(1)(H); see also 17 CFR 230.144 and 230.144A.

involving unregistered securities if both the seller and the buyer of such securities are institutional investors as defined in CAB Rule 016(i). Institutional investors often possess the knowledge and financial expertise to evaluate whether a transaction is appropriate for their needs or have the resources to hire a financial adviser who can assist and advise them in the transaction. FINRA notes that, as amended pursuant to the proposed rule change, the CAB Rules definition of "institutional investor" also would include eligible employees, as discussed above.

If CABs were permitted to act as intermediaries in connection with secondary transactions involving unregistered securities, they would be subject to the CAB Rules rather than the entire FINRA rulebook. Nevertheless, FINRA believes that there would be sufficient investor protections for CAB customers under both the CAB Rules and applicable SEC rules.

First, CABs still would be subject to CAB rules prohibiting any communication concerning the unregistered securities or the CAB's services from including false, exaggerated, unwarranted, promissory or misleading statement or claim. Such a communication could not omit any material fact or qualification that would cause the communication to be misleading and would be required to be based on principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts regarding the security or service.[46] Among other things, as discussed above, CABs would still be subject to FINRA's core supervisory requirements, and would be subject to FINRA rules restricting borrowing from or lending to customers.[47]

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46 See CAB Rule 221.

47 See CAB Rules 311 and 324.

In addition, if the CAB recommended a secondary transaction to a natural person who falls within the CAB institutional investor definition and qualifies as a retail customer under Reg BI, the CAB would be required to comply with the requirements of Reg BI, including the obligation to have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile. If a CAB recommends a securities transaction to an institutional investor who does not qualify as a retail customer under Reg BI, pursuant to CAB Rule 211, the CAB still must have a reasonable basis to believe that the recommended transaction is suitable for the customer based on information obtained through reasonable diligence of the CAB to ascertain the customer's investment profile.[48]

FINRA believes that the proposed conditions for participating in secondary market transactions are appropriately tailored to allow CABs to offer a wider range of services to their clients while remaining consistent with the purpose of the CAB Rules and CABs' limited institutional business model. The proposed rule change would not expand CABs' permitted activities to broader broker-dealer activities, such as accepting customers' trading orders, carrying customer accounts, handling customers' funds or securities, or engaging in proprietary trading or market-making. CABs would only be permitted to act as an intermediary with respect to secondary transactions in securities

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48 See CAB Rule 211 (Suitability). A CAB fulfills its customer-specific suitability obligation for an institutional investor if (1) the CAB has a reasonable basis to believe that the institutional investor is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities, and (2) the institutional investor affirmatively indicates that it is exercising independent judgment in evaluating the CAB's recommendations. Where an institutional investor has delegated decision-making to an agent, such as an investment adviser or a bank trust department, these factors are applied to the agent. See CAB Rule 211(b).

where both the seller and purchaser are institutional investors and would not be permitted to sell unregistered securities to persons who are not institutional investors.

This limitation would help mitigate any concerns that CABs would be acting as a placement agent or finder in connection with the secondary sale of unregistered securities to individuals who lack the knowledge and expertise to understand the risks and limitations of such securities or lack the resources to employ a person with such knowledge and expertise. In addition, to the extent that an institutional investor qualifies as a retail investor for purposes of Form CRS, or a retail customer under Reg BI, the CAB may need to file and deliver a relationship summary, and any recommendation that the CAB would make to such an investor about a qualifying secondary transaction may trigger the requirements of Reg BI.[49]

Private Securities Transactions

FINRA Rule 3280 (Private Securities Transactions of an Associated Person) governs situations in which an associated person of a member firm participates in any manner in a private securities transaction (i.e., a securities transaction outside of the regular course or scope of the associated person's employment with the broker-dealer) without providing prior written notice to the employer firm. If the private securities transaction involves selling compensation, the firm must determine whether to approve or disapprove the person's participation in the proposed transaction. If the member approves the transaction, it must record it on its books and records and must supervise the person's participation as if the transaction were executed on behalf of the member.

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49 See supra note 42 and accompanying text.

Currently, CAB Rule 328 prohibits any person associated with a CAB from participating in a PST as defined in Rule 3280(e). At the time of adoption of the CAB Rules, FINRA believed that an associated person of a CAB should not be engaged in selling securities away from the CAB and a CAB should not have to oversee and review such transactions, given its limited business model. However, FINRA believes that it would be appropriate to amend the CAB Rules to permit PSTs to remedy the challenges and unintended consequences presented by this prohibition. FINRA believes the proposed change is reasonable in light of changes in the regulatory landscape since adoption of the CAB Rules, including implementation of Reg BI and Form CRS, which add a layer of investor protection that did not exist at the time, and the M&A Brokers Exemption, which resulted in some firms foregoing their broker-dealer registrations to become exempt M&A Brokers.

As noted above, the current prohibition on PSTs presents operational and other challenges for some broker-dealers. For example, some registered broker-dealers have exempt affiliates that engage in limited merger and acquisitions activities in reliance on the M&A Brokers Exemption.[50] Under FINRA Rule 3280(a), an associated person of a FINRA member firm "shall not participate in any manner in a private securities transaction except in accordance with" Rule 3280's requirements. Accordingly, if a CAB associated person is also associated with an exempt affiliated M&A Broker that is relying on the M&A Brokers Exemption, that person is not permitted to participate in PSTs

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50 Under this business model, if a transaction meets the conditions and requirements of the M&A Brokers Exemption, the transaction is effected through an exempt affiliated M&A Broker. If a transaction does not meet the M&A Brokers Exemption's requirements, it is effected through a registered broker-dealer affiliate.

through the exempt affiliate.

A commenter on Regulatory Notice 20-04 noted that, in addition to creating significant operational challenges, the current prohibition on PSTs places CABs at a competitive disadvantage relative to firms relying on the M&A Brokers Exemption. This is because it may be unclear whether a future transaction will be an asset or stock sale, and the CAB may have to forgo entering into strategic referral arrangements.[51]

In addition, many firms that have considered electing CAB status declined to do so due to the inability of their associated persons to act as supervised persons of registered investment advisers ("RIAs") if they participate in private securities transactions. [52]

Such impacts on CABs and firms that might otherwise consider registering with FINRA as a CAB was not intended at the time the CAB Rules were adopted, and FINRA believes that the prohibition on PSTs is unnecessarily restrictive. FINRA believes it is appropriate to amend CAB Rule 328 and apply the same risk controls and compliance procedures relating to PSTs to CABs and non-CAB broker-dealer members alike. FINRA believes that the proposed rule change may help support capital formation by expanding the range of activities in which CABs can participate without materially impacting investor protection. Today, CABs and non-CAB broker-dealer members are subject to the same core supervisory obligations (as discussed above), and under the proposed rule change, they would have the same supervisory and record-keeping obligations with respect to PSTs.

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51 See Waterview 1 Letter.

52 See NtM 94-44.

Specifically, FINRA is proposing to amend CAB Rule 328 to subject CABs to FINRA Rule 3280 (or its successor)[53] rather than strictly prohibiting persons associated with CABs from participating in PSTs.[54] In this regard, prior to participating in any PST, an associated person of a CAB must provide written notice to the CAB with which the person is associated, describing in detail the proposed transaction and the person's proposed role therein, and also stating whether the person will receive selling compensation in connection with the transaction.[55] "Selling compensation" includes any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, but not limited to, finder's fees, securities or rights to acquire securities, rights of participation in profits, tax benefits, or dissolution proceeds, as a general partner or otherwise, and expense reimbursements.[56]

If the person will receive selling compensation, the CAB must advise the person in writing stating whether the CAB approves or disapproves the proposed transaction. If

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53 FINRA has requested comment on a proposed new rule to address the outside activities of its member firms' associated persons, which would replace current FINRA Rules 3270 and 3280. See Regulatory Notice 25-05 (March 2025). If FINRA files, and the Commission approves, a proposed rule change to adopt the new rule, FINRA would propose to replace CAB Rules 327 (Outside Business Activities of Registered Persons) and 328 (Private Securities Transactions of an Associated Person) with a new CAB Rule that would cross-reference the new FINRA rule.

54 FINRA notes that Rule 3280 applies to persons associated with a member. Accordingly, pursuant to amended CAB Rule 328, the requirements of Rule 3280 would apply to the associated persons of CABs as defined under FINRA Rules. See also CAB Rule 014 (Application of the By-Laws and the Capital Acquisition Broker Rules).

55 See FINRA Rule 3280(b).

56 See FINRA Rule 3280(e)(2).

the CAB approved the person's participating in the transaction, the CAB must record the transaction in its books and records and must supervise the person's participation in the transaction as if the transaction were executed on behalf of the CAB. If the CAB disapproved the person's participation in the proposed transaction, the person could not participate in it in any manner.[57] If the person has not and will not receive any selling compensation, the CAB must provide the person prompt written acknowledgement of the person's notice of the proposed transaction, and may, at its discretion, require the person to adhere to specified conditions in connection with the transaction.[58]

FINRA believes that this proposed change is appropriate to address the challenges that the current prohibition on PSTs presents for CABs while maintaining investor protection through the CABs' limited business model and other restrictions on CABs' activities. While this proposed change would expand the permissible activities of a CAB and its associated persons, it also would expand the CAB's supervisory responsibilities, for example, where the CAB approves its associated person's participation in a transaction for which the person will receive selling compensation.

Applying the FINRA Rule 3280 requirements to CABs would benefit investors by allowing persons who are employees or representatives of exempt M&A Brokers to also act as associated persons of CABs. If such exempt M&A Broker employees currently are also not associated persons of a member firm, they are subject to little, if any, regulatory oversight. If this proposed change were approved, such exempt M&A Broker employees may choose also to be associated persons of CABs. In such circumstances, the CAB's

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57 See FINRA Rule 3280(c).

58 See FINRA Rule 3280(d).

oversight of its associated persons' participation in PSTs conducted through the exempt M&A Broker would be subject to examination for compliance with FINRA Rule 3280. This proposed change also could remove an impediment for currently exempt firms to create new CAB affiliates, which would benefit investors through increased oversight of the exempt affiliate's transactions.

Compensation

In 2019, FINRA issued a staff interpretation of the CAB Rules stating that CABs may be compensated in the form of securities issued by a privately held CAB client, rather than in cash, provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in activities prohibited under CAB Rule 016(c)(2) (Definitions).[59] In pertinent part, the interpretation states:

> The CAB Rules do not specifically address whether a CAB may receive compensation for its services in the form of equity securities. Provided that compensation is for services in which CABs are permitted to engage under CAB Rule 016(c)(1), and [the CAB] does not engage in activities that are specifically prohibited under CAB Rule 016(c)(2), [the CAB] may accept equity securities issued by privately held companies as compensation for its services as described in your letter. Thus, for example, upon receiving equity securities as compensation, [the CAB] may not accept orders from customers to purchase or sell securities either as principal or agent for the customer, and may not engage in proprietary trading or market making activities.

FINRA proposes to codify this interpretation in proposed CAB Rule 511 (Securities as Compensation).

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59 See Letter from Joseph P. Savage, FINRA, to Jonathan D. Wiley, The Forbes Securities Group, dated May 30, 2019.

M&A Brokers Exemption

Currently, CAB Rule 016(c)(1)(G) permits a CAB to effect securities transactions solely in connection with the transfer of ownership and control of a privately held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company to a buyer that will actively operate the company of the business conducted with the assets of the company, in accordance with the terms and conditions of an SEC rule, release, interpretation or "no-action" letter that permits a person to engage in such activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act. The purpose of this provision was to allow CABs to engage in merger and acquisition activities to the same extent as unregistered persons who were relying on the M&A Brokers Letter when it was in effect.[60] The M&A Brokers Letter was withdrawn on March 29, 2023.[61]

As discussed above, since the adoption of CAB Rule 016(c)(1)(G), Congress has amended the Exchange Act to create a new registration exemption for M&A Brokers similar to the no-action relief that firms previously relied upon under the M&A Brokers Letter. Accordingly, FINRA is proposing to amend Rule 016(c)(1)(G) to reference Exchange Act Section 15(b)(13), as well as any SEC rule, release, interpretation, or no-action letter, that permits a person to engage in the same or materially similar activities without registering as a broker or dealer under the Exchange Act. The purpose of this

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60 See Securities Exchange Act Release No. 76675 (December 17, 2015), 80 FR 79969, 79977 (December 23, 2015) (Notice of Filing of File No. SR-FINRA-2015-054).

61 See supra note 29.

proposed amendment is to make clear that CABs may effect M&A transactions to the same extent as an exempt M&A Broker under the M&A Brokers Exemption.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the rule change in a Regulatory Notice.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[62] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change will enhance the efficiency and effectiveness of the CAB Rules without materially impacting investor protection. The proposed rule change addresses some of the challenges presented by the current CAB Rules by expanding some of CABs' permissible activities without materially impacting CABs' limited institutional business model. The CAB Rules are part of FINRA's regulatory program designed to, among other things, support efficient capital formation. By expanding the range of permissible activities, the proposed rule change may further support capital formation.

At the same time, however, the proposed rule change ensures that the scope of the corporate financing activities that CABs are permitted to engage in will continue to be limited and the protections for investors and the public under the CAB Rules will not be materially impacted. CABs would remain subject to the core supervisory requirements

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62 15 U.S.C. 78o–3(b)(6).

discussed above and would remain subject to many other investor protection rules. For example, CABs would continue to be subject to content standards governing their communications with the public, a requirement to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business, and audit, recordkeeping, financial reporting, and net capital compliance requirements.[63]

The proposed rule change would amend the current definition of "institutional investor" for purposes of the CAB Rules to include "eligible employees," thus permitting CABs to act as placement agents or finders in the sale of newly-issued unregistered securities to "Knowledgeable Employees" under ICA rules for private fund issuers, and specified officers, directors, and employees of issuers that are not private funds. FINRA believes that the proposed rule change is consistent with investor protection and the public interest because these eligible employees have the expertise, knowledge, and resources to understand the risks of investing in the issuer. Given the knowledge and resources of these eligible employees, and the additional investor protections provided by Reg BI and Form CRS, FINRA believes that this proposed change would not materially impact investor protection or CABs' limited institutional business model. Additionally, CABs' permissible investor pool would not be expanded to retail investors who are not eligible employees.

The proposed rule change would permit CABs to act as intermediaries for specified secondary transactions involving unregistered securities provided that the sale qualifies for an exemption from registration under the Securities Act. This proposed change is consistent with CABs' current authority to act as a placement agent or finder on

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63 See, e.g., CAB Rules 201, 221, 311, 411, 414, 451, and 453.

behalf of an issuer in connection with the sale of newly-issued unregistered securities to institutional investors. Similar to acting as a placement agent or finder for newly-issued unregistered securities, CABs only would be allowed to act as an intermediary for a secondary transaction involving unregistered securities and only where both the seller and the purchaser are institutional investors. However, under the proposed rule change, CABs would be allowed to engage in such services on behalf of securities holders that are institutional investors, as newly defined to include eligible employees, rather than just the issuer (and, as noted, sales would be restricted to institutional investors). This expansion in permissible activities would be consistent with the public interest and investor protection, as it would not allow CABs to act as an intermediary in a securities transaction where either the seller or the purchaser is a retail investor.

The proposed amendment to CAB Rule 328 would eliminate certain operational and other challenges with respect to associated persons' PSTs by eliminating the express prohibition on PSTs under CAB Rule 328 and subjecting CABs to current FINRA Rule 3280. FINRA believes that the proposed amendment to CAB Rule 328 is consistent with investor protection and the public interest since it would require a CAB to supervise and keep records of any PST to the same extent and in the same manner as a non-CAB broker-dealer member.

The proposed rule change would codify a previously issued staff interpretation of the CAB Rules providing that CABs may receive compensation in the form of equity securities of a privately held issuer on behalf of which the CAB provided permitted services, provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in any activity prohibited under the CAB Rules. This change is

consistent with investor protection and the public interest in that it would not alter the way CABs operate today and would enhance the transparency of the CAB Rules.

Lastly, the proposed rule change would clarify that CABs may effect M&A securities transactions to the same extent as exempt M&A Brokers under the M&A Brokers Exemption. This amendment is consistent with the current provision in CAB Rule 016(c)(1)(G) that allows CABs to engage in such M&A transactions to the same extent that exempt M&A Brokers previously were permitted to engage in reliance upon the M&A Brokers Letter, which was withdrawn in 2023.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and alternatives FINRA considered in assessing how best to meet its regulatory objective.

Regulatory Need

FINRA maintains a separate rule set for CABs with the goal of reducing regulatory burdens on broker-dealer firms that engage only in limited institutional corporate financing and private placement activities and do not interact with retail investors. Through its ongoing dialogue with the industry regarding the effectiveness of

the CAB Rules, FINRA has learned that the current CAB definition and existing regulatory framework may discourage some firms for which the designation was intended from electing CAB status due to limits on CABs' permissible activities.

Economic Baseline

The economic baseline of the proposed rule change is the existing CAB regulatory framework, its adoption by the industry, and CAB-related industry practices and activities. FINRA sought comments on proposed changes to the CAB Rules in Regulatory Notice 20-04.[64] FINRA additionally obtained input from several advisory committees comprising member firms of different sizes and business models, investor protection advocates, member firms, and industry trade associations.

FINRA has identified the relevant member firms currently engaged in CAB activities. As of the end of 2024, these include 65 member firms that have elected CAB status, approximately 135 non-CAB FINRA member firms that conduct CAB-like activities (FINRA-registered CAB-like firms)[65] and an unknown number of firms that

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64 See Regulatory Notice 20-04 (January 2020).

65 "CAB-like" refers to activities that are similar to those in which CABs may engage, including advising companies on mergers, acquisitions and corporate restructuring, advising issuers on raising debt and equity capital, and acting as a placement agent for sales of unregistered securities to institutional investors. To estimate the number of FINRA-registered CAB-like firms, FINRA analyzed all member firms' 2024 end-of-year FOCUS Supplementary Statement of Income (SSOI) filings. Member firms that reported M&A related fees that were 100 percent of total revenue, did not report any commissions, and did not elect the CAB status, were identified as CAB-like firms. In addition, FINRA used Form ADV information to calculate the number of member firms dually registered as broker-dealers and investment advisers that provide advisory services only to institutional investors and identified 25 such firms. The total number of 135 firms is believed to be a lower bound on the number of potential FINRA member firms that are CAB-like.

provide services similar to CABs but are not registered with FINRA or the SEC (unregistered CAB-like firms).[66] Of the 65 member firms registered as CABs at the end of 2024, approximately 92 percent had fewer than 20 registered persons at year end. In total, there were approximately 581 registered persons across the 65 CAB firms at the end of 2024.[67]

Economic Impacts

FINRA has analyzed the potential costs and benefits of the proposed rule change, and the different parties that are expected to be affected. FINRA has identified member firms that are currently registered as CABs, member firms engaged in CAB-like activities without being registered as CABs, that may or may not elect CAB status in the future, non-member firms that engage in CAB-like activities, and respective customers of such firms as the parties that would primarily be affected by the proposed rule change.

Anticipated Benefits

The proposed rule change's benefits would accrue to those firms whose business decisions or activities would be enhanced, or regulatory burdens reduced, by the proposed rule change. These include member firms that already have elected CAB status, member firms that have not chosen to elect CAB status due to the CAB Rules' limits on their current or future activities, and firms that have not applied for FINRA membership.

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66 For example, there may be some firms that are relying on Exchange Act Section 15(b)(13), which exempts an "M&A broker," as defined in that section, from broker-dealer registration. See, e.g.,15 U.S.C. 78o(b)(13). The staff does not have an estimate on the number of these firms.

67 As of December 2024, existing CAB firms have an average of 9 registered persons per firm.

Existing CAB firms that expand the scope of their activities as a result of the proposed rule change would continue to benefit from a streamlined FINRA rulebook and would benefit from increased flexibility in their business practices. For example, they would be able to act as placement agents or finders in secondary transactions of unregistered securities (in certain cases). They also would be permitted to sell unregistered securities to "eligible employees" who are specified officers, directors, and employees of the issuer or certain affiliates if they so desire. Additionally, they would be allowed to participate in PSTs in accordance with FINRA Rule 3280 (or its successor).

The FINRA-registered CAB-like firms that could benefit from the proposed rule change include those firms whose activities would fall within the range of permissible CAB activities under the proposed amendments and firms for which the expanded CAB definition would overlap sufficiently with their business activities that the benefits of becoming a CAB would exceed the costs. For example, any of the existing CAB-like member firms that act as placement agents or finders in secondary transactions of unregistered securities that would be permitted for CABs would now be CAB-eligible. Firms that sell unregistered securities to "eligible employees" and otherwise meet the expanded CAB definition, would now be CAB-eligible and would have the potential to realize any associated cost savings from electing CAB designation.

Member firms that elect CAB status as a result of the proposed rule change would benefit from reduced regulatory burdens and lower compliance costs associated with maintaining FINRA membership. For example, unlike non-CAB broker-dealer members, CABs are not subject to branch inspection requirements under FINRA Rule 3110, are not required to have a principal pre-approve, or file with FINRA, their communications with

the public, and are only required to conduct an anti-money laundering audit every two years (versus annually for most non-CAB broker-dealer members). These firms also likely would benefit from more focused examinations that are tailored to their business activities. This should reduce compliance costs for these firms and allow them to deploy their capital more efficiently.

Some unregistered CAB-like firms may elect to become CABs as a result of the proposed amendments.[68] These firms are of two types: (1) firms that may be uncertain about whether their activities require broker-dealer registration; and (2) firms that are currently engaging in activities that do not require broker-dealer registration and would have to cease certain of these activities if they became CABs (for example, an M&A Broker engaging in transactions that constitute PSTs under the CAB Rules if the M&A Broker shared personnel with a newly created CAB affiliate). Unregistered firms that may currently engage in activities that require broker-dealer registration would benefit from removing the uncertainty of being sanctioned for acting as an unregistered broker-dealer while operating under a less burdensome regulatory framework. Firms that are not currently engaging in broker-dealer activities, but that choose to enter the broker-dealer space as a CAB because of the proposed rule change may benefit from new business opportunities.

The clients of firms that would benefit from the proposed rule change likely would benefit as well. They may benefit from lower costs to the extent FINRA-registered firms that become CABs pass any of their regulatory cost savings onto their

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68 In addition, it is possible that, because of the expanded CAB definition, new firms may elect to enter the broker-dealer space as CABs. FINRA does not have data that would enable the staff to estimate the number of such firms.

customers. Clients of currently unregistered firms may benefit from the protections that come with FINRA's regulatory and supervisory framework. Clients of existing CAB firms may benefit from the expanded scope of the firms' activities, without loss of protections.

Finally, FINRA believes that the proposed amendments to the CAB Rules could individually, and collectively, support capital formation without materially impacting investor protection.

Anticipated Costs

The proposed rule change would impose certain direct costs on existing CAB firms. Such direct costs would include establishing written policies and procedures, and any attendant monitoring costs that arise from them, in response to the amendment related to persons associated with CABs participating in PSTs. Additional costs would stem from the required training and supervision of the associated persons and their activities.

The proposed rule change is expected to impose some direct costs on firms that elect to become CABs as a result of the proposal. Firms that register with FINRA as CABs would incur implementation and ongoing costs associated with applying for and maintaining FINRA membership. The implementation costs would include FINRA application fees, legal or consulting fees, and costs associated with setting up the infrastructure for regulatory reporting and developing written supervisory policies and procedures. The ongoing costs would be in the form of annual registration fees and expenses associated with ongoing compliance activities, including undergoing examinations. However, these are costs that firms may choose to incur, presumably

because they conclude that the additional costs of regulation, supervision and compliance are outweighed by the benefits of FINRA membership. Some of the costs incurred from going from an unregistered to registered status might be passed on to the firms' customers. However, these costs could also be offset by the additional benefits stemming from the registration status and added investor protections that come with it.

Competitive Effects and Additional Considerations

To the extent that FINRA-registered CAB-like firms elect CAB status or non-FINRA members elect to register as CABs, the proposed rule change should reduce the competitive imbalance between these groups. For example, expanding the trading activities permissible for CAB associated persons, such as under proposed amendments to Rule 328, would potentially remove barriers for selecting CAB status or the ability of CAB firms to compete with CAB-like FINRA members or non-members. Overall, this should enhance competition among these groups particularly since the former group will experience reduced regulatory costs as a result of the proposed rule change.

FINRA considered the implications of the proposed rule change for investor protection. FINRA believes that the proposed rule change is reasonably designed to protect investors because it does not materially impact the limited business model of CABs and may enhance regulation in this space. To the extent that the proposed rule change expands CABs' permissible activities, FINRA does not believe there would be a material impact on investor protection. For example, as described above, eligible employees likely have the knowledge and expertise to understand the risks of investing in the issuer and resources necessary to conduct due diligence. Reg BI and Form CRS provide an additional layer of investor protection.

Alternatives Considered

FINRA has considered possible alternatives to the proposal. For example, FINRA considered exempting or reducing Continuing Education (CE) requirements for CAB firm registered personnel. However, FINRA determined, also considering the recent changes to the CE program,[69] that this change could hinder CAB registered persons' future employment opportunities with non-CAB firms, and potentially could reduce investor protection. FINRA further considered amending CAB Rule 016(c)(1) to expressly allow a CAB to act as an investment adviser as defined in section 202(a)(11) of the Advisers Act, provided that the advisory clients of the CAB and its associated persons consist solely of institutional investors. As discussed below, FINRA has determined not to make this change and believes that it is appropriate to defer to the existing federal and state statutory framework with respect to whether CABs may register as investment advisers and engage in advisory activities.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Background

In January 2020, FINRA published Regulatory Notice 20-04 (the "Notice"), requesting comment on proposed amendments to the CAB Rules (the "Notice Proposal"). The Notice Proposal was intended to make the CAB Rules more useful to CABs without reducing investor protection. A copy of the Notice is attached as Exhibit 2a.

The comment period initially expired on March 30, 2020, and subsequently was extended until June 30, 2020. FINRA received eight comments in response to the Notice.

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69 See Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR-FINRA-2021-015).

A list of the commenters in response to the Notice is attached as Exhibit 2b, and copies of the comment letters received in response to the Notice are attached as Exhibit 2c.[70] A summary of the comments and FINRA's response is provided below.

Comments on Proposal

Investment Adviser Activities

The Notice Proposal would have amended CAB Rule 016(c)(1) to expressly allow a CAB to act as an investment adviser as defined in section 202(a)(11) of the Advisers Act, provided that the advisory clients of the CAB and its associated persons consist solely of institutional investors. Two commenters[71] supported permitting CABs to register as investment advisers. NYSBA commented that this proposed change would benefit CABs whose advisory services to companies contemplating a purchase or sale of securities, or to issuers who request advice concerning the investment of offering proceeds, may require registration as an IA. NYSBA also stated that allowing CABs to become investment advisers would enhance the oversight of CABs from the Commission or states, as regulators of investment advisers. NYSBA further recommended that FINRA amend CAB Rule 328 (Private Securities Transactions of an Associated Person) to exclude investment advisory activities of CAB associated persons who are employees or supervised persons of registered investment advisers, and employees of banks and trust companies who are engaged in permissible securities or advisory services. NYSBA argued that this exclusion should cover any type of advisory activities, but at a minimum, activities involving institutional clients.

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70 See Exhibit 2b for a list of abbreviations assigned to commenters.

71 M&R and NYSBA.

FINRA has determined not to make this change and instead to retain the current approach under the CAB Rules (i.e., neither expressly prohibiting nor expressly permitting CABs to register as investment advisers). FINRA believes that it is appropriate to defer to the existing federal and state statutory framework with respect to whether CABs may engage in advisory activities. In addition, FINRA is not proposing to exclude from CAB Rule 328 investment advisory or banking activities of associated persons who are also employees or supervised persons of investment advisers or banks, as recommended by NYBSA.

Institutional Investor Definition

The Notice Proposal would have amended the definition of "institutional investor" in CAB Rule 016(i) to include any "knowledgeable employee." The Notice Proposal further would have added a new defined term "knowledgeable employee" that included: (i) Knowledgeable Employees as that term is defined in ICA Rule 3c-5 where the CAB has provided services permitted under CAB Rule 016(c)(1)(F) and (G) on behalf of an issuer that is a Covered Company[72] as defined in ICA Rule 3c-5, and (ii) the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer on behalf of which the capital acquisition broker has provided

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72 A "Covered Company" under ICA Rule 3c-5 means any company that would be an investment company but for the exclusions provided by sections 3(c)(1) or 3(c)(7) of the ICA. See 17 CFR 270.3c-5(a)(2).

services permitted under CAB Rule 016(c)(1)(F) and (G); and (iii) any company owned exclusively by knowledgeable employees.

Two commenters supported the proposed amendment to the CAB Rules definition of "institutional investor" to include knowledgeable employees, noting that it is common industry practice for hedge fund and private equity fund senior officers and directors to invest in private placements in which they are involved.[73] March recommended that "institutional investor" also include accredited investors as defined in Securities Act Regulation D.[74] M&R suggested that the term also include professional legal representatives of investors under the definition. IS expressed concern that if a CAB sold unregistered securities to knowledgeable employees, those investors would be considered retail customers under Reg BI and retail investors for purposes of Form CRS, and that this status is "perhaps … an unintended consequence brought about by the SEC."

FINRA does not believe that, for purposes of the CAB Rules, "institutional investor" should include accredited investors as defined under Regulation D. Commenters on the original proposed CAB Rules made the same recommendation, and FINRA chose at that time not to adopt this change, in part because the CAB Rules are not intended to govern broker-dealers that engage in retail private placement activities, since the term "accredited investor" under Regulation D covers a much wider range of individual investors than does the term "institutional investor" under the CAB Rules, and may not possess the same wealth or expertise as other CAB institutional investors.

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73 M&R and NYSBA.

74 See 17 CFR 230.501(a).

FINRA also does not believe it is necessary to revise the definition of "institutional investor" to include professional legal representatives of investors, since the term already includes any person acting solely on behalf of any such institutional investor.[75]

However, FINRA has determined to create a new proposed definition of "eligible employee" that would include, with respect to an issuer for which the CAB has provided services to the issuer or a control person permitted under CAB Rule 016(c)(1)(F) or (G): (1) persons that meet the definition of "Knowledgeable Employee" under ICA Rule 3c-5 with respect to services provided to an issuer that is a Covered Company as defined in ICA Rule 3c-5 or services provided to an Affiliated Management Person of such Covered Company as defined in ICA Rule 3c-5; and (2) specified officers, directors, and employees of issuers other than private funds.

FINRA believes that it is appropriate to create the new defined term "eligible employee" rather than using the proposed definition of "knowledgeable employee" in a manner that differs from the meaning of that term under ICA Rule 3c-5. Using a new term "eligible employee" thereby avoids potential confusion with the term "Knowledgeable Employee" under ICA Rule 3c-5. As discussed above, this change to the CAB Rules would permit the sale of newly-issued unregistered securities to specified officers, directors, and employees of both private fund issuers and issuers that are not private funds, in addition to institutional investors as defined under the current rules. Such eligible employees often invest in their employer companies as part of a private securities offering.

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75 See CAB Rule 016(i)(7).

In addition, because a CAB is a registered broker-dealer under the Exchange Act, FINRA agrees that if a CAB recommends any securities transaction or investment strategy involving securities to any natural person, or a legal representative of a natural person, who uses the recommendation primarily for personal, family, or household purposes, the person receiving the recommendation would be a "retail customer" under Reg BI.[76] FINRA also agrees that if a CAB offers services to a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family, or household purposes, the natural person would be a "retail investor" for purposes of Form CRS.[77]

Nevertheless, FINRA does not believe the application of Reg BI or Form CRS to a CAB or an associated person of a CAB is an unintended consequence brought about by the SEC. The Commission intended these rules to apply to broker-dealers' securities recommendations and offers of services to natural persons who use them for personal, family or household purposes, regardless of a natural person's net worth or whether a natural person is considered an institutional investor under FINRA Rules.[78] Further, FINRA does not believe that the application of Reg BI or CRS to CABs would impede the ability of CABs to comply with the CAB Rules.

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76 See 17 CFR 240.15*l*-1(b)(1).

77 See 17 CFR 240.17a-14(e)(2).

78 See Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318, 33342-43 (July 12, 2019), and Securities Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492, 33542-43 (July 12, 2019).

Secondary Transactions

The Notice Proposal would have permitted CABs to qualify, identify, solicit, or act as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns, subject to specified conditions. The purchaser of such securities would need to be an institutional investor, the CAB would need to have previously provided services permitted under CAB Rules 016(c)(1)(F) and (G) to the issuer in connection with the initial sale of such securities, and the sale of such securities would need to qualify for an exemption from registration under the Securities Act.

Commenters supported this proposed change,[79] but urged FINRA not to restrict this authority to secondary transactions in securities of an issuer on behalf of which the CAB previously had acted as placement agent or finder.[80] NYSBA noted that widening the ability of CABs to act as intermediaries in the sale of any unregistered securities, regardless of whether the CAB had previously provided services to the issuer, would be consistent with the Commission's June 18, 2019, concept release on harmonizing of securities offering exemptions.[81] Similarly, two other commenters recommended that CABs be permitted to advise clients regarding the sale of minority interests (involving less than 25% of ownership interests) to institutional investors.[82] Metric further noted that if CABs are limited to acting as placement agents only in secondary transactions

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79 M&R and NYSBA.

80 Metric and NYSBA.

81 See Securities Act Release No. 10649 (June 18, 2019), 84 FR 30640 (June 26, 2019).

82 HW and Metric.

involving securities where the CAB had previously provided services to the securities' issuer, this restriction "would eliminate 99%+ of the potential market and not justify the election of CAB status."

After considering these comments, FINRA agrees that the proposed restriction only allowing a CAB to act as intermediary for secondary transactions involving securities issued by prior CAB clients would be too limiting. FINRA also believes that allowing CABs to act as intermediaries in other secondary unregistered securities transactions where both the purchaser and seller are institutional investors would be consistent with CABs' current business model, since it would not allow CABs to serve retail investors.

Accordingly, FINRA proposes to modify the Notice Proposal to allow CABs to act as intermediaries in secondary transactions involving unregistered securities. As revised, a CAB would be permitted to qualify, identify, solicit, or act as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns, provided that: (i) the purchaser of such securities is an institutional investor; and (ii) the sale of such securities qualifies for an exemption from registration under the Securities Act (such as Securities Act Rules 144 or 144A). FINRA believes that these conditions are in the public interest as they would allow CABs to offer a wider range of services to their clients and would maintain investor protection, since CABs could only privately place securities where the purchaser is an institutional investor and would not be permitted to sell unregistered securities to retail investors.

Personal Investments

The Notice Proposal proposed new CAB Rule 321 (Supervision of Associated Persons' Investments), which would have required any CAB whose business model creates potential insider trading risks to establish, maintain, and enforce written policies and procedures that are reasonably designed to mitigate and prevent those risks. Such firms would be subject to FINRA Rule 3110(d), which requires members to include in their supervisory procedures a process for the review and investigation of securities transactions that are reasonably designed to identify trades that may violate provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices that are effected for accounts of an associated person or any of his or her immediate family members. In addition, such firms would be subject to FINRA Rule 3210, which requires associated persons to obtain his or her firm's prior written consent before opening a securities account at another broker-dealer or financial institution and authorizes the employer member to request that the executing member transmit confirmations and statements of such accounts. Proposed CAB Rule 321 also would have clarified that an associated person of a CAB may purchase and sell unregistered securities, provided he or she provides prior written notice of the transaction to the person's employer broker-dealer.

Two commenters strongly opposed proposed Rule 321.[83] These commenters argued that the rule is not justified based on the nature of CABs' activities. They recommended instead that CABs be required to adopt and enforce a comprehensive

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83 Metric and Waterview.

insider trading policy, including a restricted list of companies related to a CAB's projects, and to educate CABs' employees on the prohibitions of insider trading.

Waterview stated that, as a CAB, it does not have and cannot afford the automated systems that larger firms use to review associated persons' brokerage statements for accounts at other broker-dealers, and that this requirement would significantly burden small firms. Waterview also noted that exempt brokers that rely on the M&A Brokers Letter are not required to gather and review their employees' brokerage statements, which puts CABs at a competitive disadvantage relative to these exempt firms, and that FINRA should extend the same relief to CABs.

In contrast, two commenters supported proposed CAB Rule 321.[84] NYSBA stated that proposed Rule 321 would move CABs closer to their investment banking and corporate financing brokerage peers in terms of supervision of associated persons, and that it did not view this requirement as unduly burdensome.

In response to these comments, FINRA recognizes that uniformly applying FINRA Rules 3110(d) and 3210 to all CABs may be unduly burdensome for some smaller firms, and that such an approach fails to recognize the differences between firms' sizes and business models. FINRA has determined not to adopt proposed CAB Rule 321 in light of current SEC requirements and FINRA rules. CABs that are involved in transactions, either as a finder or a placement agent, that raise insider trading risks due to the potential misuse of material nonpublic information must maintain policies and

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84 M&R and NYSBA.

procedures required by the federal securities laws to address such risks.[85] In addition, pursuant to CAB Rule 201, CABs are subject to FINRA Rule 2010, which requires that members "observe high standards of commercial honor and just and equitable principles of trade."[86]

Two commenters also recommended that FINRA exclude from the definition of PST M&A transactions that are permissible for exempt firms that rely on the M&A Brokers Letter.[87] These commenters noted that if these types of transactions are considered PSTs, it creates significant operational and competitive challenges, particularly where it is unclear whether a future transaction will be an asset or stock sale. Waterview stated that CAB Rule 328's PST prohibition has prevented the firm from entering into strategic referral arrangements, which places the firm at a competitive disadvantage relative to exempt firms relying on the no-action letter.

FINRA is proposing to revise CAB Rule 328 in response to these and other comments. Currently CAB Rule 328 prohibits any associated person from participating

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85 See SEA Section 15(g), 15 U.S.C. 78o(g); see also Notice to Members 91-45 (June 1991) (NASD/NYSE Joint Memo).

86 See All. for Fair Bd. Recruitment v. SEC, 125 F.4th 159, 176 (5th Cir. 2024) (stating that "SROs have frequently applied [FINRA Rule 2010 and similar rules] to discipline [their] members for conduct that is unethical, such as[] violating the securities laws"). See also, e.g., Dep't of Enforcement v. Clark, Complaint No. 2017055608101, 2020 FINRA Discip. LEXIS 46 (NAC Dec. 17, 2020) (affirming Hearing Panel's finding that respondent violated FINRA Rule 2010 by misusing confidential information concerning a corporate acquisition and purchasing shares for his own personal financial gain); Dep't of Market Regulation v. Geraci, Complaint No. CMS020143, 2004 NASD Discip. LEXIS 19 (NAC Dec. 9, 2004) (affirming Hearing Panel's finding that the respondent violated Section 10(b) of the Exchange Act, SEA Rule 10b-5, and NASD Rules 2110 (now FINRA Rule 2010) and 2120 (now FINRA Rule 2020) by engaging in insider trading).

87 M&R and Waterview.

in any manner in a PST. As proposed to be amended, CAB Rule 328 would subject all CABs to FINRA Rule 3280. Thus, while there no longer would be a flat prohibition on PSTs, CABs would still need to supervise and keep records of all associated persons' PSTs to the same extent as non-CAB broker-dealer members under FINRA Rule 3280. FINRA believes that, with the proposed amendment to CAB Rule 328, CABs would not face the operational and competitive challenges, described above, that CAB Rule 328 currently imposes.

Compensation

The Notice Proposal would have added a new CAB Rule 511 (Securities as Compensation) that would state that a CAB may receive compensation in the form of equity securities of a privately held issuer on behalf of which the CAB provided services pursuant to CAB Rule 016(c), provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in an activity prohibited under Rule 016(c)(2).[88] Proposed CAB Rule 511 would codify a prior FINRA staff letter that interpreted the CAB Rules to allow CABs to receive equity securities as compensation.[89]

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88 CAB Rule 016(c)(2) provides that "capital acquisition broker" does not include any broker or dealer that carries or acts as an introducing broker with respect to customers' accounts, holds or handles customers' funds or securities, accept orders from customers (other than as permitted by CAB Rule 016(c)(1)(F) or (G)), has investment discretion on behalf of any customer, engages in proprietary trading of securities or market-making activities, participates in or maintains an online platform in connection with offerings of unregistered securities pursuant to Regulation Crowdfunding or Regulation A under the Securities Act, or effects securities transactions that would require the broker or dealer to report the transaction to FINRA under the FINRA Rules 6000 or 7000 series.

89 See supra note 59.

NYSBA supported proposed CAB Rule 511, noted that CABs have evolved, and thanked FINRA for acknowledging this evolution.

FINRA is retaining the text of proposed CAB Rule 511 without change.

Other Comments

IS criticized the CAB Rules in general as too restrictive and complex, and suggested that FINRA needs to redo the entire rulemaking process instead of patching poorly conceived rules. For example, IS argued that CABs should not have to comply with anti-money laundering ("AML") rules, and that FINRA should adopt a simple qualification examination for persons working for CABs. IS further stated that institutional investors do not need the protections that the CAB Rules provide, and that the proposed changes do not go far enough to encourage more firms to elect CAB status.

Metric recommended that FINRA eliminate continuing education ("CE") requirements for associated persons of CABs, and that it did not believe that if a CAB representative moved to a non-CAB broker-dealer, not having kept up his or her CE requirements would impede the representative from obtaining employment.

M&R recommended that FINRA reach out to professional associations and communities that engage in intermediary activities outside the scope of FINRA registration to let them know the benefits that CAB registration offers to their business, which would also benefit investors should such firms actually register. M&R also urged FINRA to develop CAB-specific compliance tools for small firms and solicit CAB specific contributions to its Peer-2-Peer Compliance Library. M&R also recommended that FINRA coordinate the CAB Rules with the conditions in the M&A Brokers Letter,

which would also encourage more firms that currently rely on the letter to register as CABs instead.

FINRA does not believe it would be useful or appropriate to repeal and replace the entire CAB Rules set. As of the end of 2024, 65 FINRA members have elected CAB status and operate under the CAB Rules. Completely repealing and then rewriting the CAB Rules would severely disrupt these firms' operations and FINRA's efforts to regulate these firms. Moreover, some of IS's recommendations, such as exempting CABs from the AML rules, are beyond FINRA's authority, since those obligations stem from statutory requirements applicable to all registered broker-dealers.

FINRA believes it is premature to create a separate representative or principal registration category solely for CABs. CABs often have different business models that require different types of registrations. FINRA also believes that it is important for associated persons of CABs to maintain their CE requirements, both to ensure that these persons are current on applicable securities laws, and to ease their transition should they choose to work for a non-CAB broker-dealer.

FINRA appreciates M&R's suggestions to work with both CAB and non-CAB industry members to make them aware of the benefits of CAB registration, and its suggestions to make more compliance tools available to CABs. FINRA agrees that adding to and improving compliance tools and resources benefit the industry and investors.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[90]

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. Regulatory Notice 20-04 (January 2020)

Exhibit 2b. List of comments received in response to Regulatory Notice 20-04.

Exhibit 2c. Copies of comments received in response to Regulatory Notice 20-04.

Exhibit 5. Text of the proposed rule change.

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90 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2025-005)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend the FINRA Capital Acquisition Broker ("CAB") Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing amendments to the FINRA Capital Acquisition Broker ("CAB") Rules ("CAB Rules"), which are discussed in greater detail below.

The text of the proposed rule change is available on FINRA's website at http://www.finra.org, at the principal office of FINRA and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Overview

CABs are broker-dealers that help promote capital formation through specified functions, essentially acting as placement agents for sales of unregistered securities to institutional investors; acting as intermediaries in connection with the change of control of privately held companies; and advising companies and private equity funds on capital raising and corporate restructuring.[3] Member firms that meet the CAB criteria may elect to be governed by the CAB Rules. CABs' specified functions do not include broader broker-dealer activities, such as accepting customers' trading orders, carrying customer accounts, handling customers' funds or securities, or engaging in proprietary trading or market-making.[4]

Given their limited institutional business model, CABs are subject to fewer restrictions on particular activities (such as advertising) and are not subject to sales

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3 See CAB Rule 016(c)(1).

4 See CAB Rule 016(c)(2).

practice requirements for particular products that CABs do not offer, such as variable insurance contracts or investment company securities.

CAB Supervisory Requirements

CABs are subject to less extensive supervisory requirements than non-CAB member firms; however, pursuant to CAB Rule 311, CABs are subject to FINRA's core supervisory requirements. By subjecting CABs to specified provisions of FINRA Rule 3110, CAB Rule 311 requires CABs to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and applicable FINRA rules. A CAB's supervisory system must provide, at a minimum:

- The establishment and maintenance of written procedures as required by FINRA Rule 3110;
- The designation, where applicable, of an appropriately registered principal with authority to carry out the CAB's supervisory responsibilities for each type of business in which it engages for which registration as a broker-dealer is required;
- The registration and designation as a branch office or office of supervisory jurisdiction ("OSJ") of each location, including the CAB's main office, that meets the definitions contained in Rule 3110(f);
- The designation of one or more appropriately registered principals in each OSJ and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the CAB;

- The assignment of each registered person to an appropriately registered representative(s) or principal(s) who shall be responsible for supervising that person's activities; and
- The use of reasonable efforts to determine that all supervisory personnel are qualified, either by virtue of experience or training, to carry out their assigned responsibilities.[5]

CABs also must establish, maintain, and enforce written procedures to supervise the CAB's and its associated persons' activities that are reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules. Such procedures must include procedures for the review of incoming and outgoing written (including electronic) correspondence to properly identify and handle in accordance with firm procedures, customer complaints, and internal or external communications that require review under FINRA rules and federal securities laws.[6] CABs also must ascertain the good character, business reputation, qualifications, and experience of an applicant before the CAB applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.[7] Consistent with FINRA Rule 3110, CABs have the flexibility to tailor their supervisory systems to their limited business models.

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5 See CAB Rule 311(a); see also FINRA Rules 3110(a)(1) through (6).

6 See CAB Rule 311(a); see also FINRA Rules 3110(b)(1), (b)(4), (b)(5), and (b)(7).

7 See CAB Rule 311(a) and FINRA Rule 3110(e).

CABs must designate and specifically identify to FINRA one or more principals to serve as chief compliance officer.[8] In addition, CABs are subject to FINRA Rules 3220 (Influencing or Rewarding Employees of Others), 3240 (Borrowing from or Lending to Customers), and 3270 (Outside Business Activities of Registered Persons).[9]

CABs are not subject to all of the same supervisory requirements that apply to non-CAB member firms, however. For instance, there is no requirement for CAB representatives and principals to participate in annual interviews with firm compliance personnel, for a CAB to conduct annual reviews of the businesses in which it engages, or for a CAB to conduct periodic inspections of its OSJ, branch, and non-branch offices.[10] CABs also are not subject to FINRA Rule 3110's requirement for members to adopt and implement procedures for the review of securities transactions that are effected for specified accounts of the member, its associated persons, and other related persons.[11]

Growth of CAB Membership

The CAB Rules became effective on April 14, 2017.[12] A firm may elect CAB status either by stating in its new member application that it intends to operate as a CAB,

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8 See CAB Rule 313.

9 See CAB Rules 322, 324, and 327.

10 See CAB Rule 311(a) and FINRA Rule 3110(c).

11 See CAB Rule 311(a) and FINRA Rule 3110(d).

12 See Regulatory Notice 16-37 (October 2016). See also Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (Order Approving File No. SR-FINRA-2015-054).

or if the firm is already registered as a broker-dealer, by amending its membership agreement to state that it will operate as a CAB going forward.[13]

The number of member firms that have elected CAB status has grown gradually since the CAB Rules became effective. During 2017, 44 member firms elected CAB status.[14] As of the end of 2024, the number of members that have elected CAB status had grown to 65 firms.[15] Some existing members that initially elected CAB status subsequently amended their membership agreements to revert to non-CAB status.[16] A few former CABs have filed a Form BDW and withdrawn their broker-dealer registration entirely.

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13 See CAB Rules 112 and 116.

14 Thirty-eight of these firms were already member firms at the time the CAB Rules took effect and elected CAB status as permitted by CAB Rule 116(b). CAB Rule 116(b) provides a means by which an existing FINRA member can elect CAB status without having to file an application for approval of change in ownership, control, or business operations pursuant to FINRA Rule 1017. Six firms elected CAB status as part of their new member application in 2017. See generally CAB Rules 111-115.

15 Thirty-three of these firms were existing member firms that elected CAB status pursuant to CAB Rule 116(b), and 32 firms elected CAB status as part of their initial application.

16 During the first year after an existing member elects CAB status pursuant to CAB Rule 116(b), the member may terminate its CAB status and continue operations as a non-CAB broker-dealer member without having to file an application for approval of a material change in business operations pursuant to FINRA Rule 1017. The CAB must file a request to amend its membership agreement to provide that the member agrees to comply with all FINRA Rules and execute an amended membership agreement that imposes the same limitations on the member's activities that existed prior to the member's election of CAB status. See CAB Rule 116(d).

Modernization of FINRA Capital Raising Rules

Adoption of the CAB Rules is one of a number of steps taken by FINRA to modernize its regulation of members' participation in capital-raising activities and to increase efficiency and reduce unnecessary burdens on the capital-raising process without compromising important protections for investors. The rules were intended to improve efficiency and reduce regulatory burdens by reducing the range of rules that apply to CABs given their limited activities and institutional business model, while maintaining necessary investor protections. FINRA believes that the CAB Rules continue to meet these goals, thereby supporting capital formation, particularly with regard to private placement activities.

FINRA notes that there has been tremendous growth in the number and dollar amount of unregistered securities offerings in the U.S. For example, an analysis of data derived from all initial Regulation D ("Reg D") filings finds that the number of deals increased from 22,853 in 2015 to 32,554 in 2024 and the dollar value of these deals doubled during this time period.[17] To protect investors in these markets, FINRA has in place both examination programs[18] and filing requirements[19] for specified members that

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17 See SEC Report, Market Statistics of Exempt Offerings under Regulations A, D, and Crowdfunding March 2025 (published April 28, 2025), https://www.sec.gov/files/dera-offering-reg-d-cf-2504.pdf. While initial Reg D filings indicate substantial increases between 2015 to 2024, in both number of deals and their dollar value (with a peak in 2021 in terms of number of filings and 2023 in terms of their dollar value), it is possible that the amendments to the initial Reg D filings would result in an increase to the aggregate amount.

18 See, e.g., 2025 FINRA Annual Regulatory Oversight Report, https://www.finra.org/sites/default/files/2025-01/2025-annual-regulatory-oversight-report.pdf.

19 See FINRA Rule 5122 (Private Placements of Securities Issued by Members) and FINRA Rule 5123 (Private Placements of Securities). CABs are not subject to

engage in these activities to help ensure that they are complying with applicable SEC and FINRA standards and, per Regulation Best Interest ("Reg BI"), that recommendations of unregistered securities are in the best interest of retail customers.[20] FINRA's oversight applies to members that are registered broker-dealers and funding portals. While FINRA currently does not have data that would enable it to calculate the percentage of all private placements conducted through registered broker-dealers, it believes generally that only a fraction of private placement deals are conducted through registered broker-dealers.[21]

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these rules' filing requirements. Under the current CAB Rules, CABs may only act as placement agents on behalf of issuers in connection with the sale of newly-issued unregistered securities to institutional investors, as defined under CAB Rule 016(i), or on behalf of an issuer or control person in connection with a change of control of a privately-held company. See CAB Rule 016(c)(1)(F). The term "institutional investor" under the CAB Rules includes, among other things, many of the same types of persons who are investing in private offerings that are excluded from filing under FINRA Rules 5122 and 5123. See, e.g., FINRA Rules 5122(c)(1)(A), (B), and 5123(b)(1)(A) and (B) (exempting from filing private offerings sold solely to institutional accounts as defined in FINRA Rule 4512(c) and qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 ("ICA")). Nevertheless, FINRA believes that its examinations and oversight of CABs protect investors through the review and monitoring of CABs' activities, including private placements.

20 17 CFR 240.15*l*-1.

21 For example, a 2020 white paper published by the SEC Division of Economic and Risk Analysis found that in the total population of Reg D offerings filed with the Commission between 2009 and 2015, fewer than 20 percent of issuers, on average, reported using an intermediary. Among a sample of 210 cases that the white paper analyzed, of the 154 cases that involved use of an intermediary, only 40 percent of these intermediaries were broker-dealers. See Rachita Gullapalli, Division of Economic and Risk Analysis, SEC, Misconduct and Fraud in Unregistered Offerings (August 2020) at 24, https://www.sec.gov/files/misconduct-and-fraud-unregistered-offerings.pdf. Moreover, FINRA analysis finds that only around 10 percent of new Reg D offerings during 2013-2022 involved at least one FINRA-registered broker-dealer. This analysis is based on initial Reg D filings and may underestimate the true number of intermediaries in such cases where an issuer decided to engage a finder or a placement agent after the initial Reg D filing.

FINRA believes that most of the remaining private placements are conducted through either the issuer of the securities or an intermediary that is not registered as a broker-dealer and therefore not subject to broker-dealer regulation by FINRA and the SEC. FINRA believes that investors would benefit if more private placements were conducted through CABs and thus subject to regulatory oversight.

Industry Engagement on Proposed Changes to CAB Rules

In December 2017, the FINRA Board of Governors ("Board") approved the creation of an advisory committee to the Board called the Capital Acquisition and Placement Broker Committee ("CAP Committee"). The Board's resolutions instructed the CAP Committee to: (1) make recommendations to FINRA on SEC and FINRA policies that affect the activities of CABs and non-CAB broker-dealer members that have similar business models; and (2) propose to FINRA, for its consideration and decision, new initiatives, new rules, or amendments to the CAB Rules and to FINRA Rules that apply to non-CAB broker-dealer members that have similar business models. The CAP Committee included both individuals registered with CABs and those registered with non-CAB broker-dealer members that have similar business models.[22]

FINRA subsequently published Regulatory Notice 20-04 requesting comment on several proposed amendments to the CAB Rules. As stated in Regulatory Notice 20-04, FINRA believed that the proposed amendments would "make [the CAB Rules] more useful to CABs without reducing investor protection." Regulatory Notice 20-04 and the comments received are discussed in greater detail below.

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22 The CAP Committee met several times during 2018 and 2019 to discuss these issues, and pursuant to the Board's enabling resolutions, terminated as an advisory committee in December 2019.

Overview of Proposed Amendments

FINRA has determined to amend the CAB Rules as part of its ongoing efforts to ensure that FINRA rules are effective and efficient and its rules relating to the capital-raising process support efficient capital formation.[23] FINRA believes that the proposed amendments are reasonable in light of the experience gained since adoption of the CAB Rules, as well as changes in the regulatory environment, such as the Commission's adoption and implementation of Reg BI and Form CRS,[24] which have added investor protections that did not exist at the time the CAB Rules were adopted.

As a result of the CAP Committee meetings, as well as ongoing engagement with industry members, including in the context of Regulatory Notice 20-04, FINRA believes that the current CAB Rules include limitations on CABs' activities that may be unnecessarily restrictive and have unintended consequences. The proposed rule change is designed to remedy such challenges. If the Commission approves these proposed changes, non-CAB broker-dealer members or firms that are eligible for an exemption from broker-dealer registration under the Exchange Act[25] may be encouraged to elect CAB status, thereby benefitting these firms and investors alike.

First, FINRA is proposing to expand the pool of permissible investors for sales of newly-issued unregistered securities under the CAB Rules to include "eligible

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23 See, e.g., Regulatory Notice 25-06 (March 2025) (requesting comment on modernizing FINRA rules, guidance and processes to facilitate capital formation, including the CAB Rules) and Regulatory Notice 17-14 (April 2017) (requesting comment on FINRA rules impacting capital formation).

24 See 17 CFR 240.17a-14.

25 See infra note 30 and accompanying text.

employees" (under the proposed amended CAB Rules definition of "institutional investor"). The proposed definition of "eligible employee" includes "Knowledgeable Employees" under Investment Company Act ("ICA") rules for private fund issuers,[26] and specified officers, directors, and employees of issuers other than private funds. Such investors have the expertise and knowledge about the issuer, and the resources to retain counsel and advisors, if necessary, to understand the risks of their investment. As such, these investors do not raise the same investor protection concerns as, for example, retail investors[27] who are not officers, directors or employees of the issuer, or other institutional investors. Reg BI and Form CRS provide an additional layer of investor protection to the extent any eligible employee receives a recommendation of any securities transaction or investment strategy involving securities from a broker-dealer or its associated person, and uses the recommendation primarily for personal, family, or household purposes under Reg BI, or receives services primarily for personal, family, or household purposes under Form CRS. Thus, FINRA does not believe that this proposed expansion would materially impact investor protection.

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26 See infra notes 36-38 and accompanying text.

27 The CAB rules do not define "retail investor." For purposes of this discussion, that term is intended to include investors that are not "institutional investors" under CAB Rule 016(i). See infra notes 34-35 and accompanying text. It should be noted that "retail investor" for purposes of this discussion, and the terms "retail customer" and "retail investor" under Reg BI and Form CRS, respectively, are not coterminous. For example, a natural person with $50 million in assets, and who uses a recommendation of a securities transaction for personal, family, or household purposes, would be an "institutional investor" under the CAB Rules, but would be a "retail customer" under Reg BI and a "retail investor" under Form CRS.

Second, FINRA is proposing to allow CABs to act as placement agents or finders for secondary transactions of unregistered securities in the limited circumstance where both the seller and purchaser of such unregistered securities are institutional investors and the sale qualifies for an exemption from registration under the Securities Act of 1933 ("Securities Act") (e.g., Securities Act Rules 144 or 144A). FINRA believes that the proposed conditions would allow CABs to offer a wider range of services to their clients without materially impacting investor protection because proposed CAB Rule 016(c)(1)(H) would not permit CABs to act as a placement agent or finder in connection with a secondary transaction sale of unregistered securities to persons other than institutional investors. FINRA also believes that this proposed change may help promote capital formation. A commenter on Regulatory Notice 20-04 noted that secondary market liquidity for investors in exempt primary offerings of an issuer is integral to capital formation in the primary offering market.[28]

Third, FINRA is proposing to permit CAB associated persons to participate in private securities transactions ("PSTs"), subject to the same requirements that apply to associated persons of non-CAB broker-dealer members who participate in PSTs. As discussed in greater detail below, CAB Rule 328's express prohibition on PSTs, as defined in FINRA Rule 3280(e),[29] often creates logistical and other business-related

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28 See NYSBA Letter. All references to commenters are to the comment letters as listed in Exhibit 2b. See Exhibit 2b for a list of abbreviations assigned to commenters.

29 "Private securities transaction" means any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities which are not registered with the Commission. The term excludes transactions subject to FINRA Rule 3210's notification requirements, transactions among immediate family members for which no associated person receives any selling

difficulties, for example, for firms that have created two separate affiliates that effect securities transactions depending on whether a transaction may be effected through an exempt merger and acquisition broker ("M&A Broker").[30] To the extent that an associated person of the registered broker-dealer affiliate is also an employee of the exempt M&A Broker affiliate, any securities transaction effected through the M&A Broker in which the associated person participated would be considered a PST. Since CAB Rule 328 prohibits associated persons of CABs from participating in PSTs, this structure does not work for such firms. Furthermore, FINRA has interpreted FINRA Rule 3280 to apply to many of the investment advisory activities of members' associated persons.[31] FINRA believes that a strict prohibition on PSTs is not necessary to achieve the goals of the CAB Rules.

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compensation, and personal transactions in investment company and variable annuity securities. See FINRA Rule 3280(e).

30 The Consolidated Appropriations Act of 2023 amended Section 15 of the Exchange Act to create a new registration exemption for specified merger and acquisition brokers. Under this exemption, a person may effect a securities transaction in connection with the transfer of ownership of a privately held company without registering as a broker or dealer under the Exchange Act, provided that the person and transaction meet specified conditions, which in many respects align with those contained in a prior SEC staff no-action letter. These amendments became effective on March 29, 2023. See Pub. L. No. 117-328, Division AA, Section 501, codified at 15 U.S.C. 78o(b)(13) ("M&A Brokers Exemption"). See also M&A Brokers, 2014 SEC No-Act. Lexis 92 (January 31, 2014) ("M&A Brokers Letter"). Prior to March 29, 2023, firms relied upon the M&A Brokers Letter to effect securities transactions through this structure. The SEC staff withdrew the M&A Brokers Letter on March 29, 2023.

31 See Notice to Members 94-44 (June 1994) ("NtM 94-44"). As discussed in NtM 94-44, if an individual is registered as both a representative of a member firm and as an investment adviser ("IA") or investment adviser representative and conducts their IA activities away from their member firm employer, the representative may be subject to Rule 3280. In particular, if the representative's participation goes beyond the mere recommendation of a securities transaction, such as where he or she enters an order on behalf of an IA client with a brokerage firm other than the

FINRA believes that the proposed rule change increases efficiency by remedying some of the challenges CABs face under the current CAB Rules and promotes capital formation by reducing the regulatory burden on CABs. In addition, FINRA believes that the proposed rule change is reasonably designed to protect investors because it does not materially impact the limited institutional business model of CABs and may enhance regulation in this space. By addressing some of the challenges and burdens that have been identified since adoption of the CAB Rules, the proposed rule change may encourage some non-members and current FINRA broker-dealer members that conduct a limited range of corporate financing activities to register as a CAB. These include, for example, firms that have relied on the M&A Brokers Letter (prior to March 29, 2023) or the M&A Brokers Exemption (subsequent to March 29, 2023) to conduct limited securities activities without registering as a broker under the Exchange Act.[32] FINRA membership could benefit such firms by allowing them to expand their securities business and engage in the expanded range of activities permitted under the CAB Rules. In turn, increased regulatory oversight of these firms by FINRA and the SEC would

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member with which they are registered, or with another entity, and receives any compensation for the overall advisory services, the representative would be viewed as participating in a PST.

[32] FINRA does not have data that would enable it to estimate the number, if any, of such firms. However, some comments received on Regulatory Notice 20-04 suggest that this could be a possible outcome, for example:

> I believe the coordination [with the M&A Brokers Letter] will result in more firms opting for the CAB platform and thus performing M&A activities from start to finish under FINRA's jurisdiction, which will result in stronger investor protections.

See M&R Letter.

further enhance investor protection. Firms that are currently FINRA members that elect CAB status as a result of the proposed rule change could benefit from lower compliance costs associated with maintaining FINRA membership.

Finally, FINRA believes that the proposed rule change is reasonable in light of Reg BI and Form CRS, which provide an additional layer of investor protection that was not available at the time the CAB Rules were adopted.

The specific proposed amendments are discussed in greater detail below.

Proposed Amendments to CAB Rules

Sales of Newly-Issued Unregistered Securities

Currently, a CAB may act as a placement agent or finder (1) on behalf of an issuer in connection with a sale of newly-issued unregistered securities to "institutional investors" or (2) on behalf of an issuer or a control person in connection with a change of control of a privately-held company.[33] FINRA proposes to expand the scope of such permissible activity by broadening the definition of "institutional investor" for purposes of the CAB Rules to include any "eligible employee" under new CAB Rule 016(i)(8). As discussed below, FINRA believes that "eligible employees" do not raise the same investor protection concerns as retail investors and as such, this proposed expansion will not materially impact investor protection.

The term "institutional investor" for purposes of the CAB Rules[34] includes, among others, banks, investment companies, large employee benefit plans, and "qualified

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33 See CAB Rule 016(c)(1)(F).

34 CAB Rule 016(i) currently defines "institutional investor" as any: (1) bank, savings and loan association, insurance company or registered investment company; (2) governmental entity or subdivision thereof; (3) employee benefit plan, or multiple employee benefit plans offered to employees of the same

purchasers" under the ICA.[35] FINRA proposes to broaden the definition of institutional investor to include "eligible employees" as defined in new CAB Rule 016(m). The term would include specified officers, directors, and employees of issuers or control persons for which the CAB has provided services as permitted under subparagraphs (F) and (G) of CAB Rule 016(c)(1).

First, "eligible employee" would include any "Knowledgeable Employee," as defined in ICA Rule 3c-5,[36] with respect to services provided to an issuer that is a

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employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans; (4) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans; (5) other person (whether a natural person, corporation, partnership, trust, family office or otherwise) with total assets of at least $50 million; (6) person meeting the definition of "qualified purchaser" as that term is defined in Section 2(a)(51) of the ICA; and (7) any person acting solely on behalf of any such institutional investor.

35 The term "qualified purchaser" includes, among others, any natural person, family-owned company or specified trust that owns not less than $5,000,000 in investments, and any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments. See ICA section 2(a)(51), 15 U.S.C. 80a-2(a)(51).

36 Specifically, under ICA Rule 3c-5(a)(4), the term "Knowledgeable Employee" with respect to any Covered Company means any natural person who is: (i) an Executive Officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company or an Affiliated Management Person of the Covered Company; or (ii) an employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company, other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, provided that such employee has been performing such functions and duties for or on behalf of the Covered Company or

Covered Company, as defined in ICA Rule 3c-5,[37] or services provided to an "Affiliated Management Person" of such Covered Company, as defined in ICA Rule 3c-5,[38] under proposed CAB Rule 016(m)(1). The Commission adopted ICA Rule 3c-5 as directed by Congress pursuant to the National Securities Markets Improvements Act of 1996 ("NSMIA").[39] The Commission stated that the purpose of this provision of NSMIA "appears to be to allow private funds to offer persons who participate in the funds' management the opportunity to invest in the fund as a benefit of employment."[40]

As noted above, the CAB definition of "institutional investor" currently includes qualified purchasers as defined under the ICA. ICA Rule 3c-5 permits Knowledgeable Employees of private funds and certain of their affiliates to invest in such funds to the same extent as other qualified purchasers, even if an employee does not fall within the definition of that term. Thus, the inclusion of ICA Rule 3c-5 Knowledgeable Employees

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the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months. Under ICA Rule 3c-5, shares beneficially owned by knowledgeable employees are excluded for purposes of determining whether a private fund is excluded from the definition of "investment company" under ICA sections 3(c)(1) or 3(c)(7). See ICA Rule 3c-5(b).

37 "Covered Company" includes companies that would be investment companies under the ICA but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the ICA. See 17 CFR 270.3c-5(a)(2), (a)(5), and (a)(6).

38 Under ICA Rule 3c-5(a)(1), the term Affiliated Management Person "means an affiliated person, as such term is defined in section 2(a)(3) of the [Investment Company] Act [15 U.S.C. 80a-2(a)(3)], that manages the investment activities of a Covered Company. For purposes of this definition, the term 'investment company' as used in section 2(a)(3) of the Act includes a Covered Company."

39 See NSMIA section 209(d)(3), Pub. L. 104-290, 110 Stat. 3416, 3436 (1996).

40 See ICA Release No. 22405 (December 18, 1996), 61 FR 68100, 68102 & n.25 (December 26, 1996).

in the CAB definition of "eligible employee" would align the scope of persons to whom a CAB may sell private fund securities under the CAB Rules with the scope of investors permitted to invest in private funds under the ICA relying on the exclusion from the definition of "investment company" provided by section 3(c)(7) of the ICA.

Second, the term "eligible employee" would include specified officers, directors, or employees of an issuer that is not a Covered Company as defined in ICA Rule 3c-5,[41] under proposed CAB Rule 016(m)(2). Thus, the CAB Rules would permit CABs to act as a placement agent or finder in connection with sales to persons who hold similar positions to Knowledgeable Employees at issuers that are not private funds. In this regard, it is common for officers, directors, and other employees of issuers that are not private funds to invest in those companies' securities, either through stock options that are paid to such persons as compensation, or as part of a private offering of securities. FINRA believes that the proposed expansion of CABs' permissible activities to include sales to eligible employees is appropriate because they are likely to understand and appreciate any risks and limitations associated with investing in the issuer's securities. Eligible employees likely have the expertise and knowledge about the issuer, and the resources to retain counsel and financial advisers, if necessary, to evaluate a potential investment. Accordingly, they do not raise the same investor protection concerns as, for example, retail investors. Eligible employees would still have to qualify to invest in

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41 Specifically, this sub-category of "eligible employee" includes the president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer that is not a Covered Company as defined in ICA Rule 3c-5.

securities of a private company under the federal securities laws. Thus, for example, they could invest in unregistered securities pursuant to Securities Act Regulation D, such as by meeting the definition of "accredited investor."[42]

These proposed changes are consistent with CABs' limited institutional business model because they would not expand permissible sales to allow CABs to sell newly issued unregistered securities to retail investors who are not eligible employees. If the CAB recommends a securities transaction to an eligible employee who qualifies as a retail customer under Reg BI, or a retail investor for purposes of Form CRS, the CAB will be required to comply with the requirements of Reg BI and Form CRS.[43] FINRA

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42 See Securities Act Regulation D, 17 CFR 230.500 et seq.

43 Reg BI establishes a standard of conduct for broker-dealers and their associated persons when they make a recommendation to a retail customer of any securities transaction or investment strategy involving securities. Reg BI aligns the standard of conduct with retail customers' reasonable expectations by requiring broker-dealers, among other things, to act in the retail customer's best interest at the time a recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interests of the retail customer; and to address conflicts of interest by establishing, maintaining, and enforcing policies and procedures reasonably designed to identify and fully and fairly disclose material facts about conflicts of interest, and in instances where disclosure is insufficient to reasonably address the conflict, to mitigate or, in certain instances, eliminate the conflict. See Regulation Best Interest: The Broker-Dealer Standard of Conduct, Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019). In addition, a broker-dealer making a recommendation to a retail investor of any securities transaction or investment strategy involving securities must provide a brief relationship summary prior to, or at the time of, the recommendation. The relationship summary is intended to inform retail investors about the types of client and customer relationships and services the firm offers; the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services; whether the firm and its financial professionals currently have reportable legal or disciplinary history; and how to obtain additional information about the firm. See Form CRS Relationship Summary; Amendments to Form ADV, Securities Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492 (July 12, 2019).

believes that the additional protections that Reg BI and Form CRS provide will help ensure that any such securities recommendations are in the eligible employees' best interests, and that such employees will receive disclosures concerning the CAB required by Form CRS. Accordingly, FINRA does not believe that this proposed change will have a material impact on investor protection.[44]

Secondary Transactions

CABs currently may not act as placement agents in connection with secondary transactions involving unregistered securities, except when the transaction is in connection with the change of ownership or control of a privately-held company.[45] FINRA proposes also to allow CABs to act as placement agents or finders for secondary transactions of unregistered securities in the limited circumstance where both the seller and purchaser of such unregistered securities are institutional investors for purposes of the CAB Rules and the sale qualifies for an exemption from registration under the Securities Act (e.g., Securities Act Rules 144 or 144A).[46]

FINRA believes that this proposed change is appropriate and would not have a material impact on investor protection, particularly in light of the implementation of Reg BI and Form CRS following adoption of the CAB Rules. As discussed above, CABs

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44 FINRA is also proposing to make a technical change to the definition of "institutional investor" by deleting the word "any" at the beginning of CAB Rule 016(i)(7). This deletion is appropriate because "any" already appears in the introductory clause of Rule 016(i). FINRA also is moving the word "and" from the end of Rule 016(i)(6) to the end of Rule 016(i)(7) due to the addition of proposed Rule 016(i)(8).

45 See CAB Rules 016(c)(1)(F) and (G).

46 See proposed CAB Rule 016(c)(1)(H); see also 17 CFR 230.144 and 230.144A.

would only be permitted to act as a placement agent or finder in a secondary transaction involving unregistered securities if both the seller and the buyer of such securities are institutional investors as defined in CAB Rule 016(i). Institutional investors often possess the knowledge and financial expertise to evaluate whether a transaction is appropriate for their needs or have the resources to hire a financial adviser who can assist and advise them in the transaction. FINRA notes that, as amended pursuant to the proposed rule change, the CAB Rules definition of "institutional investor" also would include eligible employees, as discussed above.

If CABs were permitted to act as intermediaries in connection with secondary transactions involving unregistered securities, they would be subject to the CAB Rules rather than the entire FINRA rulebook. Nevertheless, FINRA believes that there would be sufficient investor protections for CAB customers under both the CAB Rules and applicable SEC rules.

First, CABs still would be subject to CAB rules prohibiting any communication concerning the unregistered securities or the CAB's services from including false, exaggerated, unwarranted, promissory or misleading statement or claim. Such a communication could not omit any material fact or qualification that would cause the communication to be misleading and would be required to be based on principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts regarding the security or service.[47] Among other things, as discussed above, CABs

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47 See CAB Rule 221.

would still be subject to FINRA's core supervisory requirements, and would be subject to FINRA rules restricting borrowing from or lending to customers.[48]

In addition, if the CAB recommended a secondary transaction to a natural person who falls within the CAB institutional investor definition and qualifies as a retail customer under Reg BI, the CAB would be required to comply with the requirements of Reg BI, including the obligation to have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile. If a CAB recommends a securities transaction to an institutional investor who does not qualify as a retail customer under Reg BI, pursuant to CAB Rule 211, the CAB still must have a reasonable basis to believe that the recommended transaction is suitable for the customer based on information obtained through reasonable diligence of the CAB to ascertain the customer's investment profile.[49]

FINRA believes that the proposed conditions for participating in secondary market transactions are appropriately tailored to allow CABs to offer a wider range of services to their clients while remaining consistent with the purpose of the CAB Rules and CABs' limited institutional business model. The proposed rule change would not expand CABs' permitted activities to broader broker-dealer activities, such as accepting

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48 See CAB Rules 311 and 324.

49 See CAB Rule 211 (Suitability). A CAB fulfills its customer-specific suitability obligation for an institutional investor if (1) the CAB has a reasonable basis to believe that the institutional investor is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities, and (2) the institutional investor affirmatively indicates that it is exercising independent judgment in evaluating the CAB's recommendations. Where an institutional investor has delegated decision-making to an agent, such as an investment adviser or a bank trust department, these factors are applied to the agent. See CAB Rule 211(b).

customers' trading orders, carrying customer accounts, handling customers' funds or securities, or engaging in proprietary trading or market-making. CABs would only be permitted to act as an intermediary with respect to secondary transactions in securities where both the seller and purchaser are institutional investors and would not be permitted to sell unregistered securities to persons who are not institutional investors.

This limitation would help mitigate any concerns that CABs would be acting as a placement agent or finder in connection with the secondary sale of unregistered securities to individuals who lack the knowledge and expertise to understand the risks and limitations of such securities or lack the resources to employ a person with such knowledge and expertise. In addition, to the extent that an institutional investor qualifies as a retail investor for purposes of Form CRS, or a retail customer under Reg BI, the CAB may need to file and deliver a relationship summary, and any recommendation that the CAB would make to such an investor about a qualifying secondary transaction may trigger the requirements of Reg BI.[50]

Private Securities Transactions

FINRA Rule 3280 (Private Securities Transactions of an Associated Person) governs situations in which an associated person of a member firm participates in any manner in a private securities transaction (i.e., a securities transaction outside of the regular course or scope of the associated person's employment with the broker-dealer) without providing prior written notice to the employer firm. If the private securities transaction involves selling compensation, the firm must determine whether to approve or disapprove the person's participation in the proposed transaction. If the member

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50 See supra note 43 and accompanying text.

approves the transaction, it must record it on its books and records and must supervise the person's participation as if the transaction were executed on behalf of the member.

Currently, CAB Rule 328 prohibits any person associated with a CAB from participating in a PST as defined in Rule 3280(e). At the time of adoption of the CAB Rules, FINRA believed that an associated person of a CAB should not be engaged in selling securities away from the CAB and a CAB should not have to oversee and review such transactions, given its limited business model. However, FINRA believes that it would be appropriate to amend the CAB Rules to permit PSTs to remedy the challenges and unintended consequences presented by this prohibition. FINRA believes the proposed change is reasonable in light of changes in the regulatory landscape since adoption of the CAB Rules, including implementation of Reg BI and Form CRS, which add a layer of investor protection that did not exist at the time, and the M&A Brokers Exemption, which resulted in some firms foregoing their broker-dealer registrations to become exempt M&A Brokers.

As noted above, the current prohibition on PSTs presents operational and other challenges for some broker-dealers. For example, some registered broker-dealers have exempt affiliates that engage in limited merger and acquisitions activities in reliance on the M&A Brokers Exemption.[51] Under FINRA Rule 3280(a), an associated person of a FINRA member firm "shall not participate in any manner in a private securities transaction except in accordance with" Rule 3280's requirements. Accordingly, if a CAB

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[51] Under this business model, if a transaction meets the conditions and requirements of the M&A Brokers Exemption, the transaction is effected through an exempt affiliated M&A Broker. If a transaction does not meet the M&A Brokers Exemption's requirements, it is effected through a registered broker-dealer affiliate.

associated person is also associated with an exempt affiliated M&A Broker that is relying on the M&A Brokers Exemption, that person is not permitted to participate in PSTs through the exempt affiliate.

A commenter on Regulatory Notice 20-04 noted that, in addition to creating significant operational challenges, the current prohibition on PSTs places CABs at a competitive disadvantage relative to firms relying on the M&A Brokers Exemption. This is because it may be unclear whether a future transaction will be an asset or stock sale, and the CAB may have to forgo entering into strategic referral arrangements.[52]

In addition, many firms that have considered electing CAB status declined to do so due to the inability of their associated persons to act as supervised persons of registered investment advisers ("RIAs") if they participate in private securities transactions. [53]

Such impacts on CABs and firms that might otherwise consider registering with FINRA as a CAB was not intended at the time the CAB Rules were adopted, and FINRA believes that the prohibition on PSTs is unnecessarily restrictive. FINRA believes it is appropriate to amend CAB Rule 328 and apply the same risk controls and compliance procedures relating to PSTs to CABs and non-CAB broker-dealer members alike. FINRA believes that the proposed rule change may help support capital formation by expanding the range of activities in which CABs can participate without materially impacting investor protection. Today, CABs and non-CAB broker-dealer members are subject to the same core supervisory obligations (as discussed above), and under the

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52 See Waterview 1 Letter.

53 See NtM 94-44.

proposed rule change, they would have the same supervisory and record-keeping obligations with respect to PSTs.

Specifically, FINRA is proposing to amend CAB Rule 328 to subject CABs to FINRA Rule 3280 (or its successor)[54] rather than strictly prohibiting persons associated with CABs from participating in PSTs.[55] In this regard, prior to participating in any PST, an associated person of a CAB must provide written notice to the CAB with which the person is associated, describing in detail the proposed transaction and the person's proposed role therein, and also stating whether the person will receive selling compensation in connection with the transaction.[56] "Selling compensation" includes any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, but not limited to, finder's fees, securities or rights to acquire securities, rights of participation in profits, tax benefits, or dissolution proceeds, as a general partner or otherwise, and expense reimbursements.[57]

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54 FINRA has requested comment on a proposed new rule to address the outside activities of its member firms' associated persons, which would replace current FINRA Rules 3270 and 3280. See Regulatory Notice 25-05 (March 2025). If FINRA files, and the Commission approves, a proposed rule change to adopt the new rule, FINRA would propose to replace CAB Rules 327 (Outside Business Activities of Registered Persons) and 328 (Private Securities Transactions of an Associated Person) with a new CAB Rule that would cross-reference the new FINRA rule.

55 FINRA notes that Rule 3280 applies to persons associated with a member. Accordingly, pursuant to amended CAB Rule 328, the requirements of Rule 3280 would apply to the associated persons of CABs as defined under FINRA Rules. See also CAB Rule 014 (Application of the By-Laws and the Capital Acquisition Broker Rules).

56 See FINRA Rule 3280(b).

57 See FINRA Rule 3280(e)(2).

If the person will receive selling compensation, the CAB must advise the person in writing stating whether the CAB approves or disapproves the proposed transaction. If the CAB approved the person's participating in the transaction, the CAB must record the transaction in its books and records and must supervise the person's participation in the transaction as if the transaction were executed on behalf of the CAB. If the CAB disapproved the person's participation in the proposed transaction, the person could not participate in it in any manner.[58] If the person has not and will not receive any selling compensation, the CAB must provide the person prompt written acknowledgement of the person's notice of the proposed transaction, and may, at its discretion, require the person to adhere to specified conditions in connection with the transaction.[59]

FINRA believes that this proposed change is appropriate to address the challenges that the current prohibition on PSTs presents for CABs while maintaining investor protection through the CABs' limited business model and other restrictions on CABs' activities. While this proposed change would expand the permissible activities of a CAB and its associated persons, it also would expand the CAB's supervisory responsibilities, for example, where the CAB approves its associated person's participation in a transaction for which the person will receive selling compensation.

Applying the FINRA Rule 3280 requirements to CABs would benefit investors by allowing persons who are employees or representatives of exempt M&A Brokers to also act as associated persons of CABs. If such exempt M&A Broker employees currently are also not associated persons of a member firm, they are subject to little, if any, regulatory

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58 See FINRA Rule 3280(c).

59 See FINRA Rule 3280(d).

oversight. If this proposed change were approved, such exempt M&A Broker employees may choose also to be associated persons of CABs. In such circumstances, the CAB's oversight of its associated persons' participation in PSTs conducted through the exempt M&A Broker would be subject to examination for compliance with FINRA Rule 3280. This proposed change also could remove an impediment for currently exempt firms to create new CAB affiliates, which would benefit investors through increased oversight of the exempt affiliate's transactions.

Compensation

In 2019, FINRA issued a staff interpretation of the CAB Rules stating that CABs may be compensated in the form of securities issued by a privately held CAB client, rather than in cash, provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in activities prohibited under CAB Rule 016(c)(2) (Definitions).[60] In pertinent part, the interpretation states:

> The CAB Rules do not specifically address whether a CAB may receive compensation for its services in the form of equity securities. Provided that compensation is for services in which CABs are permitted to engage under CAB Rule 016(c)(1), and [the CAB] does not engage in activities that are specifically prohibited under CAB Rule 016(c)(2), [the CAB] may accept equity securities issued by privately held companies as compensation for its services as described in your letter. Thus, for example, upon receiving equity securities as compensation, [the CAB] may not accept orders from customers to purchase or sell securities either as principal or agent for the customer, and may not engage in proprietary trading or market making activities.

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60 See Letter from Joseph P. Savage, FINRA, to Jonathan D. Wiley, The Forbes Securities Group, dated May 30, 2019.

FINRA proposes to codify this interpretation in proposed CAB Rule 511 (Securities as Compensation).

M&A Brokers Exemption

Currently, CAB Rule 016(c)(1)(G) permits a CAB to effect securities transactions solely in connection with the transfer of ownership and control of a privately held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company to a buyer that will actively operate the company of the business conducted with the assets of the company, in accordance with the terms and conditions of an SEC rule, release, interpretation or "no-action" letter that permits a person to engage in such activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act. The purpose of this provision was to allow CABs to engage in merger and acquisition activities to the same extent as unregistered persons who were relying on the M&A Brokers Letter when it was in effect.[61] The M&A Brokers Letter was withdrawn on March 29, 2023.[62]

As discussed above, since the adoption of CAB Rule 016(c)(1)(G), Congress has amended the Exchange Act to create a new registration exemption for M&A Brokers similar to the no-action relief that firms previously relied upon under the M&A Brokers Letter. Accordingly, FINRA is proposing to amend Rule 016(c)(1)(G) to reference Exchange Act Section 15(b)(13), as well as any SEC rule, release, interpretation, or no-action letter, that permits a person to engage in the same or materially similar activities

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61 See Securities Exchange Act Release No. 76675 (December 17, 2015), 80 FR 79969, 79977 (December 23, 2015) (Notice of Filing of File No. SR-FINRA-2015-054).

62 See supra note 30.

without registering as a broker or dealer under the Exchange Act. The purpose of this proposed amendment is to make clear that CABs may effect M&A transactions to the same extent as an exempt M&A Broker under the M&A Brokers Exemption.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the rule change in a Regulatory Notice.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[63] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change will enhance the efficiency and effectiveness of the CAB Rules without materially impacting investor protection. The proposed rule change addresses some of the challenges presented by the current CAB Rules by expanding some of CABs' permissible activities without materially impacting CABs' limited institutional business model. The CAB Rules are part of FINRA's regulatory program designed to, among other things, support efficient capital formation. By expanding the range of permissible activities, the proposed rule change may further support capital formation.

At the same time, however, the proposed rule change ensures that the scope of the corporate financing activities that CABs are permitted to engage in will continue to be limited and the protections for investors and the public under the CAB Rules will not be materially impacted. CABs would remain subject to the core supervisory requirements

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63 15 U.S.C. 78o–3(b)(6).

discussed above and would remain subject to many other investor protection rules. For example, CABs would continue to be subject to content standards governing their communications with the public, a requirement to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business, and audit, recordkeeping, financial reporting, and net capital compliance requirements.[64]

The proposed rule change would amend the current definition of "institutional investor" for purposes of the CAB Rules to include "eligible employees," thus permitting CABs to act as placement agents or finders in the sale of newly-issued unregistered securities to "Knowledgeable Employees" under ICA rules for private fund issuers, and specified officers, directors, and employees of issuers that are not private funds. FINRA believes that the proposed rule change is consistent with investor protection and the public interest because these eligible employees have the expertise, knowledge, and resources to understand the risks of investing in the issuer. Given the knowledge and resources of these eligible employees, and the additional investor protections provided by Reg BI and Form CRS, FINRA believes that this proposed change would not materially impact investor protection or CABs' limited institutional business model. Additionally, CABs' permissible investor pool would not be expanded to retail investors who are not eligible employees.

The proposed rule change would permit CABs to act as intermediaries for specified secondary transactions involving unregistered securities provided that the sale qualifies for an exemption from registration under the Securities Act. This proposed change is consistent with CABs' current authority to act as a placement agent or finder on

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64 See, e.g., CAB Rules 201, 221, 311, 411, 414, 451, and 453.

behalf of an issuer in connection with the sale of newly-issued unregistered securities to institutional investors. Similar to acting as a placement agent or finder for newly-issued unregistered securities, CABs only would be allowed to act as an intermediary for a secondary transaction involving unregistered securities and only where both the seller and the purchaser are institutional investors. However, under the proposed rule change, CABs would be allowed to engage in such services on behalf of securities holders that are institutional investors, as newly defined to include eligible employees, rather than just the issuer (and, as noted, sales would be restricted to institutional investors). This expansion in permissible activities would be consistent with the public interest and investor protection, as it would not allow CABs to act as an intermediary in a securities transaction where either the seller or the purchaser is a retail investor.

The proposed amendment to CAB Rule 328 would eliminate certain operational and other challenges with respect to associated persons' PSTs by eliminating the express prohibition on PSTs under CAB Rule 328 and subjecting CABs to current FINRA Rule 3280. FINRA believes that the proposed amendment to CAB Rule 328 is consistent with investor protection and the public interest since it would require a CAB to supervise and keep records of any PST to the same extent and in the same manner as a non-CAB broker-dealer member.

The proposed rule change would codify a previously issued staff interpretation of the CAB Rules providing that CABs may receive compensation in the form of equity securities of a privately held issuer on behalf of which the CAB provided permitted services, provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in any activity prohibited under the CAB Rules. This change is

consistent with investor protection and the public interest in that it would not alter the way CABs operate today and would enhance the transparency of the CAB Rules.

Lastly, the proposed rule change would clarify that CABs may effect M&A securities transactions to the same extent as exempt M&A Brokers under the M&A Brokers Exemption. This amendment is consistent with the current provision in CAB Rule 016(c)(1)(G) that allows CABs to engage in such M&A transactions to the same extent that exempt M&A Brokers previously were permitted to engage in reliance upon the M&A Brokers Letter, which was withdrawn in 2023.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and alternatives FINRA considered in assessing how best to meet its regulatory objective.

Regulatory Need

FINRA maintains a separate rule set for CABs with the goal of reducing regulatory burdens on broker-dealer firms that engage only in limited institutional corporate financing and private placement activities and do not interact with retail investors. Through its ongoing dialogue with the industry regarding the effectiveness of

the CAB Rules, FINRA has learned that the current CAB definition and existing regulatory framework may discourage some firms for which the designation was intended from electing CAB status due to limits on CABs' permissible activities.

Economic Baseline

The economic baseline of the proposed rule change is the existing CAB regulatory framework, its adoption by the industry, and CAB-related industry practices and activities. FINRA sought comments on proposed changes to the CAB Rules in Regulatory Notice 20-04.[65] FINRA additionally obtained input from several advisory committees comprising member firms of different sizes and business models, investor protection advocates, member firms, and industry trade associations.

FINRA has identified the relevant member firms currently engaged in CAB activities. As of the end of 2024, these include 65 member firms that have elected CAB status, approximately 135 non-CAB FINRA member firms that conduct CAB-like activities (FINRA-registered CAB-like firms)[66] and an unknown number of firms that

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65 See Regulatory Notice 20-04 (January 2020).

66 "CAB-like" refers to activities that are similar to those in which CABs may engage, including advising companies on mergers, acquisitions and corporate restructuring, advising issuers on raising debt and equity capital, and acting as a placement agent for sales of unregistered securities to institutional investors. To estimate the number of FINRA-registered CAB-like firms, FINRA analyzed all member firms' 2024 end-of-year FOCUS Supplementary Statement of Income (SSOI) filings. Member firms that reported M&A related fees that were 100 percent of total revenue, did not report any commissions, and did not elect the CAB status, were identified as CAB-like firms. In addition, FINRA used Form ADV information to calculate the number of member firms dually registered as broker-dealers and investment advisers that provide advisory services only to institutional investors and identified 25 such firms. The total number of 135 firms is believed to be a lower bound on the number of potential FINRA member firms that are CAB-like.

provide services similar to CABs but are not registered with FINRA or the SEC (unregistered CAB-like firms).[67] Of the 65 member firms registered as CABs at the end of 2024, approximately 92 percent had fewer than 20 registered persons at year end. In total, there were approximately 581 registered persons across the 65 CAB firms at the end of 2024.[68]

Economic Impacts

FINRA has analyzed the potential costs and benefits of the proposed rule change, and the different parties that are expected to be affected. FINRA has identified member firms that are currently registered as CABs, member firms engaged in CAB-like activities without being registered as CABs, that may or may not elect CAB status in the future, non-member firms that engage in CAB-like activities, and respective customers of such firms as the parties that would primarily be affected by the proposed rule change.

Anticipated Benefits

The proposed rule change's benefits would accrue to those firms whose business decisions or activities would be enhanced, or regulatory burdens reduced, by the proposed rule change. These include member firms that already have elected CAB status, member firms that have not chosen to elect CAB status due to the CAB Rules' limits on their current or future activities, and firms that have not applied for FINRA membership.

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67 For example, there may be some firms that are relying on Exchange Act Section 15(b)(13), which exempts an "M&A broker," as defined in that section, from broker-dealer registration. See, e.g.,15 U.S.C. 78o(b)(13). The staff does not have an estimate on the number of these firms.

68 As of December 2024, existing CAB firms have an average of 9 registered persons per firm.

Existing CAB firms that expand the scope of their activities as a result of the proposed rule change would continue to benefit from a streamlined FINRA rulebook and would benefit from increased flexibility in their business practices. For example, they would be able to act as placement agents or finders in secondary transactions of unregistered securities (in certain cases). They also would be permitted to sell unregistered securities to "eligible employees" who are specified officers, directors, and employees of the issuer or certain affiliates if they so desire. Additionally, they would be allowed to participate in PSTs in accordance with FINRA Rule 3280 (or its successor).

The FINRA-registered CAB-like firms that could benefit from the proposed rule change include those firms whose activities would fall within the range of permissible CAB activities under the proposed amendments and firms for which the expanded CAB definition would overlap sufficiently with their business activities that the benefits of becoming a CAB would exceed the costs. For example, any of the existing CAB-like member firms that act as placement agents or finders in secondary transactions of unregistered securities that would be permitted for CABs would now be CAB-eligible. Firms that sell unregistered securities to "eligible employees" and otherwise meet the expanded CAB definition, would now be CAB-eligible and would have the potential to realize any associated cost savings from electing CAB designation.

Member firms that elect CAB status as a result of the proposed rule change would benefit from reduced regulatory burdens and lower compliance costs associated with maintaining FINRA membership. For example, unlike non-CAB broker-dealer members, CABs are not subject to branch inspection requirements under FINRA Rule 3110, are not required to have a principal pre-approve, or file with FINRA, their communications with

the public, and are only required to conduct an anti-money laundering audit every two years (versus annually for most non-CAB broker-dealer members). These firms also likely would benefit from more focused examinations that are tailored to their business activities. This should reduce compliance costs for these firms and allow them to deploy their capital more efficiently.

Some unregistered CAB-like firms may elect to become CABs as a result of the proposed amendments.[69] These firms are of two types: (1) firms that may be uncertain about whether their activities require broker-dealer registration; and (2) firms that are currently engaging in activities that do not require broker-dealer registration and would have to cease certain of these activities if they became CABs (for example, an M&A Broker engaging in transactions that constitute PSTs under the CAB Rules if the M&A Broker shared personnel with a newly created CAB affiliate). Unregistered firms that may currently engage in activities that require broker-dealer registration would benefit from removing the uncertainty of being sanctioned for acting as an unregistered broker-dealer while operating under a less burdensome regulatory framework. Firms that are not currently engaging in broker-dealer activities, but that choose to enter the broker-dealer space as a CAB because of the proposed rule change may benefit from new business opportunities.

The clients of firms that would benefit from the proposed rule change likely would benefit as well. They may benefit from lower costs to the extent FINRA-registered firms that become CABs pass any of their regulatory cost savings onto their

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69 In addition, it is possible that, because of the expanded CAB definition, new firms may elect to enter the broker-dealer space as CABs. FINRA does not have data that would enable the staff to estimate the number of such firms.

customers. Clients of currently unregistered firms may benefit from the protections that come with FINRA's regulatory and supervisory framework. Clients of existing CAB firms may benefit from the expanded scope of the firms' activities, without loss of protections.

Finally, FINRA believes that the proposed amendments to the CAB Rules could individually, and collectively, support capital formation without materially impacting investor protection.

Anticipated Costs

The proposed rule change would impose certain direct costs on existing CAB firms. Such direct costs would include establishing written policies and procedures, and any attendant monitoring costs that arise from them, in response to the amendment related to persons associated with CABs participating in PSTs. Additional costs would stem from the required training and supervision of the associated persons and their activities.

The proposed rule change is expected to impose some direct costs on firms that elect to become CABs as a result of the proposal. Firms that register with FINRA as CABs would incur implementation and ongoing costs associated with applying for and maintaining FINRA membership. The implementation costs would include FINRA application fees, legal or consulting fees, and costs associated with setting up the infrastructure for regulatory reporting and developing written supervisory policies and procedures. The ongoing costs would be in the form of annual registration fees and expenses associated with ongoing compliance activities, including undergoing examinations. However, these are costs that firms may choose to incur, presumably

because they conclude that the additional costs of regulation, supervision and compliance are outweighed by the benefits of FINRA membership. Some of the costs incurred from going from an unregistered to registered status might be passed on to the firms' customers. However, these costs could also be offset by the additional benefits stemming from the registration status and added investor protections that come with it.

Competitive Effects and Additional Considerations

To the extent that FINRA-registered CAB-like firms elect CAB status or non-FINRA members elect to register as CABs, the proposed rule change should reduce the competitive imbalance between these groups. For example, expanding the trading activities permissible for CAB associated persons, such as under proposed amendments to Rule 328, would potentially remove barriers for selecting CAB status or the ability of CAB firms to compete with CAB-like FINRA members or non-members. Overall, this should enhance competition among these groups particularly since the former group will experience reduced regulatory costs as a result of the proposed rule change.

FINRA considered the implications of the proposed rule change for investor protection. FINRA believes that the proposed rule change is reasonably designed to protect investors because it does not materially impact the limited business model of CABs and may enhance regulation in this space. To the extent that the proposed rule change expands CABs' permissible activities, FINRA does not believe there would be a material impact on investor protection. For example, as described above, eligible employees likely have the knowledge and expertise to understand the risks of investing in the issuer and resources necessary to conduct due diligence. Reg BI and Form CRS provide an additional layer of investor protection.

Alternatives Considered

FINRA has considered possible alternatives to the proposal. For example, FINRA considered exempting or reducing Continuing Education (CE) requirements for CAB firm registered personnel. However, FINRA determined, also considering the recent changes to the CE program,[70] that this change could hinder CAB registered persons' future employment opportunities with non-CAB firms, and potentially could reduce investor protection. FINRA further considered amending CAB Rule 016(c)(1) to expressly allow a CAB to act as an investment adviser as defined in section 202(a)(11) of the Advisers Act, provided that the advisory clients of the CAB and its associated persons consist solely of institutional investors. As discussed below, FINRA has determined not to make this change and believes that it is appropriate to defer to the existing federal and state statutory framework with respect to whether CABs may register as investment advisers and engage in advisory activities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Background

In January 2020, FINRA published Regulatory Notice 20-04 (the "Notice"), requesting comment on proposed amendments to the CAB Rules (the "Notice Proposal"). The Notice Proposal was intended to make the CAB Rules more useful to CABs without reducing investor protection. A copy of the Notice is available on FINRA's website at http://www.finra.org.

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70 See Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR-FINRA-2021-015).

The comment period initially expired on March 30, 2020, and subsequently was extended until June 30, 2020. FINRA received eight comments in response to the Notice. A list of the commenters in response to the Notice and copies of the comment letters received in response to the Notice are available on FINRA's website.[71] A summary of the comments and FINRA's response is provided below.

Comments on Proposal

Investment Adviser Activities

The Notice Proposal would have amended CAB Rule 016(c)(1) to expressly allow a CAB to act as an investment adviser as defined in section 202(a)(11) of the Advisers Act, provided that the advisory clients of the CAB and its associated persons consist solely of institutional investors. Two commenters[72] supported permitting CABs to register as investment advisers. NYSBA commented that this proposed change would benefit CABs whose advisory services to companies contemplating a purchase or sale of securities, or to issuers who request advice concerning the investment of offering proceeds, may require registration as an IA. NYSBA also stated that allowing CABs to become investment advisers would enhance the oversight of CABs from the Commission or states, as regulators of investment advisers. NYSBA further recommended that FINRA amend CAB Rule 328 (Private Securities Transactions of an Associated Person) to exclude investment advisory activities of CAB associated persons who are employees or supervised persons of registered investment advisers, and employees of banks and trust

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71 See SR-FINRA-2025-005 (Form 19b-4, Exhibit 2b) for a list of abbreviations assigned to commenters (available on FINRA's website at http://www.finra.org).

72 M&R and NYSBA.

companies who are engaged in permissible securities or advisory services. NYSBA argued that this exclusion should cover any type of advisory activities, but at a minimum, activities involving institutional clients.

FINRA has determined not to make this change and instead to retain the current approach under the CAB Rules (i.e., neither expressly prohibiting nor expressly permitting CABs to register as investment advisers). FINRA believes that it is appropriate to defer to the existing federal and state statutory framework with respect to whether CABs may engage in advisory activities. In addition, FINRA is not proposing to exclude from CAB Rule 328 investment advisory or banking activities of associated persons who are also employees or supervised persons of investment advisers or banks, as recommended by NYBSA.

Institutional Investor Definition

The Notice Proposal would have amended the definition of "institutional investor" in CAB Rule 016(i) to include any "knowledgeable employee." The Notice Proposal further would have added a new defined term "knowledgeable employee" that included: (i) Knowledgeable Employees as that term is defined in ICA Rule 3c-5 where the CAB has provided services permitted under CAB Rule 016(c)(1)(F) and (G) on behalf of an issuer that is a Covered Company[73] as defined in ICA Rule 3c-5, and (ii) the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions,

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[73] A "Covered Company" under ICA Rule 3c-5 means any company that would be an investment company but for the exclusions provided by sections 3(c)(1) or 3(c)(7) of the ICA. See 17 CFR 270.3c-5(a)(2).

director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer on behalf of which the capital acquisition broker has provided services permitted under CAB Rule 016(c)(1)(F) and (G); and (iii) any company owned exclusively by knowledgeable employees.

Two commenters supported the proposed amendment to the CAB Rules definition of "institutional investor" to include knowledgeable employees, noting that it is common industry practice for hedge fund and private equity fund senior officers and directors to invest in private placements in which they are involved.[74] March recommended that "institutional investor" also include accredited investors as defined in Securities Act Regulation D.[75] M&R suggested that the term also include professional legal representatives of investors under the definition. IS expressed concern that if a CAB sold unregistered securities to knowledgeable employees, those investors would be considered retail customers under Reg BI and retail investors for purposes of Form CRS, and that this status is "perhaps … an unintended consequence brought about by the SEC."

FINRA does not believe that, for purposes of the CAB Rules, "institutional investor" should include accredited investors as defined under Regulation D. Commenters on the original proposed CAB Rules made the same recommendation, and FINRA chose at that time not to adopt this change, in part because the CAB Rules are not intended to govern broker-dealers that engage in retail private placement activities, since the term "accredited investor" under Regulation D covers a much wider range of

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74 M&R and NYSBA.

75 See 17 CFR 230.501(a).

individual investors than does the term "institutional investor" under the CAB Rules, and may not possess the same wealth or expertise as other CAB institutional investors.

FINRA also does not believe it is necessary to revise the definition of "institutional investor" to include professional legal representatives of investors, since the term already includes any person acting solely on behalf of any such institutional investor.[76]

However, FINRA has determined to create a new proposed definition of "eligible employee" that would include, with respect to an issuer for which the CAB has provided services to the issuer or a control person permitted under CAB Rule 016(c)(1)(F) or (G): (1) persons that meet the definition of "Knowledgeable Employee" under ICA Rule 3c-5 with respect to services provided to an issuer that is a Covered Company as defined in ICA Rule 3c-5 or services provided to an Affiliated Management Person of such Covered Company as defined in ICA Rule 3c-5; and (2) specified officers, directors, and employees of issuers other than private funds.

FINRA believes that it is appropriate to create the new defined term "eligible employee" rather than using the proposed definition of "knowledgeable employee" in a manner that differs from the meaning of that term under ICA Rule 3c-5. Using a new term "eligible employee" thereby avoids potential confusion with the term "Knowledgeable Employee" under ICA Rule 3c-5. As discussed above, this change to the CAB Rules would permit the sale of newly-issued unregistered securities to specified officers, directors, and employees of both private fund issuers and issuers that are not private funds, in addition to institutional investors as defined under the current rules.

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76 See CAB Rule 016(i)(7).

Such eligible employees often invest in their employer companies as part of a private securities offering.

In addition, because a CAB is a registered broker-dealer under the Exchange Act, FINRA agrees that if a CAB recommends any securities transaction or investment strategy involving securities to any natural person, or a legal representative of a natural person, who uses the recommendation primarily for personal, family, or household purposes, the person receiving the recommendation would be a "retail customer" under Reg BI.[77] FINRA also agrees that if a CAB offers services to a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family, or household purposes, the natural person would be a "retail investor" for purposes of Form CRS.[78]

Nevertheless, FINRA does not believe the application of Reg BI or Form CRS to a CAB or an associated person of a CAB is an unintended consequence brought about by the SEC. The Commission intended these rules to apply to broker-dealers' securities recommendations and offers of services to natural persons who use them for personal, family or household purposes, regardless of a natural person's net worth or whether a natural person is considered an institutional investor under FINRA Rules.[79] Further, FINRA does not believe that the application of Reg BI or CRS to CABs would impede the ability of CABs to comply with the CAB Rules.

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77 See 17 CFR 240.15*l*-1(b)(1).

78 See 17 CFR 240.17a-14(e)(2).

79 See Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318, 33342-43 (July 12, 2019), and Securities Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492, 33542-43 (July 12, 2019).

Secondary Transactions

The Notice Proposal would have permitted CABs to qualify, identify, solicit, or act as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns, subject to specified conditions. The purchaser of such securities would need to be an institutional investor, the CAB would need to have previously provided services permitted under CAB Rules 016(c)(1)(F) and (G) to the issuer in connection with the initial sale of such securities, and the sale of such securities would need to qualify for an exemption from registration under the Securities Act.

Commenters supported this proposed change,[80] but urged FINRA not to restrict this authority to secondary transactions in securities of an issuer on behalf of which the CAB previously had acted as placement agent or finder.[81] NYSBA noted that widening the ability of CABs to act as intermediaries in the sale of any unregistered securities, regardless of whether the CAB had previously provided services to the issuer, would be consistent with the Commission's June 18, 2019, concept release on harmonizing of securities offering exemptions.[82] Similarly, two other commenters recommended that CABs be permitted to advise clients regarding the sale of minority interests (involving less than 25% of ownership interests) to institutional investors.[83] Metric further noted that if CABs are limited to acting as placement agents only in secondary transactions

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80 M&R and NYSBA.

81 Metric and NYSBA.

82 See Securities Act Release No. 10649 (June 18, 2019), 84 FR 30640 (June 26, 2019).

83 HW and Metric.

involving securities where the CAB had previously provided services to the securities' issuer, this restriction "would eliminate 99%+ of the potential market and not justify the election of CAB status."

After considering these comments, FINRA agrees that the proposed restriction only allowing a CAB to act as intermediary for secondary transactions involving securities issued by prior CAB clients would be too limiting. FINRA also believes that allowing CABs to act as intermediaries in other secondary unregistered securities transactions where both the purchaser and seller are institutional investors would be consistent with CABs' current business model, since it would not allow CABs to serve retail investors.

Accordingly, FINRA proposes to modify the Notice Proposal to allow CABs to act as intermediaries in secondary transactions involving unregistered securities. As revised, a CAB would be permitted to qualify, identify, solicit, or act as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns, provided that: (i) the purchaser of such securities is an institutional investor; and (ii) the sale of such securities qualifies for an exemption from registration under the Securities Act (such as Securities Act Rules 144 or 144A). FINRA believes that these conditions are in the public interest as they would allow CABs to offer a wider range of services to their clients and would maintain investor protection, since CABs could only privately place securities where the purchaser is an institutional investor and would not be permitted to sell unregistered securities to retail investors.

Personal Investments

The Notice Proposal proposed new CAB Rule 321 (Supervision of Associated Persons' Investments), which would have required any CAB whose business model creates potential insider trading risks to establish, maintain, and enforce written policies and procedures that are reasonably designed to mitigate and prevent those risks. Such firms would be subject to FINRA Rule 3110(d), which requires members to include in their supervisory procedures a process for the review and investigation of securities transactions that are reasonably designed to identify trades that may violate provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices that are effected for accounts of an associated person or any of his or her immediate family members. In addition, such firms would be subject to FINRA Rule 3210, which requires associated persons to obtain his or her firm's prior written consent before opening a securities account at another broker-dealer or financial institution and authorizes the employer member to request that the executing member transmit confirmations and statements of such accounts. Proposed CAB Rule 321 also would have clarified that an associated person of a CAB may purchase and sell unregistered securities, provided he or she provides prior written notice of the transaction to the person's employer broker-dealer.

Two commenters strongly opposed proposed Rule 321.[84] These commenters argued that the rule is not justified based on the nature of CABs' activities. They recommended instead that CABs be required to adopt and enforce a comprehensive

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84 Metric and Waterview.

insider trading policy, including a restricted list of companies related to a CAB's projects, and to educate CABs' employees on the prohibitions of insider trading.

Waterview stated that, as a CAB, it does not have and cannot afford the automated systems that larger firms use to review associated persons' brokerage statements for accounts at other broker-dealers, and that this requirement would significantly burden small firms. Waterview also noted that exempt brokers that rely on the M&A Brokers Letter are not required to gather and review their employees' brokerage statements, which puts CABs at a competitive disadvantage relative to these exempt firms, and that FINRA should extend the same relief to CABs.

In contrast, two commenters supported proposed CAB Rule 321.[85] NYSBA stated that proposed Rule 321 would move CABs closer to their investment banking and corporate financing brokerage peers in terms of supervision of associated persons, and that it did not view this requirement as unduly burdensome.

In response to these comments, FINRA recognizes that uniformly applying FINRA Rules 3110(d) and 3210 to all CABs may be unduly burdensome for some smaller firms, and that such an approach fails to recognize the differences between firms' sizes and business models. FINRA has determined not to adopt proposed CAB Rule 321 in light of current SEC requirements and FINRA rules. CABs that are involved in transactions, either as a finder or a placement agent, that raise insider trading risks due to the potential misuse of material nonpublic information must maintain policies and

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85 M&R and NYSBA.

procedures required by the federal securities laws to address such risks.[86] In addition, pursuant to CAB Rule 201, CABs are subject to FINRA Rule 2010, which requires that members "observe high standards of commercial honor and just and equitable principles of trade."[87]

Two commenters also recommended that FINRA exclude from the definition of PST M&A transactions that are permissible for exempt firms that rely on the M&A Brokers Letter.[88] These commenters noted that if these types of transactions are considered PSTs, it creates significant operational and competitive challenges, particularly where it is unclear whether a future transaction will be an asset or stock sale. Waterview stated that CAB Rule 328's PST prohibition has prevented the firm from entering into strategic referral arrangements, which places the firm at a competitive disadvantage relative to exempt firms relying on the no-action letter.

FINRA is proposing to revise CAB Rule 328 in response to these and other comments. Currently CAB Rule 328 prohibits any associated person from participating

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86 See SEA Section 15(g), 15 U.S.C. 78o(g); see also Notice to Members 91-45 (June 1991) (NASD/NYSE Joint Memo).

87 See All. for Fair Bd. Recruitment v. SEC, 125 F.4th 159, 176 (5th Cir. 2024) (stating that "SROs have frequently applied [FINRA Rule 2010 and similar rules] to discipline [their] members for conduct that is unethical, such as[] violating the securities laws"). See also, e.g., Dep't of Enforcement v. Clark, Complaint No. 2017055608101, 2020 FINRA Discip. LEXIS 46 (NAC Dec. 17, 2020) (affirming Hearing Panel's finding that respondent violated FINRA Rule 2010 by misusing confidential information concerning a corporate acquisition and purchasing shares for his own personal financial gain); Dep't of Market Regulation v. Geraci, Complaint No. CMS020143, 2004 NASD Discip. LEXIS 19 (NAC Dec. 9, 2004) (affirming Hearing Panel's finding that the respondent violated Section 10(b) of the Exchange Act, SEA Rule 10b-5, and NASD Rules 2110 (now FINRA Rule 2010) and 2120 (now FINRA Rule 2020) by engaging in insider trading).

88 M&R and Waterview.

in any manner in a PST. As proposed to be amended, CAB Rule 328 would subject all CABs to FINRA Rule 3280. Thus, while there no longer would be a flat prohibition on PSTs, CABs would still need to supervise and keep records of all associated persons' PSTs to the same extent as non-CAB broker-dealer members under FINRA Rule 3280. FINRA believes that, with the proposed amendment to CAB Rule 328, CABs would not face the operational and competitive challenges, described above, that CAB Rule 328 currently imposes.

Compensation

The Notice Proposal would have added a new CAB Rule 511 (Securities as Compensation) that would state that a CAB may receive compensation in the form of equity securities of a privately held issuer on behalf of which the CAB provided services pursuant to CAB Rule 016(c), provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in an activity prohibited under Rule 016(c)(2).[89] Proposed CAB Rule 511 would codify a prior FINRA staff letter that interpreted the CAB Rules to allow CABs to receive equity securities as compensation.[90]

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89 CAB Rule 016(c)(2) provides that "capital acquisition broker" does not include any broker or dealer that carries or acts as an introducing broker with respect to customers' accounts, holds or handles customers' funds or securities, accept orders from customers (other than as permitted by CAB Rule 016(c)(1)(F) or (G)), has investment discretion on behalf of any customer, engages in proprietary trading of securities or market-making activities, participates in or maintains an online platform in connection with offerings of unregistered securities pursuant to Regulation Crowdfunding or Regulation A under the Securities Act, or effects securities transactions that would require the broker or dealer to report the transaction to FINRA under the FINRA Rules 6000 or 7000 series.

90 See supra note 60.

NYSBA supported proposed CAB Rule 511, noted that CABs have evolved, and thanked FINRA for acknowledging this evolution.

FINRA is retaining the text of proposed CAB Rule 511 without change.

Other Comments

IS criticized the CAB Rules in general as too restrictive and complex, and suggested that FINRA needs to redo the entire rulemaking process instead of patching poorly conceived rules. For example, IS argued that CABs should not have to comply with anti-money laundering ("AML") rules, and that FINRA should adopt a simple qualification examination for persons working for CABs. IS further stated that institutional investors do not need the protections that the CAB Rules provide, and that the proposed changes do not go far enough to encourage more firms to elect CAB status.

Metric recommended that FINRA eliminate continuing education ("CE") requirements for associated persons of CABs, and that it did not believe that if a CAB representative moved to a non-CAB broker-dealer, not having kept up his or her CE requirements would impede the representative from obtaining employment.

M&R recommended that FINRA reach out to professional associations and communities that engage in intermediary activities outside the scope of FINRA registration to let them know the benefits that CAB registration offers to their business, which would also benefit investors should such firms actually register. M&R also urged FINRA to develop CAB-specific compliance tools for small firms and solicit CAB specific contributions to its Peer-2-Peer Compliance Library. M&R also recommended that FINRA coordinate the CAB Rules with the conditions in the M&A Brokers Letter,

which would also encourage more firms that currently rely on the letter to register as CABs instead.

FINRA does not believe it would be useful or appropriate to repeal and replace the entire CAB Rules set. As of the end of 2024, 65 FINRA members have elected CAB status and operate under the CAB Rules. Completely repealing and then rewriting the CAB Rules would severely disrupt these firms' operations and FINRA's efforts to regulate these firms. Moreover, some of IS's recommendations, such as exempting CABs from the AML rules, are beyond FINRA's authority, since those obligations stem from statutory requirements applicable to all registered broker-dealers.

FINRA believes it is premature to create a separate representative or principal registration category solely for CABs. CABs often have different business models that require different types of registrations. FINRA also believes that it is important for associated persons of CABs to maintain their CE requirements, both to ensure that these persons are current on applicable securities laws, and to ease their transition should they choose to work for a non-CAB broker-dealer.

FINRA appreciates M&R's suggestions to work with both CAB and non-CAB industry members to make them aware of the benefits of CAB registration, and its suggestions to make more compliance tools available to CABs. FINRA agrees that adding to and improving compliance tools and resources benefit the industry and investors.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date

if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2025-005 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2025-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2025-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[91]

Jill M. Peterson
Assistant Secretary

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91 17 CFR 200.30-3(a)(12).

Exhibit 2a

Regulatory Notice 20-04

Capital Acquisition Brokers

FINRA Requests Comments on Proposed Amendments to the Capital Acquisition Broker (CAB) Rules

Comment Period Expires: March 30, 2020

Summary

FINRA's CAB rules provide a simplified rulebook for broker-dealers that engage only in limited capital advisory, corporate restructuring and private placement activities. FINRA is requesting comment on proposed amendments to the CAB rules to make them more useful to CABs without reducing investor protection.

The proposed rule text is available in Attachment A.

Questions regarding this *Notice* should be directed to Joseph P. Savage, Vice President and Counsel, Office of Regulatory Analysis, at (240) 386-4534 or by email at *joe.savage@finra.org*.

Questions regarding the Economic Impact Assessment in this *Notice* should be directed to: Meghan Burns, Associate Principal Analyst, Office of Chief Economist, at (202) 728-8062 or by email at *meghan.burns@finra.org*.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by March 30, 2020.

Comments must be submitted through one of the following methods:

- Emailing comments to *pubcom@finra.org*; or
- Mailing comments in hard copy to:

  Jennifer Piorko Mitchell
  Office of the Corporate Secretary
  FINRA
  1735 K Street, NW
  Washington, DC 20006-1506

To help FINRA process comments more efficiently, persons should use only one method to comment on the proposal.

January 30, 2020

Notice Type

- Request for Comment

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topics

- Capital Acquisition Brokers
- Institutional Investors
- Investment Advisers
- Personal Investments

Referenced Rules & Notices

- CAB Rule 016
- CAB Rule 321
- CAB Rule 328
- CAB Rule 511
- FINRA Rule 3110
- FINRA Rule 3210
- FINRA Rule 3280
- Notice to Members 91-45
- Regulatory Notice 16-22
- Regulatory Notice 16-37
- Investment Advisers Act section 202(a)(11)
- Investment Company Act section 2(a)(51)
- Investment Company Act Rule 3c-5
- Securities Act Rule 144
- Securities Act Rule 144A
- Securities Exchange Act section 15(g)

Important Notes: All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.[1]

Before becoming effective, a proposed rule change must be filed with the Securities and Exchange Commission (SEC) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).[2]

Background and Discussion

CAB Rules

CABs are firms that engage in a limited range of activities, essentially acting as placement agents for sales of unregistered securities to institutional investors and advising companies and private equity funds on capital raising and corporate restructuring. Firms meeting the CAB criteria may elect to be governed by the CAB rules.

The benefit of electing CAB status is that CABs are subject to fewer restrictions on specified activities (such as advertising) and have less burdensome supervisory requirements. On the other hand, CABs are not permitted to engage in other broker-dealer activities, such as accepting customers' trading orders, carrying customer accounts, handling customers' funds or securities, or engaging in proprietary trading or market-making.

The CAB rules became effective on April 14, 2017.[3] Firms may elect CAB status either as a new firm applicant or by electing CAB status as a current member firm.

Proposed Changes to CAB Rules

Investment Adviser Activities

The CAB rules currently do not permit CABs to register as investment advisers. Moreover, associated persons of CABs may not participate in private securities transactions (PSTs), which include the forwarding of orders from investment adviser clients to a third-party broker-dealer for execution. The proposed changes would allow CABs to register as investment advisers, so long as the advisory services are provided only to institutional investors.[4]

Institutional Investor Definition

A CAB may act as a placement agent or finder in the sale of newly-issued unregistered securities to "institutional investors."[5] The term "institutional investor" for purposes of the CAB rules includes banks, investment companies, large employee benefit plans and "qualified purchasers" under the Investment Company Act of 1940 (ICA).[6] FINRA proposes to broaden the definition of institutional investor to include "knowledgeable employees" under ICA Rule 3c-5, a term that includes senior officers and directors of private funds and their advisers.[7] "Knowledgeable employee" also would include persons performing similar roles at other private issuers for which CABs act as placement agents.[8]

Secondary Transactions

CABs may not act as placement agents in connection with secondary transactions involving unregistered securities, except when the transaction is in connection with the change of control of a privately-held company.[9] FINRA proposes to expand the ability of a CAB to act as placement agent for secondary trades of unregistered securities.[10] A CAB would be permitted to act as a placement agent in a secondary transaction involving unregistered securities of an issuer for which the CAB had previously acted as placement agent for such securities, provided that the purchaser of such securities is an institutional investor, and the new sale falls within a Securities Act of 1933 (Securities Act) exemption from registration (*e.g.*, Securities Act Rules 144 or 144A).[11]

Compensation

FINRA recently issued a staff interpretation of the CAB rules stating that CABs may be compensated in the form of securities issued by a privately held CAB client, rather than in cash, provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in activities prohibited under CAB Rule 016(c)(2) (Definitions).[12] FINRA proposes to codify this interpretation.[13]

Personal Investments

The CAB rules do not require a CAB's associated person to obtain the CAB's prior written consent before opening or otherwise establishing a securities account at another financial institution. Associated persons of non-CAB firms must do so under FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions). Nevertheless, some CABs may be involved in transactions, either as advisor or placement agent, that raise insider trading possibilities. CABs that are involved with such transactions must maintain policies and procedures required by the SEC to address insider trading risks.[14]

FINRA proposes to adopt new CAB Rule 321 (Supervision of Associated Persons' Investments), which would provide that any CAB whose business model creates potential insider trading risks is required to establish, maintain and enforce written policies and procedures that are reasonably designed to mitigate and prevent those risks. These CABs would be subject to FINRA Rule 3210 and their associated persons would be required to obtain the prior written consent of the CAB to open or otherwise establish at another firm any account in which securities transactions can be effected and in which the associated person has a beneficial interest.[15] The CAB also could request that a broker-dealer or other financial institution with which the associated person has a securities account transmit duplicate copies of confirmations and statements from the associated person's account.

In addition, CABs meeting this description would be subject to FINRA Rule 3110(d) (Supervision), which requires firms to adopt supervisory procedures for the review of securities transactions that are reasonably designed to identify trades that may violate provisions of the Securities Exchange Act of 1934 and SEC and FINRA rules prohibiting insider trading in accounts of the firm's associated persons and their immediate family members. Rule 3110(d) also requires these firms to promptly investigate such trades and file written reports of these investigations with FINRA.

The CAB rules also technically prohibit associated persons of CABs from investing in unregistered securities, since they prohibit associated persons from participating in PSTs. The PST definition in FINRA Rule 3280 (Private Securities Transactions of an Associated Person) includes direct investments in unregistered securities.[16] Proposed CAB Rule 321 would permit CAB associated persons to invest in unregistered securities notwithstanding the prohibition on PSTs, provided that they give prior written notice of all purchases and sales of unregistered securities to their CAB.

Economic Impact Assessment

Regulatory Need

FINRA created a separate rule set for CABs with the goal of reducing regulatory burdens on broker-dealer firms that engage only in limited institutional corporate financing and private placement activities and do not interact with retail investors. FINRA understands that the current CAB definition may discourage some firms for which the designation was intended from electing CAB status due to limits on CABs' permissible activities. This proposal would broaden the types of activities in which CABs may engage, and would clarify CABs' insider trading responsibilities.

Economic Baseline

The baseline is the existing CAB regulatory framework, including 55 member firms that have elected CAB status, non-CAB FINRA member firms that conduct CAB-like activities (FINRA-registered CAB-like firms),[17] and an unknown number of firms that provide services similar to CABs but are not registered with FINRA or the SEC (unregistered CAB-like firms).[18]

FINRA estimates that there are approximately 700 FINRA-registered CAB-like firms. Of these firms, 80 percent have fewer than 20 registered representatives. Of the 55 member firms currently registered as CABs, approximately 91 percent have fewer than 20 registered representatives. In total, there are approximately 548 registered representatives working across the 55 existing CAB firms.[19]

Economic Impact

Anticipated Benefits

The proposal's benefits would accrue to those firms whose business decisions or activities would be enhanced or regulatory costs reduced by the proposal. These include member firms that already have elected CAB status, member firms that have not chosen to elect CAB status due to the CAB rules' limits on their current or future activities, and firms that have not applied for FINRA membership.

Existing CAB firms that expand the scope of their activities as a result of the proposal would continue to benefit from a streamlined FINRA rulebook and would benefit from increased flexibility in their business practices. For example, they would be able to act as placement agents in secondary transactions of unregistered securities (in certain cases). They also would be permitted to register as investment advisers, and sell their unregistered securities to "knowledgeable employees" if they so desire.

The FINRA-registered CAB-like firms that could benefit from the proposal include those firms whose activities would fall within the range of permissible CAB activities under the proposed amendments and firms for which the expanded CAB definition would overlap sufficiently with their business activities that the benefits of becoming a CAB would exceed the costs. For example, any of the 700 CAB-like firms that act as placement agents in secondary transactions of unregistered securities that would be permitted for CABs would now be CAB-eligible. Similarly, FINRA estimates that there are at least 20 firms[20] that are dually registered as broker-dealers and investment advisers that provide advisory services only to institutional investors.[21] All of these firms, including those that sell unregistered securities to "knowledgeable employees" and otherwise meet the expanded CAB definition, would now be CAB-eligible and would have the potential to realize any associated cost savings from electing CAB designation.

Firms that elect CAB status as a result of this proposal would benefit from lower compliance costs associated with maintaining FINRA membership. For example, unlike non-CAB member firms, CABs are not subject to branch inspection requirements under Rule 3110, are not required to have a principal pre-approve, or file with FINRA, their communications with the public, and are only required to conduct an anti-money laundering audit every two years (versus annually for most non-CAB member firms). These firms also likely would benefit from more focused examinations that are tailored to their business activities. This should reduce compliance costs for these firms and allow them to deploy their capital more efficiently.

Some unregistered CAB-like firms may elect to become CABs as a result of the proposed amendments.[22] These firms are of two types: (1) unregistered firms that may currently engage in activities that require broker-dealer registration; and (2) unregistered firms that are not currently engaging in broker-dealer activities and that elect to enter the broker-dealer space as a CAB. Unregistered firms that may currently engage in activities that require broker-dealer registration would benefit from removing the uncertainty of being sanctioned for acting as an unregistered broker-dealer while operating under a less burdensome regulatory framework. Firms that are not currently engaging in broker-dealer activities, but that choose to enter the broker-dealer space because of the expanded CAB definition, would benefit from new business opportunities.

The clients of firms that benefit from the new proposal likely would benefit as well. They may benefit from lower costs to the extent FINRA-registered firms that become CABs pass any of their regulatory cost savings onto their customers. Clients of currently unregistered firms may benefit from the protections that come with FINRA's regulatory and supervisory framework. Clients of existing CAB firms may benefit from the expanded scope of the firms' activities, without loss of protections. Additionally, investors in general should benefit from the preventative measures against insider-trading that are included in the proposal.

Anticipated Costs

The proposal would impose certain costs on some CAB firms to the extent that they had not previously established written policies and procedures reasonably designed to prevent insider trading, and any attendant monitoring costs that arise from them. It also would impose costs on associated persons of some CAB firms because they would be required to obtain written consent from their firms before opening a securities account at another financial institution. This will slow the account opening process for employees of CAB firms.

Otherwise, the proposal would not impose any direct costs on existing CAB firms or FINRA member firms that elect to become CABs as a result of the proposal. Firms that register with FINRA as CABs would incur implementation and ongoing costs associated with applying for and maintaining FINRA membership. The implementation costs would include FINRA application fees, legal or consulting fees, and costs associated with setting up the infrastructure for regulatory reporting and developing written supervisory policies and procedures. The ongoing costs would be in the form of annual registration fees and expenses associated with ongoing compliance activities, including undergoing examinations. However, these are costs that firms may choose to incur, presumably because they conclude that the additional costs of regulation and compliance are outweighed by the benefits of FINRA membership.

Competitive Effects and Additional Considerations

To the extent that FINRA-registered CAB-like firms elect CAB status or non-FINRA members elect to register as CABs, the proposal should reduce the competitive imbalance between these groups. Overall, this should enhance competition among these groups particularly since the former group will experience reduced regulatory costs without reduction in investor protections as a result of the proposal.

FINRA considered the implications of this proposal for investor protection. Since CABs may only conduct business with corporate entities and institutional investors, FINRA has determined that retail investors should not lose any protections as a result of the proposal. Corporate entities and institutional investors often are more sophisticated than retail investors and have the resources necessary to conduct due diligence. Therefore, a moderated regulatory framework is sufficient to protect these investors from potential harm.

Alternatives Considered

In addition to the elements incorporated in this proposal, FINRA considered exempting or reducing Continuing Education (CE) requirements for CAB firm registered personnel. However, FINRA determined that this change could hinder CAB registered persons' future employment opportunities with non-CAB firms, and potentially could reduce investor protection.

Request for Comment

FINRA requests comment on all aspects of the proposal. FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible. FINRA specifically requests comment concerning the following issues:

1. Are there other categories of activities that FINRA should consider incorporating into the CAB definition without reducing investor protection? What are those categories of activities and what are the anticipated benefits and costs of incorporating them into the CAB definition?
2. Are there unforeseen risks associated with allowing CABs to register as investment advisers that FINRA should consider? Are there unforeseen risks associated with allowing CABs to act as placement agents in certain secondary transactions involving unregistered securities?
3. Do the proposed amendments represent a reasonable incentive for eligible firms to elect CAB status?
4. Do the proposed amendments reasonably maintain strong investor protections?
5. Are there any expected economic impacts associated with the proposal not discussed in this *Notice*? What are they and what are the estimates of those impacts?

Endnotes

1. Persons submitting comments are cautioned that FINRA does not edit personal identifying information, such as names or email addresses, from comment submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.
2. *See* SEA section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
3. *See* *Regulatory Notice 16-37* (October 2016). *See also* Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (Order Approving Rule Change as Modified by Amendment Nos. 1 and 2 to Adopt FINRA Capital Acquisition Broker Rules; File No. SR-FINRA-2015-054).
4. *See* proposed CAB Rule 016(c)(1)(I).
5. *See* CAB Rule 016(c)(1)(F).
6. *See* CAB Rule 016(i). The term "qualified purchaser" includes, among other things, any natural person, family-owned company or specified trust that owns not less than $5,000,000 in investments, and any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments. *See* ICA section 2(a)(51), 15 USC 80a-2(a)(51).
7. *See* proposed CAB Rule 016(i)(8); *see also* ICA Rule 3c-5(a)(4). Under Rule 3c-5, shares beneficially owned by knowledgeable employees are excluded for purposes of determining whether a hedge fund is excepted from the definition of "investment company" under ICA sections 3(c)(1) or 3(c)(7). *See* ICA Rule 3c-5(b).
8. *See* proposed CAB Rule 016(m).
9. *See* CAB Rule 016(c)(1)(F).
10. *See* proposed CAB Rule 016(c)(1)(H).
11. *See* 17 CFR 230.144 and 230.144A.
12. *See* Interpretive Letter to Jonathan D. Wiley, The Forbes Securities Group (May 30, 2019).
13. *See* proposed CAB Rule 511 (Securities as Compensation).
14. *See* SEA section 15(g), 15 USC 78o(g); *see also Notice to Members 91-45* (June 21, 1991) (NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures).
15. For further background on FINRA Rule 3210, *see* *Regulatory Notice 16-22* (June 2016) (Accounts At Other Broker-Dealers and Financial Institutions). In addressing insider trading risk, FINRA is tailoring the proposed requirement to the limited activities of CABs as permitted under the CAB rules. FINRA has noted that the scope of Rule 3210 is not limited to reviews for insider trading risk and that reviews of the information that firms obtain pursuant to Rule 3210 could relate to other facets of conduct under applicable rules. *See* note 4 in *Notice 16-22*.
16. *See* FINRA Rule 3280(e).

17. "CAB-like" refers to activities that are similar to those in which CABs may engage, including advising companies on mergers, acquisitions and corporate restructuring, advising issuers on raising debt and equity capital, and acting as a placement agent for sales of unregistered securities to institutional investors. While FINRA estimates that there may be as many as 700 of these firms, we are unsure of the extent to which these firms would benefit from changing their activities to fit within those allowed by the proposed CAB rules.

18. For example, there may be some firms that are relying on SEC no-action relief to avoid broker-dealer registration. The staff does not have an estimate on the number of these firms.

19. As of January 10, 2020. Existing CAB firms have an average of 10 registered representatives per firm.

20. Figures are based upon FINRA's internal mapping of firms' primary business model. These estimates likely include some firms whose secondary activities make them ineligible for CAB status.

21. The proposal also would expand the range of permissible activities to include selling unregistered securities to "knowledgeable employees" and acting as a placement agent for specified secondary unregistered securities transactions.

22. In addition, it is possible that, because of the expanded CAB definition, new firms may elect to enter the broker-dealer space as CABs. FINRA is unaware of any data that would enable the staff to estimate the number of such firms.

ATTACHMENT A

Below is the text of the proposed rule change. Proposed new language is underlined; deletions are bracketed.

010. GENERAL STANDARDS

016. Definitions

When used in the Capital Acquisition Broker Rules, unless the context otherwise requires:

(a)-(b) No change.

(c) "Capital Acquisition Broker"

(1) A "capital acquisition broker" is any broker that solely engages in any one or more of the following activities:

(A) – (E) No change.

(F) qualifying, identifying, soliciting, or acting as a placement agent or finder (i) on behalf of an issuer in connection with a sale of newly-issued, unregistered securities to institutional investors or (ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. For purposes of this subparagraph, a "control person" is a person who has the power to direct the management or policies of a company through ownership of securities, by contract, or otherwise. Control will be presumed to exist if, before the transaction, the person has the right to vote or the power to sell or direct the sale of 25% or more of a class of voting securities or in the case of a partnership or limited liability company has the right to receive upon dissolution or has contributed 25% or more of the capital. For purposes of this subparagraph, a "privately-held company" is a company that does not have any class of securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12 of the Exchange Act or with respect to which the company files, or is required to file, periodic information, documents, or reports under Section 15(d) of the Exchange Act; [and]

(G) effecting securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination

involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, in accordance with the terms and conditions of an SEC rule, release, interpretation or "no-action" letter that permits a person to engage in such activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act[.];

(H) qualifying, identifying, soliciting, or acting as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns, provided that:

(i) the purchaser of such securities is an institutional investor;

(ii) the capital acquisition broker previously had provided services permitted under paragraphs (c)(1)(F) and (G) of this Rule to the issuer in connection with the initial sale of such securities; and

(iii) the sale of such securities qualifies for an exemption from registration under the Securities Act; and

(I) Acting as an "investment adviser" as defined in section 202(a)(11) of the Investment Advisers Act of 1940, as amended, provided that the advisory clients of the capital acquisition broker and its associated persons consist solely of institutional investors.

(2) No change.

(d) – (h) No change.

(i) "Institutional Investor"

The term "institutional investor" means any:

(1) – (5) No change.

(6) person meeting the definition of "qualified purchaser" as that term is defined in Section 2(a)(51) of the Investment Company Act of 1940; [and]

(7) [any] person acting solely on behalf of any such institutional investor[.]; and

(8) knowledgeable employee.

(j) – (l) No change.

(m) "Knowledgeable Employee"

The term "knowledgeable employee" means:

(1) any "Knowledgeable Employee" as defined in Investment Company Act Rule 3c-5, where the capital acquisition broker has provided services permitted under Rule 016(c)(1)(F) and (G) on behalf of an issuer that is a Covered Company as defined in Investment Company Rule 3c-5;

(2) the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer on behalf of which the capital acquisition broker has provided services permitted under Rule 016(c)(1)(F) and (G); and

(3) any company owned exclusively by knowledgeable employees.

300. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

321 Supervision of Associated Persons' Investments

(a) Any capital acquisition broker whose business model creates risks that an associated person of the capital acquisition broker or any related person may misuse material nonpublic information to purchase or sell securities must establish, maintain and enforce written policies and procedures that are reasonably designed to mitigate and prevent such risks.

(b) A capital acquisition broker that is subject to paragraph (a) of this Rule shall also be subject to FINRA Rules 3110(d) and 3210.

(c) Notwithstanding Rule 328, an associated person of a capital acquisition broker and any related person may purchase or sell securities that are not registered under the Securities Act of 1933, provided that the associated person shall provide prior written notice to the capital acquisition broker of any purchase or sale of unregistered securities that are for the benefit of the associated person or any related person.

Supplemental Material:

.01 Definition of "related person." For purposes of this Rule 321, "related person" shall include any of the individuals described in Supplemental Material .02 of FINRA Rule 3210.

500. SECURITIES OFFERINGS

511. Securities as Compensation.

A capital acquisition broker may receive compensation in the form of equity securities of a privately held issuer on behalf of which the capital acquisition broker provided services permitted under paragraphs (c)(1) of Rule 016, provided that the receipt, exercise or subsequent sale of such securities will not cause the capital acquisition broker to engage in any activity prohibited under Rule 016(c)(2).

EXHIBIT 2b

Alphabetical List of Written Comments
Regulatory Notice 20-04

1. Brendan Edmonds, Metric Point Capital, LLC ("Metric") (May 15, 2020)

2. Tram Nguyen, Peter W. LaVigne, Jennifer Bergenfeld & Tracey Russell, Committee on Securities Regulation of the Business Law Section of the New York State Bar Association ("NYSBA") (June 30, 2020)

3. Richard J. Rice, March Capital Corporation ("March") (May 15, 2020)

4. Lisa Roth, Monahan & Roth, LLC ("M&R") (April 20, 2020)

5. Howard Spindel & Rosemarie Connell, Integrated Solutions ("IS") (June 30, 2020)

6. Larry S. Starks, Waterview Securities, Inc. ("Waterview 1") (March 24, 2020)

7. Larry S. Starks, Waterview Securities, Inc. ("Waterview 2") (June 24, 2020)

8. Ashley Van der Waag, Harris Williams LLC ("HW") (May 12, 2020)

Exhibit 2c

METRIC POINT CAPITAL

May 15, 2020

Jennifer Piorko Mitchell
Financial Industry Regulatory Authority Office of the Corporate Secretary
1735 K Street, NW, Washington, DC 20006-1506

Re: Proposed Amendments to the Capital Acquisition Broker (CAB) Rules

Dear Ms. Mitchell,

Thank you for the opportunity to comment on the proposed rule amendments., and we appreciate your consideration. My firm, Metric Point Capital, LLC, is a FINRA member firm that conducts CAB-like activities, with a specific focus on acting as a placement agent for private securities transactions and marketing only to institutional investors. Metric Point does not hold customer accounts or funds or solicit or provide services to retail customers.

We originally planned to register as a CAB, but ultimately decided against this due primarily to the inability to act as a placement agent for secondary transactions. Based on the currently proposed amendments and specifically the narrow scope of permitted secondary transactions, we would still not register as a CAB.

1. **Are there other categories of activities that FINRA should consider incorporating into the CAB definition without reducing investor protections?**

   The ability to act as a placement agent for secondary transactions involving issuers for which a CAB has not previously acted as a placement agent, and the ability to advise on the sale of minority interests of under 25% in an M&A transaction. In both lower-risk situations, the buyer is a sophisticated institutional investor and there should be no reduction in investor protections.

2. **Are there unforeseen risks associated with allowing CABs to register as investment advisers that FINRA should consider? Are there unforeseen risks associated with allowing CABs to act as placement agents in certain secondary transactions involving unregistered securities?**

   FINRA's proposal to allow CABs to act as a placement agent in secondary transactions in unregistered securities is one that we support. That said, we believe that limiting such activities to issuers for which a CAB or broker dealer has previously acted as a placement agent will not encourage adoption of CAB registration. So long as the purchaser of the securities in a secondary transaction is an institutional investor there should be no additional risk. It is unclear why a CAB would be able to act as a placement agent in the sale of newly issued, unregistered securities to institutional investors for an issuer it has not previously worked with, but not secondary transactions. It is arguably easier for CABs/broker dealers and institutional investors to perform due diligence on a secondary transaction where an asset(s) is known, compared to issuing new unregistered securities for a blind pool vehicle. Furthermore, institutional investors typically sell multiple fund interests involving several issuers at a time when transacting on the secondary market. Thus, the proposed changes as currently structured would prohibit CABs from pursing these transactions as selling institutions prefer to use a single advisor.

METRIC POINT CAPITAL

We respectfully encourage FINRA to consider allowing CABs to act as placement agents for secondary transactions without the requirement of having previously acted as placement agent for an issuer.

3. Do the proposed amendments represent a reasonable incentive for eligible firms to elect CAB status?

Expanding the scope of a CAB's permitted activities to include M&A, secondary transactions and investment advisory activities is a step in the right direction; however, Metric Point, and we believe most similar firms would still decline to elect CAB status due to the limitations of the proposal. For example, the ability to act as placement agent only in secondary transactions involving issuers for whom we have previously acted as a placement agent would eliminate 99%+ of the potential market and not justify the election of CAB status.

4. Do the proposed amendments reasonably maintain strong investor protections?

I do not support the adoption and inclusion of CAB Rule 321 as part of the CAB framework, which I do not think is justified based on the nature of activities that CABs may participate in. In my opinion a comprehensive insider trading policy and education of RRs on the topic would alleviate the possibility of insider trading. This would seem to be a risk more acutely faced by firms trading and offering equity securities. Each month I spend a considerable amount of time reviewing brokerage statements despite the fact that our CAB-like activities center on the sale of unregistered securities, and we do not trade or offer public equity securities.

I understand and respect FINRA's concern that eliminating the CE requirement could hinder CAB registered persons' future employment opportunities with non-CAB firms and reduce investor protections, but I respectfully submit that if a RR at a CAB or CAB-like firm takes CE courses geared toward relevant activities for a CAB or CAB-like firm, then he/she would arguably still be at a disadvantage when seeking employment at a member firm engaged in a broader or entirely different set of activities. Irrespective of the CE courses taken, a CAB RR will require additional training if he/she is seeking employment at a retail-focused broker dealer, and I find it highly unlikely that an employer would decline a candidate because they had not taken a CE course. Furthermore, the fact that CABs are only permitted to solicit sophisticated institutional investors should also mitigate, if not eliminate the concern regarding reduced investor protections.

5. Are there any expected economic impacts associated with the proposal not discussed in this Notice? What are they and what are the estimates of those impacts?

Broader adoption of CAB registration would ultimately reduce the cost and regulatory burdens imposed on (typically small) firms that engage in limited placement and advisory activities, and perhaps more importantly allow FINRA to channel its resources toward the regulation of broker dealers engaged in riskier, often retail-focused activities such as accepting customers' trading orders, carrying customer accounts, handling customers' funds or securities, and so forth.

STRICTLY CONFIDENTIAL

METRIC POINT CAPITAL

Thank you for your ongoing efforts to improve the CAB framework. I believe that broader adoption of CAB status by CAB-like firms will be determined by the degree to which a broader set of lower risk M&A and advisory activities involving institutional investors are included. Please do not hesitate to contact me with any questions.

Best regards,

Brendan Edmonds
Partner & Chief Compliance Officer
Metric Point Capital, LLC

New York State Bar Association
One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org

Comments on FINRA Regulatory Notice 20-04 -- Proposed Amendments to the Capital Acquisition Broker (CAB) Rules

BUSINESS LAW SECTION
SECURITIES REGULATION COMMITTEE

BLS #6 June 30, 2020

The Committee on Securities Regulation (the "Committee") of the Business Law Section of the New York State Bar Association appreciates the opportunity to comment on the above-referenced FINRA Regulatory Notice 20-04 ("Regulatory Notice 20-04") which proposes amendments to FINRA's Capital Acquisition Broker Rules (the "CAB Rules").

The Committee is composed of members of the New York bar, including lawyers in private practice and in corporation law departments, a principal part of whose practice is securities regulation. Members of the Committee have reviewed a draft of this letter and the views expressed herein are generally consistent with those of the majority of members who reviewed and commented on the letter in draft form. The views set forth in this letter, however, are those of the Committee and do not necessarily reflect the views of the organizations with which its members are associated, the New York State Bar Association, or its Business Law Section.

The Committee commends the efforts of FINRA to improve the regulations governing capital acquisition brokers ("CABs") and to broaden the permissible activities of CABs. This letter covers the proposed areas for revision, in the order discussed in Regulatory Notice 20-04.

Investment Adviser Activities

The Committee strongly supports FINRA's proposal to allow CABs to register as investment advisers. This change will benefit CABs whose advisory services to companies contemplating a purchase or sale of securities or issuers who may request advice concerning the investment of offering proceeds may require registration as an investment adviser. It will also benefit CABs that wish to offer expanded services to existing institutional clients.

Additionally, this permission to become a dual registrant allows for enhanced oversight from another regulator. As a registered investment adviser, a CAB would also be subject to a compliance protocol that is appropriate for regulated entities that advise institutional investors. We support, as well, the proposal that a CAB's advisory activities be limited to those performed for institutional investors, which aligns with the CAB's securities-related activities.

The proposed revisions do not fully address one issue specifically mentioned in the Notice, however:

> Moreover, associated persons of CABs may not participate in private securities transactions (PSTs), which include the forwarding of orders from investment adviser clients to a third-party broker-dealer for execution.

Associated persons of CABs may be dual registered with an investment adviser affiliated with the CAB, i.e., an entity other than the CAB itself. Rule 328, the prohibition on all private securities transactions, would still prohibit those employees from forwarding orders from clients of the affiliated investment adviser to third-party broker-dealers for execution. As we stated in our January 22, 2016 comment letter to the SEC addressing the original CAB rule proposal (SR-FINRA-2015-054)("2016 Comment Letter"):

> Rule 328 should be revised to exclude (1) the investment advisory activities of associated persons who are also employees or supervised persons of an investment adviser registered with the SEC or a state and (2) employees of a bank or trust company engaged in securities or advisory activities that a bank may engage in pursuant to the exceptions from the definition of broker or dealer in Exchange Act Sections 3(a)(4) or (5) or Regulation R.

While we would urge FINRA to permit that activity with respect to all clients of the investment adviser, including a bank or trust company, at a minimum the activity should be permitted with respect to institutional clients as defined in the CAB rules.

Institutional Investor Definition

The Committee supports the expansion of the Institutional Investor Definition to include knowledgeable employees to align with "knowledgeable employees" within Rule 3c-5 under the Investment Company Act of 1940 ("Investment Company Act") in respect of investments in funds sponsored by their employers. Many CABs permit the investment personnel involved in offerings to invest their personal money in the same private investments offered to clients. It is a common industry practice also for hedge fund and private equity senior officers and directors to invest in the private placements in which they are involved. Those persons would generally be deemed knowledgeable employees with reasonable measures of financial sophistication, possess financial industry training and education, and typically hold securities licenses and other professional accreditation.

Secondary Transactions

The Committee supports the expansion of the ability of a CAB to act as a placement agent for secondary trades of unregistered securities if (i) the CAB had previously acted as placement agent for such securities; (ii) the purchaser of such securities is an institutional investor; and (iii) the new sale falls within a Securities Act of 1933 ("Securities Act") exemption from registration. As we noted in the 2016 Comment Letter:

> In the recently adopted FAST Act, Congress recognized the importance of the accessibility of the secondary market in the securities of startup companies. In Title LXXVI, "Reforming Access for Investments in Startup Enterprises," Congress added a new exemption, Section 4(a)(7), for secondary sales to accredited investors. This exemption, together with Rules 144 and 144A, makes it easier for holders of unregistered companies, including current and former employees and investors in early rounds, to find buyers for their securities at reasonable prices.

The SEC spoke to this theme in the recent Concept Release on Harmonization of Securities Offering Exemptions (Release No. 33-10649, Jun. 18, 2019):

> Section II of this release has focused on the framework of exemptions available for primary offerings by an issuer. Secondary market liquidity for investors in these issuers is integral to capital formation in the primary offering market. While restricted and otherwise illiquid securities can yield a more stable shareholder base with less investor turnover, small businesses report struggling to attract capital in their primary offerings because potential investors are reluctant to invest unless they are confident there will be an exit opportunity. Those issuers that are able to attract investors may incur a higher cost of capital or bear an illiquidity discount if the securities lack secondary market liquidity. In addition, limited secondary market liquidity and a lack of an active trading market may impair investors' ability to diversify their portfolios over time because their capital may be locked up longer than they would like. In turn, an investor's inability to divest prior investments due to illiquidity may prevent the investor from reallocating capital to the next investment opportunity, thereby limiting the capital available to the next business. (Text at footnotes 591-595; footnotes omitted.)

While we appreciate that the revisions with respect to secondary transactions represent a major improvement, we believe that CABs should not be restricted to secondary transactions in securities of an issuer for which the CAB has previously acted as placement agent with respect to those securities. It is possible that institutional clients of the CAB will own unregistered securities of issuers for which the CAB has not acted as placement agent, and that the CAB may have another institutional client willing to buy those securities. So long as the CAB is only acting in secondary transactions in unregistered securities for institutional clients, regardless of whether the CAB has previously acted as placement agent for the issuer, the benefits described in the SEC Concept Release can be achieved without increased regulatory risks.

Compensation

The Committee supports FINRA's proposed Rule 511, which codifies FINRA's recently issued staff interpretation allowing receipt by a CAB of securities as compensation. That interpretation stated that CABs may be compensated in the form of securities issued by a privately held CAB client, rather than in cash, provided the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in activities prohibited under CAB Rule 016(c)(2) (Definitions). *See* Interpretive Letter to Jonathan

D. Wiley, The Forbes Securities Group (May 30, 2019). This position reflects industry practice of financial institutions receiving client securities as part of offerings.

Since FINRA adopted the CAB rules in 2017, CABs have evolved notwithstanding their limited business activities on behalf of privately held companies and we are grateful to FINRA for acknowledging such evolution. Part of that process has included the consideration of various forms of compensation for their deal making, beyond merely transaction-based compensation. The Committee is mindful that CAB Rule 201 (Standards of Commercial Honor and Principles of Trade) already applies in situations in which a CAB receives an equity stake or otherwise charges a commission or fee for a private placement that clearly is unreasonable under the circumstances. FINRA's focus on the potential conflict seems reasonable to the Committee.

Personal Investments

The Committee also supports FINRA's proposal to adopt a new CAB Rule 321 (Supervision of Associated Persons' Investments) and to extend applicability of FINRA Rule 3280 (Private Securities Transactions of an Associated Person) to CABs, requiring that any CAB whose business model creates potential insider trading risks institute personal trading oversight, supervisory procedures and compliance reporting, requiring CABs to establish, maintain and enforce written policies and procedures that are reasonably designed to mitigate and prevent those risks in compliance with the Securities Exchange Act of 1934, and SEC and FINRA rules prohibiting insider trading.

Under the revision to Rule 3210, persons associated with CABs would be required to obtain the prior written consent of the CAB to open or otherwise establish securities trading accounts for which they are a beneficial owner. The CAB also could request that the financial institution holding the associated person's securities account transmit duplicate copies of account confirmations and statements. Such enhanced compliance moves CABs closer to their investment banking and corporate finance brokerage peers in terms of supervision of associated persons, subject to FINRA Rule 3110(d) (Supervision) and oversight of their securities trading to prevent conflicts and the potential for insider trading. Similar personal trading compliance rules exist under the Investment Advisers Act of 1940 (Rules 17j-1 and Rule 402A-1) for associated persons of registered investment advisers.

The Committee does not view as unduly burdensome the additional risk controls and compliance procedures that CABs must undertake when balanced with enhanced investor protection and securities regulation.

Conclusion

The Committee views FINRA's proposed CAB rules to expand the scope of CAB activities, while enhancing compliance and supervision. The Committee appreciates the opportunity to comment on the Concept Release and respectfully requests that the Commission consider the recommendations set forth above. We are available to meet and discuss these matters and to respond to any questions.

Chair of the Committee: Tram Nguyen, Esq.
Drafting Committee:
Peter W. LaVigne, Esq. – Chair
Jennifer Bergenfeld, Esq.
Tracey Russell, Esq.

Briefly, if you expanded the minimum suitability to accredited investor level, we would convert to CAB. While our need to work with accredited investors continues to shrink from an already small segment of our business, occasions arise when the accredited level investor makes sense for an offering. To facilitate that rare need, we do not opt for CAB, a status that clearly addresses the reality of our business.

Best regards,
March Capital Corp

Richard J Rice
CEO
Phone:: 312-640-0480
Mobile: 312-443-8404

MARCH
CAPITAL CORPORATION

2 NORTH LA SALLE STREET SUITE 2300
CHICAGO IL 60602-3975

April 20, 2020

Jennifer Piorko Mitchell
FINRA Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006

Lisa Roth
630 First Avenue
San Diego, CA 92101
619-283-3500

Re: Regulatory Notice 20-04: FINRA Requests Comments on Proposed Amendments to the Capital Acquisition Broker (CAB) Rules

Dear Ms. Mitchell:

I appreciate the opportunity to comment on the proposed rule referenced above.

The rule proposal presents meaningful expansions under the CAB rules that I believe will encourage more firms to consider the regulatory framework.

In response to FINRA's requests for comment, please consider my comments, below:

1. Are there other categories of activities that FINRA should consider incorporating into the CAB definition without reducing investor protection?

    a. I wish to echo the comments made in the letter submitted by Larry Starks, Senior Managing Director of Watermark Securities, Inc. I strongly support his position that FINRA should coordinate its CAB rules to the SEC's "M&A" No Action letter. In addition to Mr. Starks' comments regarding the operational challenges that exist under the current framework, I believe the coordination will result in more firms opting for the CAB platform and thus performing M&A activities from start to finish under FINRA's jurisdiction, which will result in stronger investor protections.

    b. I support the proposed expansion of the definition of "institutional investor" to include "knowledgeable employee" and suggest that FINRA consider further expansion of the term in the to include professional legal representatives, in particular other regulated entities or individuals. This would round out the definition to include a broader range of counter-parties without compromise to investor protection.

2. Are there unforeseen risks associated with allowing CABs to register as investment advisers that FINRA should consider? Are there unforeseen risks associated with allowing CABs to act as

placement agents in certain secondary transactions involving unregistered securities?

a. I agree with FINRA's proposal that CABs be permitted register as investment advisers. As a compliance consultant to existing and potential broker-dealers and investment advisers, I strongly believe that the prohibition against IA registration is a formidable (and unnecessary) barrier to firms considering the CAB platform.

b. I support FINRA's proposal to permit CABs to act as placement agent in secondary transactions involving unregistered securities but question why the proposal is limited to those issuers with which the CAB has previously acted as placement agent. Provided that the purchaser of such securities is an institutional investor, and the new sale falls within a Securities Act of 1933 (Securities Act) exemption from registration there seems to be no added risk to investors in the scenario in which a CAB could be a participant as a placement agent in any secondary offering.

3. Do the proposed amendments represent a reasonable incentive for eligible firms to elect CAB status?
   a. I believe that FINRA's consideration of amendments that would permit CABs to engage in M&A, secondary transactions and investment advisory activity will be viewed as substantial incentive for existing and new firms to adopt the CAB framework.
   b. I also believe that FINRA and the investment community would greatly benefit from outreach to the professional associations and communities that engage in intermediary activities outside the scope of FINRA registration.[1] The unregistered entities and individuals affiliated with these groups may not be aware of the advantages CAB registration offers to their businesses, or the relevance of applicable regulations to their business practices. Their clients do not benefit from the investor protections that FINRA has to offer. Outreach to these groups in concert with the implementation of the proposed amendments would be timely and likely to expand FINRA's CAB registrations.

4. Do the proposed amendments reasonably maintain strong investor protections?
   a. As proposed, the rule amendments provide for strong investor protections that build on and/or are consistent with the current CAB framework.
   b. Investor protection would be enhanced under proposed Rule 321, and I support the proposal.

5. Are there any expected economic impacts associated with the proposal not discussed in this *Notice*? What are they and what are the estimates of those impacts?

[1] See: www.ibba.org, www.bizbrokersofamerica.com and others.

a. Even on the CAB platform, the economic impact of FINRA registration presents a substantial barrier to firms considering CAB registration, especially for firms that are currently unregistered. To lower the barrier, FINRA should consider adding CAB-specific compliance tools to its Small Firm Compliance Tools webpage, and should solicit CAB-specific contributions to its Peer-2-Peer Compliance Library.

In summary, I welcome FINRA's continued attention to the CAB framework, and support the ongoing effort to amend the platform to encourage broader adoption. I invite any questions FINRA may have regarding my comments.

Best regards,

//LISA ROTH//
Lisa Roth
President

INTEGRATED SOLUTIONS (SM)

June 30, 2020

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Via email to: pubcom@finra.org

RE: Regulatory Notice 20-04
Capital Acquisition Brokers

Thank you for allowing us the opportunity to comment on the proposed Amendments to the Capital Acquisition Broker Rules.

Integrated Solutions ("IS") is one of the largest providers of compliance consulting and financial accounting services to the financial services industry, including about 100 FINRA members, among others types of financial services firms.[1] We counsel clients daily on the scope of permissible broker-dealer activities under various FINRA, SEC and other rules. At any one time, we have several New Member Applications, Continuing Membership Applications and Materiality Consultations submitted to FINRA on behalf of clients. IS has regular, daily experience with FINRA and its membership categories and rules, the SEC, and other regulators with jurisdiction over the financial services industry. We counsel clients in the financial reporting and compliance requirements applicable to broker-dealers, and how they are, in fact, implemented by the various regulators.

Most importantly, it seems to us that FINRA should have focused on the previous comment letters presented to FINRA and the SEC with respect to the CAB Rules. While we commented on the rules, Morgan Lewis, a prominent law firm published a white paper, which essentially laid out why the rules were not a great idea for most market participants.

[1] The statements in this comment letter incorporate the views of IS, not those of our clients.

See the white paper here:
https://www.morganlewis.com/~/media/files/publication/morgan%20lewis%20title/white%20paper/broker-lite-finra-built-it-but-will-they-come-september2016.ashx?la=en

It is somewhat true that in FINRA's most recent attempt to ameliorate or eliminate the poor features of the CAB Rules, FINRA has failed to recognize that it may very well be better to totally redo the entire process instead of patching up the poorly conceived rules. Actually, the poorly conceived rules include not only the CAB Rules but also other rules as described below.

We note that the explanatory material of Regulatory Notice 20-24 declares some interesting statistics. In the four or so years that the CAB Rules have existed, only 55 FINRA members have elected CAB status. That tells us that the rules were very uninviting. We realize that some firms did not elect CAB status because of some of the rules that seemed overly restrictive yet we don't believe that the proposed amendments go far enough to inspire firms to either register as CABs instead of being regular members or to register as CABs instead of operating without registration either illegally or in conformity with the conditions of the six-lawyers letter issued by the SEC.

Yet these are not necessarily the most telling statistic. The regulatory notice states that "FINRA estimates that there are approximately 700 FINRA-registered CAB-like firms". When we compare the 700 firms to the 55 firms, that suggests to us that the rules that currently govern the 700 firms are way too strict. Not only that, the entire regulatory scheme that applies to those firms imposes unimaginable hardships that have little to do with risk.

For example, a regular CAB-like firm arguably needs to have its AML procedures reviewed every year. If such a firm was a CAB, the procedures would need a review every two years. That tells us that rather than adopt CAB Rule amendments, there should be amendments to the rules applicable currently to CAB-like firms where the risks are essentially minimal. Similarly, CABs would not need branch inspections that are currently applicable under Rule 3110. We know that most CAB-like firm branches are almost always devoid of regulatory implications especially when there is a separate Office of Supervisory Jurisdiction that manages the firm's affairs.

These are just a few examples of why the 700 firms are unhappy with FINRA regulations. Assuming that the vast majority of the 700 firms have fewer than 151 registered persons, we can guess that based upon the 3165 members counted as small firms as mentioned in the recent notice announcing the upcoming Board of Governors election, that 22% of the small firm members are overregulated. Clearly the rules should change for them rather than provide them with the CAB Rules which do not necessarily provide them with necessary flexibility.

We observe that FINRA does not have any special qualifying examinations for CABs. Currently, to sell Direct Placement Programs, a Series 22 is required. To sell corporate private placements, a Series 82 is required. A Series 7 would cover both categories but would it not be nice to have a simple qualification examination that would be good for CABs as well as the 700 CAB-like firms?

With regard to a portion of FINRA's first question, specifically "Are there other categories of activities that FINRA should consider incorporating into the CAB definition without reducing investor protection?" - let us focus for a moment on the area of investor protection.

We at Integrated Solutions would submit that most if not all institutional investors are less concerned with, and in fact do not need, investor protection provided by the entire panoply of SEC and FINRA rules. Rather, they are concerned mainly with fair dealings and protection against fraud. Too many of the current rules are too complex and represent impediments to the capital formation process.

More to the point, FINRA states in its request for comments that FINRA proposes rule amendments to CAB rules to make them more useful to CABs without reducing investor protection. Furthermore, in Attachment A, Section 016. Definitions, paragraph (c)(1)(F), (G) and (H), FINRA defines a Capital Acquisition Broker and outlines certain activities that such Capital Acquisition Broker may engage in. However, relatedly, our clients have asked for advice on whether they could (and should) operate lawfully under the parameters of the SEC's M&A Brokers No-Action Letter (the "Six Lawyers Letter").[2] Indeed many of them can and yet FINRA's definitions and descriptions of business activities in the above reference paragraphs would imply

[2] SEC No-Action Letter, dated Jan. 31, 2014, revised February 4, 2014; available at: http://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf. We believe that FINRA's CAB Rules in general, are FINRA's response to the Six Lawyers Letter so as to keep more business activities within the FINRA regulatory umbrella.

that no such mechanism exists. In fact, we are well aware that there probably are many more entities that are currently engaged in the activities in which CABs operate than there are CABS. There are reasons for that phenomenon.

We should mention that we and others have previously commented on FINRA's CAB Proposals and believe this experience enables us to assess the impact of the current CAB Proposal on current and future FINRA members from both a regulatory and business perspective.

In FINRA's current Request for Comment, Question 3 asks: Do the proposed amendments represent a reasonable incentive for eligible firms to elect CAB status?

We believe that the answer must be: no, the proposed amendments do not go far enough and instead therefore it is not likely that eligible firms will wish to elect CAB status.

As your own Request for Comment document states, "the benefit of electing CAB status is that CABs are subject to few restrictions on specified activities (such as advertising) and have less burdensome supervisory requirements". Furthermore, CAB clients are institutional investors, which "for purposes of CAB rules includes banks, investment companies, large employee benefit plans and "qualified purchasers" under the Investment Company Act of 1940". FINRA now seeks to broaden the definition of institutional investor to include "knowledgeable employees" such as senior officers and directors of private funds and their advisors, amongst others. It seems to us that this crosses the threshold, even if subliminally, into the retail investor sphere. Yes, Regulation BI will apply to these individuals but perhaps this is an unintended consequence brought about by the SEC.

With regard to FINRA's 4th question, "Do the proposed amendments reasonably maintain strong investor protections?" – we at Integrated Solutions believe that many of the amendments to the CAB rules and the current CAB rules themselves are unnecessary and speak directly to FINRA's own discussion of Economic Impact Assessment in this comment request.

This brings us to FINRA's 5th question related to economic impact. Most of Integrated Solutions' client firms have fewer than ten people associated with them. This underscores FINRA's own discussion in the Economic Impact Assessment portion of this comment request, whereby FINRA

refers to “55 member firms that have elected CAB status” “of which 91% have fewer than twenty registered representatives” or “548 registered representatives working across the 55 existing CAB firms”[3] .

These small-sized firms do not have the objective to be in the business of complying with rules. Rather, they must comply with rules to stay in business. To make staying in business, for these firms, an onerous endeavor in terms of economic impact (additional staffing, cost of opportunity etc.), is indefensible.

Ironically, “FINRA estimates that there are approximately 700 FINRA-registered CAB-like firms”. Since these firms are already registered, there is hardly any advantage to them to become a CAB. The fact that the CAB amendments would allow them to do certain additional activities might inspire a handful of firms to become CABs but most firms that already are fully registered would likely find the new benefits available to CABs to not be an incentive at all.

In closing

We thank FINRA for taking the time to read this letter and for offering us the opportunity to offer comment. Please feel free to contact us via email at hspindel@integrated.solutions or rconnell@integrated.solutions or by calling Howard Spindel at 212-897-1688 or Rosemarie Connell at 212-897-1691.

Very truly yours,

Howard Spindel
Senior Managing Director

Rosemarie Connell
Managing Director

[3] Obviously, that means that the average CAB has fewer than 10 people.

Ms. Burns, Mr. Savage et al.,

Below are my comments related to Regulatory Notice 20-04. It may help your understanding of my comments to know that our primary business a non-FINRA provider of financial consulting services including business transactions structured as asset sales. Our FINRA firm was an "add-on" to our business to allow us to expand our service offerings in the area of institutional private placements.

1. Suggested Amendment to CAB rules without reducing investor protection
In addition to the changes you have outlined in Notice 20-04, is it possible to have the transactions outlined in the SEC's No Action Letter regarding M&A Brokers dated January 31, 2014 (revised February 4, 2014) excluded from the definition of Private Securities Transactions in CAB rule 328? There would be no impact to investor protection by coordinating the rules with the SEC's letter and the change would provide a more level playing field for those of us in the private company M&A business.

Without the change requested herein, there are significant operational and competitive challenges for small firms like ours where we have both (i) a non FINRA registered firm that provides valuation and other financial consulting services including activities conducted pursuant to the SEC's no action letter, and (ii) a FINRA CAB. Our primary business is, and has always been, the non FINRA financials services firm. The FINRA CAB is maintained to provide the ability for our business to provide occasional institutional private placement services to our clients. We originally initiated the FINRA registration (i) at the request of some of our referral sources and (ii) to grow our business with occasional institutional private placements.

2. Operational Issues that would be solved
A key operational issue is that, because of our small size, the Managing Directors in our business work in both the non-FINRA business (which is most of their work) and occasionally with private placements. As the FINRA rules are currently written, and in conflict with the SEC No-Action letter, any M&A transaction that is led by one of our professionals (because they are FINRA Registered) can be conducted in the non-FINRA firm if it is an asset deal, but must be transferred to the FINRA CAB at some future time if the transaction is ultimately structured as an equity transaction for tax or accounting reasons. We, as the M&A advisor are not in control of how a transaction is ultimately structured. As a current example, our firm was recently hired to assist a manufacturer in the sale of its company. It was not clear at the time of our engagement whether it would be best (from a tax perspective) to sell the assets of the business or the stock of the company. We engaged with the client in our non-FINRA entity. As we completed our marketing process and identified a buyer for the company, the initial term of our engagement ended. While no deal was completed at the time our engagement ended, our firm is still due a fee if the transaction is completed within 18 months after our engagement has ended. We are now in that 18 month "tail period" and it looks like the transaction is going to close. We are no longer active in the transaction (even thought the seller will owe us a fee because of the tail period) and are not sure if it will be structured as a stock sale or asset sale. If we were able to fully operate under the SEC's No Action letter, the fees would be paid to our non-FINRA firm that has done all the work to date regardless of the transaction structure (asset or stock). Unfortunately, because of the conflict in the rules, if the transaction closes as a stock deal, the fee must be paid to the FINRA CAB. <u>The problem is that we may not know how the transaction is structured until after the closing. How are we supposed to handle this circumstance?</u> Doesn't this highlight why the SEC position and FINRA rules should be coordinated? Please help.

3. Competitive Issues that would be addressed

We also recently engaged in a significant business opportunity with a key potential referral source. The referral source consults strategically with private company CEOs and is not in the securities business. The referral source is likely talking to a few M&A firms (most of which are not FINRA licensed and legally operating under the No Action Letter) about a strategic relationship where the referral source would receive a contingent fee for the sale of a referred company whether structured as an asset sale or stock sale. I believe the referral source would like to do business with Waterview. Unfortunately, Waterview is likely to lose this significant opportunity because of the artificial competitive disadvantage created by the conflict between the SEC's No Action Letter and FINRA rules. In order to comply with the rules as currently written, Waterview can only pay the referral source on asset deals and not stock deals. **Our competition does not suffer from this same restriction.** I do not believe that the SEC or FINRA intended to put firms like mine at an artificial competitive disadvantage and am asking that FINRA rectify the oversight by taking the action requested in point 1 above.

Thank you for your attention to this very important matter.

Larry S. Starks, CFA
Senior Managing Director
Waterview Securities, Inc.
12770 Coit Road, Suite 1218 ▪ Dallas, Texas 75251
Office: 469-916-3935

As a small firm (three registered reps) that elected CAB status, one of the key benefits was that the CAB election eliminated the burden of reviewing and retaining brokerage statements for each of the registered reps.

It seems that the proposed CAB Rule 321 would reinstate the need to review and retain the brokerage statements. Because we are a small firm, this is a significantly burdensome manual task. We do not have (and cannot afford) the automated systems that larger firms have. Can you imagine if you forced the large wire houses to manually review, sign and retain the paper documents each month for each of their reps? You would have overwhelming push back. This is effectively what you are forcing small firms like ours to do.

At our firm, we meet weekly and have our registered reps sign an attestation that they have not traded in any securities on our restricted list (companies related to projects that we are working on). I believe this provides the necessary investor protection. By the way, the restricted list is often empty for months because we are not typically working on transactions that include publicly traded companies.

Further, I would remind everyone that firms across the country in the same business as my firm that are not FINRA registered and operate under the SEC No Action Letter do not gather and review financial statements for their professional staff. FINRA CAB firms need a level playing field. Aside from the operational burden, recruiting professionals becomes a challenge when the potential employees view the provision of personal brokerage statements as inappropriately intrusive and "not required by other [i.e. non-FINRA] firms" .

It seems that an appropriate solution would be to either reverse the no action letter or provide FINRA CAB rules that mirror the relief provided in the SEC No Action Letter.

Thank you for your consideration.

As an aside, if the operational benefits of CAB status get reduced, can our firm switch back to non-CAB status easily?

Larry S. Starks, CFA
Senior Managing Director
Waterview Securities, Inc.
12770 Coit Road, Suite 1218 ▪ Dallas, Texas 75251
Office: 469-916-3935

May 12, 2020

Jennifer Piorko Mitchell
Financial Industry Regulatory Authority
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1506

Subject: Comments on the Proposed Amendments to the Capital Acquisition Broker (CAB) Rules

Dear Ms. Mitchell:

Harris Williams ("HW") appreciates the opportunity to provide comments regarding proposed amendments to the CAB rules, as requested in FINRA Regulatory Notice 20-04. HW is a specialized investment bank that solely provides mergers and acquisitions ("M&A")-related advisory services to companies. HW only provides M&A-related advice; the firm does not extend credit, hold customer accounts or provide services to retail customers, or engage in banking transactions on its own or its clients' behalf. HW's revenue is composed entirely of advisory fees.

When FINRA initially considered adopting the CAB model, HW was interested in exploring the prospect of a broker-dealer regulatory approach right-sized to the firm's lower-risk, advisory-only business model, and therefore in potentially electing the new CAB designation. HW's Chief Operating Officer, Paul Poggi, served for a time on the FINRA Committee established to provide practitioner insight to FINRA about the CAB proposal.

Ultimately, HW chose not to avail itself of the CAB designation. The reason is that under section 016 of FINRA's Capital Acquisition Broker rules, the definition of a "capital acquisition broker" is "any broker that solely engages in any one or more of the following activities". Among the listed activities is:

> (F) qualifying, identifying, soliciting, or acting as a placement agent or finder...(ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. For purposes of this subparagraph, a "control person" is a person who has the power to direct the management or policies of a company through ownership of securities, by contract, or otherwise. Control will be presumed to exist if, before the transaction, the person has the right to vote or the power to sell or direct the sale of 25% or more of a class of voting securities or in the case of a partnership or limited liability company has the right to receive upon dissolution or has contributed 25% or more of the capital.

While most of HW's advisory engagements do involve transactions that result in a change of control as defined by section 016, not all do. Sometimes the firm is engaged to advise a client – a company – with respect to the potential sale of less than 25% of its ownership interests, typically to a single institutional buyer. Because HW does not want to relinquish its ability to advise clients with respect to a capital raise

or liquidity event that involves a sale of less than 25% of that client's ownership interests, the firm has not elected the CAB designation. As a result, HW remains registered as a traditional broker–dealer.

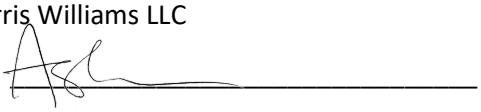
We respectfully encourage FINRA to reassess this position and allow broker-dealers that advise clients regarding the sale of minority interests to register as CABs. We believe that the M&A-related advisory services that we provide with respect to change-of-control transactions result in relatively lower overall risk than other activities performed by broker-dealers – and we believe that providing advice on sales of minority interests poses even less risk, as the interest is typically sold to a sophisticated institutional buyer. It seems counterintuitive to exclude these related and relatively lower-risk activities from the CAB definition. And because such advisory services do not involve retail securities activities, including them within the CAB definition would not subject the investing public to any additional risk or loss of protection.

HW's opinion is that if advisory services with respect to non-change-of-control transactions that involve less than 25% of ownership interests were included in the CAB definition, more firms such as HW would seek to register as a CAB. CAB registration would benefit advisory firms like HW that are currently registered as broker-dealers. The benefits include lower compliance costs, lower burdens of supervision, and more targeted oversight in areas of greater risk. Additionally it would support FINRA's continuing efforts to tailor risk-based approaches to firms' different risk profiles.

We appreciate your consideration and welcome the opportunity to discuss further.

Respectfully submitted,

Harris Williams LLC

By: 

Ashley Van der Waag
Chief Compliance Officer

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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CAPITAL ACQUISITION BROKER RULES

010. GENERAL STANDARDS

* * * * *

016. Definitions

When used in the Capital Acquisition Broker Rules, unless the context otherwise requires:

(a) through (b) No Change.

(c) "Capital Acquisition Broker"

(1) A "capital acquisition broker" is any broker that solely engages in any one or more of the following activities:

(A) through (E) No Change.

(F) qualifying, identifying, soliciting, or acting as a placement agent or finder (i) on behalf of an issuer in connection with a sale of newly-issued, unregistered securities to institutional investors or (ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. For purposes of this subparagraph, a "control person" is a person who has the power to direct the management or policies of a company through ownership of securities, by contract, or otherwise. Control will be presumed to exist if, before the transaction, the person has the right to vote or the power to sell or direct the sale of 25% or more of a class of voting securities or in the case of a partnership or

limited liability company has the right to receive upon dissolution or has contributed 25% or more of the capital. For purposes of this subparagraph, a "privately-held company" is a company that does not have any class of securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12 of the Exchange Act or with respect to which the company files, or is required to file, periodic information, documents, or reports under Section 15(d) of the Exchange Act; [and]

(G) effecting securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, in accordance with the terms and conditions of Section 15(b)(13) of the Exchange Act or any provision of an SEC rule, release, interpretation or "no-action" letter that permits a person to engage in [such]the same or materially similar activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act[.]; and

(H) qualifying, identifying, soliciting, or acting as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns, provided that:

(i) the purchaser of such securities is an institutional investor; and

(ii) the sale of such securities qualifies for an exemption from registration under the Securities Act.

(2) No Change.

(d) through (h) No Change.

(i) "Institutional Investor"

The term "institutional investor" means any:

(1) through (5) No Change.

(6) person meeting the definition of "qualified purchaser" as that term is defined in Section 2(a)(51) of the Investment Company Act[of 1940]; [and]

(7) [any] person acting solely on behalf of any such institutional investor[.]; and

(8) eligible employee.

(j) through (l) No Change.

(m) "Eligible Employee"

The term "eligible employee" means, with respect to an issuer for which the capital acquisition broker has provided services to the issuer or a control person permitted under subparagraphs (F) or (G) of Rule 016(c)(1):

(1) any "Knowledgeable Employee" as defined in Investment Company Act Rule 3c-5 ("Rule 3c-5") with respect to services provided to an issuer that is a Covered Company as defined in Rule 3c-5 or services provided to an Affiliated Management Person of such Covered Company as defined in Rule 3c-5; and

(2) the president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs

similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer that is not a Covered Company as defined in Rule 3c-5.

* * * * *

300. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

* * * * *

328. Private Securities Transactions of an Associated Person

[No person associated with a capital acquisition broker shall participate in any manner in a private securities transaction as defined in FINRA Rule 3280(e).]All capital acquisition brokers are subject to FINRA Rule 3280.

* * * * *

500. SECURITIES OFFERINGS

511. Securities as Compensation

A capital acquisition broker may receive compensation in the form of equity securities of a privately held issuer on behalf of which the capital acquisition broker provided services permitted under paragraphs (c)(1) of Rule 016, provided that the receipt, exercise or subsequent sale of such securities will not cause the capital acquisition broker to engage in any activity prohibited under Rule 016(c)(2).

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