

Attachment A

New language is underlined; deletions are in brackets.

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5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

5110. Corporate Financing Rule — Underwriting Terms and Arrangements

(a) Requirements for Public Offerings

(1) through (3) No Change.

(4) Documents and Information Required to be Filed

(A) No Change.

(B) Any member filing documents with FINRA pursuant to paragraph

(a)(4)(A) must file the following information with respect to the offering in

FINRA's Public Offering System:

(i) through (iii) No Change.

(iv) a description of any securities of the issuer acquired and

beneficially owned by any participating member during the review period,
provided that:

a. non-convertible, [or] non-exchangeable debt or
preferred securities and derivative instruments acquired in a
transaction related to the public offering must be filed and also
accompanied by a representation that a registered principal or
senior manager of the participating member has determined if the
transaction was or will be entered into at a fair price;

b. non-convertible₁ [or] non-exchangeable debt or
preferred securities and derivative instruments need not be filed if
acquired in a transaction that is unrelated to the public offering;
and

c. securities if acquired in accordance with Supplementary
Material .01(b) need not be filed.

(v) through (vi) No Change.

(C) through (E) No Change.

(b) No Change.

(c) Valuation of Underwriting Compensation

**(1) Limitation on Securities Received Upon Exercise or Conversion of
Another Security**

A participating member may not receive a security (including securities in a unit),
a warrant for a security, or a security convertible into another security as underwriting
compensation in connection with a public offering unless:

(A) the security received or the security underlying the warrant or
convertible security received is identical to the security offered to the public[or to
a security with a bona fide public market]; or

(B) the security can be accurately valued[, using any method in this
paragraph (c)][as required by paragraph (g)(1) of this Rule].

(2) Valuation of Non-Convertible Securities

Non-convertible securities received as underwriting compensation will have a
compensation value based on:

(A) the difference between:

(i) either the closing market price [per]of the security traded on a U.S. registered national securities exchange or a designated offshore securities market as defined under Securities Act Rule 902(b) on the date of acquisition, or[, if no bona fide public market exists for the security,] the public offering price per security; and

(ii) the per security cost;

(B) through (D) No Change.

(3) Valuation of Convertible Securities

Options, warrants or convertible securities (“warrants”) shall have a compensation value based on the following formula:

(A) No Change.

(B) minus the resultant of the exercise or conversion price per warrant

less either:

(i) the closing market price [per]of the convertible security, or the common stock or other security underlying the convertible security traded on a U.S. registered national securities exchange or a designated offshore securities market as defined under Securities Act Rule 902(b) on the date of acquisition[, where a bona fide public market exists for the security]; or

(ii) the public offering price per security;

(C) through (H) No Change.

(4) No Change.

(5) Valuation of Securities Acquired in Connection with [a] Fair Price Non-Convertible, [or] Non-Exchangeable Debt or Preferred Securities and [or] Derivative Instruments

Any non-convertible, [or] non-exchangeable debt or preferred securities and derivative instruments acquired or entered into at a "fair price" as defined in Supplementary Material .06(b) and underwriting compensation received in or receivable in the settlement, exercise or other terms of such non-convertible, [or] non-exchangeable debt or preferred securities and derivative instruments shall not have a compensation value for purposes of determining underwriting compensation. If the actual price for the non-convertible, [or] non-exchangeable debt or preferred securities and derivative instruments [is] are not at a fair price, compensation will be calculated pursuant to this paragraph (c) or based on the difference between the fair price and the actual price.

(d) No Change.

(e) Lock-Up Restriction on Securities

(1) No Change.

(2) Exceptions to Lock-Up Restriction

Notwithstanding paragraph (e)(1):

(A) the lock-up restriction will not apply:

(i) through (iii) No Change.

(iv) to a non-convertible [or] and non-exchangeable debt or preferred security acquired in a transaction related to the public offering;

(v) through (ix) No Change.

(B) No Change.

(f) No Change.

(g) Unreasonable Terms and Arrangements

Without limiting the requirements of paragraph (a)(1)(A) of this Rule, the following terms and arrangements are prohibited:

(1) through (4) No Change.

(5) any underwriting compensation in connection with a public offering that is not completed according to the terms of an agreement entered into by an issuer and a participating member, except

(A) No Change.

(B) a termination fee, a tail fee or a right of first refusal, as set forth in a written agreement entered into by an issuer and a participating member, provided that:

(i) No Change.

(ii) an issuer's exercise of its right of "termination for cause" eliminates any obligations with respect to the payment of any termination fee, tail fee or provision of any right of first refusal;

(iii) the amount of any termination fee or tail fee must be reasonable in relation to the underwriting services contemplated in the agreement and any fees arising from underwriting services provided under a right of first refusal must be customary for those types of services; and

(iv) the issuer shall not be responsible for paying the termination fee or tail fee unless an offering or other type of transaction (as set forth in

the agreement) is consummated within two years of the date the engagement is terminated by the issuer;

(6) through (11) No Change.

(h) through (i) No Change.

(j) Definitions

The definitions in Rule 5121 are incorporated herein by reference. For purposes of this Rule, the following terms have the meanings stated below:

(1) through (7) No Change.

(8) Immediate Family

The term “immediate family” means:

(A) the spouse or children of an associated person of a member; and

(B) No Change.

(9) through (10) No Change.

(11) Insurance Company

For the purposes of paragraph (d) of this Rule, the term “insurance company” refers only to the regulated entity, not its subsidiaries or other affiliates.

(12) through (18) No Change.

(19) Required Filing Date

(A) The term “required filing date” means the dates referenced in paragraph (a)(3) of this Rule; and

(B) For a public offering exempt from filing under paragraph (h) of this Rule, the term “required filing date” means the date the public offering would have been required to be filed with FINRA but for the exemption.

(20) No Change.

(21) Total Equity Securities

For the purposes of paragraph (d) of this Rule, the term "total equity securities" means the aggregate of the total shares of:

(A) common stock outstanding of the issuer; and

(B) common stock of the issuer underlying all convertible securities outstanding that convert without the payment of any additional consideration.

(22) No Change.

• • • Supplementary Material: -----

.01 Underwriting Compensation

(a) The following are examples of payments or benefits that are considered underwriting compensation:

(1) through (12) No Change.

(13) any compensation paid to any participating member in connection with a prior proposed public offering that was not completed, if the member firm participates in the revised public offering, except that accountable expenses received pursuant to paragraph (g)(5)(A) of this Rule shall not be deemed underwriting compensation; and

(14) No Change.

(b) Participating members may receive payments from an issuer or another source during the review period that may be unrelated to a particular offering. Such payments generally would not be deemed to be underwriting compensation. The following list, while not comprehensive, provides examples of payments that are not deemed to be underwriting compensation:

(1) through (18) No Change.

(19) non-convertible [or] and non-exchangeable debt or preferred securities and derivative instruments acquired in a transaction that is unrelated to the public offering;

(20) No Change.

(21) securities acquired in the secondary market by a participating member that is a broker-dealer in connection with the performance of bona fide customer facilitation activities and bona fide market making activities; provided that securities acquired from the issuer will be considered “underwriting compensation” if the securities were not acquired at a fair price (taking into account, among other things customary commissions, mark-downs and other charges); [and]

(22) securities acquired pursuant to a governmental or court-approved proceeding or plan of reorganization as a result of action by the government or court (e.g., bankruptcy or tax court proceeding);[.]

(23) securities acquired by a lender affiliated with a participating member through a debt-for-equity exchange that is sold by its affiliated member, if:

(A) the debt-for-equity exchange was structured to provide economic and tax benefits to the issuer and not the lender or affiliated member, except for the compensation in subparagraph (D) of this Supplementary Material .01(b)(23);

(B) the affiliated member subsequently offered all of the equity securities the lender acquired in a firm commitment offering following the debt exchange;

(C) the terms negotiated in connection with the debt exchange and the subsequent equity offering were determined through arms’ length negotiations based on the market price of the equity exchanged, subject to the compensation in subparagraph (D) of this Supplementary Material .01(b)(23); and

(D) the affiliated member negotiated customary compensation for the subsequent equity offering; and

(24) securities acquired before or during the distribution of an offering by a participating member in the issuer or an affiliated entity in connection with the investment of cash to capitalize a direct participation program or a real estate investment trust, as defined in Rule 2231(d), provided that:

(A) the acquisition of securities is disclosed in the issuer's prospectus as a capital investment or a comparable form of capitalization;

(B) the securities offered to the public and the securities acquired in the capitalization transaction are valued and priced on a net asset value or NAV basis;

(C) the offering for which the participating member is engaged is an offering subject the requirements of Rule 2310; and

(D) the securities acquired and excluded are not sold, transferred, assigned, pledged or hypothecated, or be the subject of any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of the securities for a period of 180 days beginning on the date of commencement of sales of the public equity offering.

(c) No Change.

.02 Venture Capital Transactions and Significantly Delayed Offerings. Notwithstanding paragraph (d) of this Rule, in the event that an offering is significantly delayed and the issuer needs funding pending consummation of the public offering, FINRA may exclude from underwriting compensation any securities acquired in a transaction that otherwise meets the requirements in paragraph (d), but occurs after the required filing date. To determine whether an

acquisition of securities that occurs after the required filing date may be excluded from underwriting compensation, FINRA will consider the following factors, as well as any other relevant factors and circumstances:

(a) through (c) No Change.

.03 Underwriting Compensation Securities Acquired Other than from the Issuer.

Notwithstanding paragraph (j)(22) of this Rule, FINRA may exclude securities acquired from a third-party entity from underwriting compensation. To determine whether an acquisition of securities from a third-party entity may be excluded from underwriting compensation, FINRA will consider the following factors, as well as any other relevant factors and circumstances:

(a) through (c) No Change.

.04 Underwriting Compensation Resulting from Issuer Directed Sales Programs.

Notwithstanding paragraph (j)(15) and (22) of this Rule, FINRA may exclude from underwriting compensation securities acquired by a participating member's associated persons or their immediate family pursuant to an issuer directed sales program. To determine whether an acquisition of securities by a participating member's associated persons or their immediate family pursuant to an issuer directed sales program may be excluded from underwriting compensation, FINRA will consider the following factors, as well as any other relevant factors and circumstances:

(a) through (c) No Change.

.05 No Change.

.06 Non-Convertible, [or]Non-Exchangeable Debt or Preferred Securities and Derivative[s] Instruments

(a) Non-convertible, [or]non-exchangeable debt or preferred securities and derivative instruments acquired in a transaction related to the public offering and at a fair price, will be considered underwriting compensation but will have no compensation value. Non-convertible, [or]non-exchangeable debt or preferred securities and derivative instruments acquired in a transaction related to the public offering but not at a fair price, will be considered underwriting compensation and subject to the normal valuation requirements of this Rule.

(b) The term “derivative instrument” means any "eligible OTC derivative instrument" as defined in SEA Rule 3b-13(a)(1), (2) and (3). The term “fair price” means the participating members have priced a derivative instrument or non-convertible, [or] non-exchangeable debt or preferred security in good faith; on an arm’s length, commercially reasonable basis, and in accordance with pricing methods and models and procedures used in the ordinary course of their business for pricing similar transactions. A derivative instrument or other security received as compensation for providing services for the issuer, for providing or arranging a loan, credit facility, merger, acquisition or any other service, including underwriting services will not be deemed to be entered into or acquired at a fair price.

.07 Venture Capital Transactions. The determination of whether a securities acquisition may be excluded from underwriting compensation pursuant to paragraph (d) of this Rule is to be made at the time of the securities acquisition.

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5123. Private Placements of Securities

(a) No Change.

(b) Exemptions

The following private placements are exempt from the requirements of this Rule:

(1) offerings sold by the member or person associated with the member solely to any one or more of the following:

(A) through (I) No Change.

(J) accredited investors described in Securities Act Rule 501(a)(1), (2),

(3), ~~[or] (7), (9) or (12).~~

(2) through (14) No Change.

(c) through (d) No Change.

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