

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 18		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2025 - * 005 Amendment No. (req. for Amendments *) 1	
Filing by Financial Industry Regulatory Authority					
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input type="checkbox"/>		Amendment * <input checked="" type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>	
				Section 19(b)(3)(B) * <input type="checkbox"/>	
				Rule	
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Section 806(e)(2) * <input type="checkbox"/>		
			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div></div>					
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) 728-8331 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 09/24/2025 (Title *) By Joseph Savage Vice President and Associate General Counsel (Name *) 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. Joseph Savage Digitally signed by Joseph Savage Date: 2025.09.24 12:41:13 -04'00'					

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS 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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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.

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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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FINRA-2025-005 Partial A-1 Exhibit 4.

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 Partial A-1 Exhibit 5.

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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FINRA-2025-005 Partial A-1.docx

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On June 4, 2025, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) proposed rule change SR-FINRA-2025-005, which would amend the FINRA Capital Acquisition Broker (“CAB”) Rules (“Proposal”).

The Proposal would: (1) expand the pool of permissible investors for sales of newly-issued unregistered securities by amending the definition of “institutional investor” under CAB Rule 016(i) to include “eligible employees” (as defined under proposed CAB Rule 016(m)); (2) adopt proposed CAB Rule 016(c)(1)(H) to permit CABs to act as placement agents or finders for institutional investor sellers in secondary transactions of unregistered securities 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); (3) amend CAB Rule 328 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; (4) codify prior FINRA staff guidance that permits CABs to receive as compensation securities issued by a privately held issuer client, rather than cash; and (5) amend CAB Rule 016(c)(1)(G) to permit CABs to effect securities transactions in connection with the transfer of ownership and control of a privately held company in accordance with the terms and conditions of Section 15(b)(13) of the Securities Exchange Act (“Exchange Act”) or any provision of an 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 SEC published the Proposal for comment in the Federal Register on June 16, 2025,¹ and received two comment letters in response.² Both commenters expressed support for the Proposal, one of which requested clarification on the Proposal.³ On July 17, 2025, FINRA consented to an extension of the time period for the SEC to take action on the Proposal until September 12, 2025. On September 11, 2025, the SEC published an order to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether to approve or disapprove the proposed rule change.⁴

¹ See Securities Exchange Act Release No. 103216 (June 10, 2025), 90 FR 25396 (June 16, 2025) (Notice of Filing of File No. SR-FINRA-2025-005).

² See Letter from Egwele & Company, dated June 14, 2025; and Letter from Jeffrey L. Robins, Debevoise & Plimpton, LLP, to Sherry R. Haywood, Assistant Secretary, SEC, dated July 7, 2025 (“Debevoise”).

³ Debevoise.

⁴ See Securities Exchange Act Release No. 103945 (September 11, 2025), 90 FR 44747 (September 16, 2025) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove File No. SR-FINRA-2025-005).

FINRA is submitting by separate letter its response to comments on the Proposal contemporaneously with this Partial Amendment No. 1. As discussed in FINRA's response to comments, Debevoise requested that FINRA clarify that CABs are permitted to act on behalf of institutional investors wishing to purchase securities in private primary or secondary offerings and are not limited to acting on behalf of issuers or sellers of securities. Specifically, Debevoise requested guidance or further amendments "clarifying that it would be consistent with the amended definition of 'capital acquisition broker' for a CAB to act as a private placement agent or finder in connection with the sale of (i) newly-issued securities or (ii) securities by an institutional investor to another institutional investor, in each case where (iii) the CAB is engaged as the agent of an institutional investor acting as buyer to find and/or solicit potential issuers or institutional investor sellers."

In response to this comment, FINRA is proposing to amend the Proposal to allow CABs to represent institutional investor buyers in connection with sales of newly-issued unregistered securities under CAB Rule 016(c)(1)(F)(i) and secondary transactions of unregistered securities under proposed CAB Rule 016(c)(1)(H). For reasons similar to the reasons underlying the proposed changes to allow CABs to represent the buy side in these transactions, FINRA believes that it is also appropriate to amend CAB Rule 016(c)(1)(F)(ii)⁵ to allow CABs to represent both buyers and sellers in transactions involving a change of control of a privately held company. This additional proposed change would more closely align CABs' authority to engage in such change of control transactions with the provisions of the Exchange Act's registration exemption for merger and acquisition brokers (the "M&A Brokers Exemption").⁶

The changes proposed in this Partial Amendment No. 1 are described below.⁷

Sales of Newly-Issued Unregistered Securities

Currently, CAB Rule 016(c)(1)(F)(i) allows a CAB to qualify, identify, solicit, or act as a placement agent or finder on behalf of an issuer in connection with a sale of newly-issued unregistered securities to institutional investors. This Partial Amendment No. 1 would amend this rule to provide that a CAB may represent an issuer or an institutional investor buyer in connection with a sale of newly-issued unregistered

⁵ FINRA also is proposing a technical change to CAB Rule 016(c)(1)(F) to divide (i) and (ii) into formal subparagraphs, and as discussed below, is proposing new subparagraphs a. and b. under CAB Rule 016(c)(1)(F)(ii).

⁶ See 15 U.S.C. 78o(b)(13).

⁷ FINRA also is proposing a technical change to CAB Rule 511 (Securities as Compensation), as proposed in the Proposal, to replace "paragraphs (c)(1) of Rule 016" with "Rule 016(c)(1)." This change would correct the inadvertent plural form used in the original proposed rule text and would be consistent with the format of the subsequent reference to Rule 016(c)(2) in that sentence.

securities. Thus, a CAB would no longer be expressly limited to acting on behalf of an issuer under CAB Rule 016(c)(1)(F)(i).

Debevoise commented that “there is no material investor protection or other policy rationale for limiting CABs to acting as agent on the issuer/seller side of the market for institutional investor private placements.” FINRA agrees with this comment. As discussed below, FINRA believes that allowing a CAB also to act on behalf of an institutional investor buyer in connection with the sale of newly-issued unregistered securities is consistent with CABs’ limited institutional business model and would not materially impact investor protection.

Secondary Transactions

The Proposal would adopt new CAB Rule 016(c)(1)(H) to allow CABs to act as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns where (i) the purchaser is an institutional investor and (ii) the sale qualifies for an exemption from registration under the Securities Act.

This Partial Amendment No. 1 would revise the proposed rule to provide that a CAB may engage in qualifying, identifying, soliciting, or acting as a placement agent or finder on behalf of an institutional investor that seeks to sell or buy unregistered securities. Thus, a CAB would no longer be expressly limited to acting on behalf of a seller under proposed CAB Rule 016(c)(1)(H). This Partial Amendment No. 1 also would revise subparagraph (i) to provide that both the seller and buyer⁸ of such securities must be institutional investors.

As with the sale of newly-issued unregistered securities, Debevoise commented that the Proposal is intended to allow CABs to provide a wider range of services to clients without materially impacting investor protection (because the Proposal would not permit acting as agent for sales to non-institutional investors) and to promote capital formation. Thus, Debevoise contended, the proposed rule language limiting a CAB to acting for an institutional investor only “as seller” in a permitted secondary market transaction seems unnecessary. FINRA agrees with this comment. As discussed below, FINRA believes that allowing a CAB also to act on behalf of an institutional investor buyer in connection with secondary transactions of unregistered securities is consistent with CABs’ limited institutional business model and would not materially impact investor protection.

Change of Control Transactions

Currently CAB Rule 016(c)(1)(F)(ii) permits a CAB to qualify, identify, solicit, or act as a placement agent or finder on behalf of an issuer or control person in connection with the change of control of a privately held company. This rule defines “control person” as a person who has the power to direct the management or policies of a

⁸ FINRA also is revising proposed CAB Rule 016(c)(1)(H) to refer to a “buyer” rather than a “purchaser” in order to use consistent terms throughout paragraph (c).

company through ownership of securities, by contract, or otherwise. This rule further specifies that 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. “Privately held company” is defined to mean a company that does not have any class of securities registered, or required to be registered, with the SEC under Exchange Act Section 12 or with respect to which the company files, or is required to file, periodic information, documents, or reports under Exchange Act Section 15(d).

This rule text was in part modeled on the Commission staff’s 2014 M&A Brokers no-action letter, which the Commission withdrew when the M&A Brokers Exemption took effect.⁹ One key difference, however, is that CAB Rule 016(c)(1)(F)(ii) only permits a CAB to act on behalf of an issuer or control person. Pursuant to the M&A Brokers Exemption (and prior to that, the M&A Brokers Letter), an M&A broker is permitted to represent both buyers and sellers, and to the extent the M&A broker represents both the buyer and seller in the same transaction, the M&A broker must provide clear written disclosure as to the parties it represents and obtain written consent from both parties to the joint representation.¹⁰

In addition, the M&A Brokers Letter and the M&A Brokers Exemption do not refer to a “control person”; instead, they use the defined term “control” and consider whether control exists *upon completion* of the transaction. By contrast, as noted above, CAB Rule 016(c)(1)(F)(ii) considers whether control exists *prior to* the transaction. Because the current CAB Rules use the defined term “control person” and permit a CAB to represent only an issuer or control person selling their shares, “control” must be considered prior to the transaction.

Finally, the M&A Brokers Letter and the M&A Brokers Exemption define “control” as the power, *directly or indirectly*, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Current CAB Rule 016(c)(1)(F)(ii) does not contain the language “directly or indirectly” in reference to control under the rule.

CAB Rule 016(c)(1)(G), as proposed to be amended pursuant to the Proposal, permits CABs to engage in M&A transactions to the same extent as exempt broker-dealers under the M&A Brokers Exemption. To more closely align the terms and

⁹ See M&A Brokers, 2014 SEC No-Act. LEXIS 92 (January 31, 2014) (“M&A Brokers Letter”); see also letter from Emily Westerberg Russell, Chief Counsel and Associate Director, SEC Division of Trading and Markets, to Faith Colish, et al., dated March 29, 2023 (informing attorneys who previously had requested the M&A Brokers Letter that the staff was withdrawing the letter due to Congress’s adoption of the M&A Brokers Exemption).

¹⁰ See 15 U.S.C. 78o(b)(13)(B)(vi).

conditions of these provisions, FINRA is proposing to amend CAB Rule 016(c)(1)(F)(ii) to eliminate the key differences described above. Specifically, this Partial Amendment No. 1 would delete the term “control person” in CAB Rule 016(c)(1)(F)(ii)¹¹ and permit a CAB to represent the buyer or the seller in a change of control transaction. In addition, the rule would be amended to define the term “control”—similar to the M&A Brokers Exemption—as the power, *directly or indirectly*, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

Control will be presumed to exist if, *upon completion* of the transaction, the buyer or group of buyers 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. The proposed definition of “control” maintains the 25% voting securities and capital thresholds under the current definition of “control person,” which thresholds are also found in the definition of “control” under the M&A Brokers Exemption.

FINRA believes that a CAB should be permitted to represent both the buyer and seller in a transaction involving a change of control of a privately held company. However, such joint representation could present conflicts of interest for the CAB. Accordingly, FINRA is proposing new CAB Rule 016(c)(1)(F)(ii)b. to provide that a CAB may represent both the buyer and seller in the same transaction under paragraph (c)(1)(F)(ii) after providing clear written disclosure as to the parties the CAB represents and obtaining written consent from both parties to the joint representation. The proposed rule text mirrors the above-referenced language concerning joint representation found in the M&A Brokers Exemption. The statutory language addresses the same potential conflicts of interest that FINRA has identified and imposes the same disclosure and consent requirements as proposed CAB Rule 016(c)(1)(F)(ii)b.¹²

While the proposed changes to CAB Rule 016(c)(1)(F)(ii) are not in direct response to Debevoise’s comment on the Proposal, FINRA nonetheless believes they are appropriate for similar reasons to the proposed changes to allow CABs to represent buyers in certain transactions (specifically, to represent institutional investor buyers in sales of newly-issued unregistered securities and secondary unregistered securities transactions). In addition, as noted above, CAB Rule 016(c)(1)(G) permits CABs to engage in merger and acquisition transactions to the same extent as exempt broker-dealers under the M&A Brokers Exemption. Given the overlap between these provisions, FINRA believes that CAB Rule 016(c)(1)(F)(ii) should more closely align with the terms

¹¹ Since this Partial Amendment No. 1 would delete the defined term “control person” under CAB Rule 016(c)(1)(F)(ii), FINRA also is proposing a technical change to the proposed definition of “eligible employee” under new CAB Rule 016(m), which was proposed in the Proposal. Specifically, FINRA is proposing to replace “a control person” with “a person that controls the issuer.”

¹² FINRA also is proposing that the definitions found in CAB Rule 016(c)(1)(F)(ii) will appear in new subparagraph a. of the rule.

and conditions of the M&A Brokers Exemption to avoid having potentially confusing or conflicting requirements under the CAB Rules.

Although CABs would not be limited to representing buyers and sellers that are institutional investors in a transaction involving a change of control of a privately held company, FINRA believes that the proposed changes are nonetheless consistent with CABs' limited institutional business model and would not materially impact investor protection, as discussed below.

Consistency with CABs' Limited Institutional Business Model

The amendments proposed in this Partial Amendment No. 1 are consistent with CABs' limited institutional business model because they would permit CABs to act as a finder or placement agent (1) for institutional investors in connection with the purchase or sale of unregistered securities or (2) for buyers and sellers in connection with a transaction involving a change of control of a privately held company.

As discussed in the Proposal, institutional investors generally have 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. Reg BI¹³ and Form CRS¹⁴ provide an additional layer of investor protection to the extent any natural person receives a recommendation of a securities transaction or investment strategy involving securities from a CAB or its associated person, and uses the recommendation primarily for personal, family, or household purposes under Reg BI, or receives services from a broker-dealer primarily for personal, family, or household purposes under Form CRS.

FINRA notes that the proposed amendments do not require that the buyer or seller that a CAB represents in connection with a change of control transaction be an institutional investor. However, current CAB Rule 016(c)(1)(F)(ii) does not impose such a limitation; *i.e.*, currently, a CAB may represent an issuer or control person that is not an institutional investor in a change of control transaction. FINRA does not believe that it would be appropriate to restrict CABs' permissible activities by imposing an institutional investor limitation in CAB Rule 016(c)(1)(F)(ii).

In addition, the proposed amendments to CAB Rule 016(c)(1)(F)(ii) are modeled on the M&A Brokers Exemption, which refers to a buyer and seller and does not include a wealth or other institutional threshold. As discussed in the request for no-action relief submitted to the SEC in January 2014, which formed the basis for the M&A Brokers Letter, the active role of the buyer and seller in an M&A transaction distinguishes these transactions from the purchase and sale of securities by retail and other investors for

¹³ See 17 CFR 240.15/-1. FINRA notes that Reg BI also imposes requirements relating to the disclosure and mitigation of conflicts of interest. See 17 CFR 240.15/-1(a)(2)(iii).

¹⁴ See 17 CFR 240.17a-14.

passive investment purposes. For example, a buyer that seeks to acquire control and operate all or part of a seller's business will want to conduct due diligence, often with the assistance of legal counsel, accountants, and other business consultants. A seller is also actively involved and may seek the advice of an intermediary regarding potential buyers, valuation issues, due diligence, structuring concerns, and various business-related issues.

Furthermore, with these amendments, the scope of the corporate financing activities that CABs are permitted to engage in will continue to be limited, and additional protections for investors and the public under the CAB Rules will not be materially impacted. The proposed amendments 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. In addition, CABs would remain subject to the core supervisory requirements discussed in the Proposal 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.¹⁵ In addition, proposed CAB Rule 016(c)(1)(F)(ii)b. would require informed written consent if a CAB were to represent both sides to a change of control transaction under CAB Rule 016(c)(1)(F)(ii).

FINRA believes that the potential impacts of the amendments proposed in this Partial Amendment No. 1 are qualitatively the same as those described in the Proposal.

With this Partial Amendment No. 1, FINRA is including (1) Exhibit 4, which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 1, marked to show changes to the text as proposed in the Proposal; and (2) Exhibit 5, which reflects all proposed changes to the current rule text, as amended by this Partial Amendment No. 1.

¹⁵ See, e.g., CAB Rules 201, 221, 311, 411, 414, 451, and 453.

EXHIBIT 4

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

* * * * *

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 or institutional investor buyer 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 company₂

regardless of whether the capital acquisition broker acts on behalf of a seller or buyer.

a. For purposes of this subparagraph, [a] “control [person]” means [is a person who has] the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Control will be presumed to exist if, [before] upon completion of the transaction, the [person] buyer or group of buyers 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[;].

b. A capital acquisition broker may represent both the buyer and the seller in the same transaction under this paragraph (c)(1)(F)(ii) after providing clear written

disclosure as to the parties the capital acquisition broker represents and obtaining written consent from both parties to the joint representation;

(G) No Change.

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

(i) the seller and [purchaser] buyer of such securities [is an] are both institutional investors; and

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

(2) No Change.

(d) 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 that controls the issuer permitted under subparagraphs (F) or (G) of Rule 016(c)(1):

(1) through (2) No Change.

* * * * *

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(c)(1), 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 5

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

* * * * *

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 or institutional investor buyer 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, regardless of whether the capital acquisition broker acts on behalf of a seller or buyer.

a. For purposes of this subparagraph, [a] “control [person]” means [is a person who has] the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Control will be presumed to exist if, [before] upon completion of the transaction, the [person] buyer or group of buyers 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]

b. A capital acquisition broker may represent both the buyer and the seller in the same transaction under this paragraph (c)(1)(F)(ii) after providing clear written disclosure as to the parties the capital acquisition broker

represents and obtaining written consent from both parties to the joint representation;

(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 or buy unregistered securities, provided that:

(i) the seller and buyer of such securities are both institutional investors; 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 person that controls the issuer 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.

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300. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

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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.

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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 Rule 016(c)(1), 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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