

Regulatory Notice

26-19

Capital Formation

FINRA Amends its Corporate Financing Rules

Effective date for Rule 5123: October 21, 2026

Effective date for Rule 5110: December 21, 2026

Summary

FINRA has amended Rules 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements) and 5123 (Private Placements of Securities) to make substantive, organizational and terminology changes to the rules.¹ These amendments simplify and clarify rule provisions while maintaining important protections for market participants, including issuers and investors participating in public offerings.

The amendments to Rule 5123 are effective on October 21, 2026.

The amendments to Rule 5110 are effective on December 21, 2026.

Additional guidance is provided in this *Notice* and on FINRA's [Corporate Financing page](#).

The text of the amendments is included as [Attachment A](#).

Questions regarding this *Notice* should be directed to:

- ▶ Gabriela Agüero, Vice President, Corporate Financing, by [email](#) or (240) 386-4657; or
- ▶ Micah Hauptman, Associate General Counsel, Office of General Counsel, by [email](#) or (202) 728-8123.

October 21, 2026

Notice Type

- ▶ Rule Amendment

Suggested Routing:

- ▶ Compliance
- ▶ Corporate Finance
- ▶ Institutional
- ▶ Investment Banking
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Syndicate
- ▶ Systems
- ▶ Underwriting

Key Topics:

- ▶ Capital Formation
- ▶ Convertible Securities
- ▶ Corporate Financing
- ▶ Distribution of Securities
- ▶ Initial Public Offerings
- ▶ Investment Banking
- ▶ Private Placements
- ▶ Public Offerings
- ▶ Underwriting Compensation
- ▶ Unlisted REITs and DPPs
- ▶ Venture Capital

Referenced Rules & Notices:

- ▶ Regulation M
- ▶ Regulatory Notice 24-17
- ▶ Rules 2310, 5110 and 5123
- ▶ Securities Act Rules 501 and 902

Background & Discussion

The ability of small and large businesses to raise capital is critical to job creation and economic growth. Rule 5110 has played an important role in the capital raising process by promoting investor and issuer protection and market integrity.

In general, FINRA Rule 5110 requires that when FINRA members participate in a public offering, the terms and conditions of the offering, including underwriter compensation, must be fair and reasonable. The rule requires FINRA members that participate in a public offering to file documents and information with FINRA about the underwriting terms and arrangements.² Among other things, the rule contains provisions relating to how underwriting compensation is valued,³ and provides examples of payments that are not deemed to be underwriting compensation.⁴ FINRA's Corporate Financing Department reviews filings prior to the commencement of the offering to determine whether the underwriting compensation and other terms and arrangements meet the requirements of the applicable FINRA rules.⁵

Rule 5123 plays an important role in providing information that assists FINRA in the identification of potential investor protection concerns, compliance issues and trends in the private placement market, which is an important source of capital for American businesses, including small and midsize companies.

In general, Rule 5123 requires members to file with FINRA any private placement memorandum, term sheet or other offering document, and any retail communication that promotes or recommends a private placement, used in connection with a private placement of securities to individuals.

In response to feedback received to enhance the capital-raising process without compromising protections for investors and issuers, FINRA has amended Rules 5110 and 5123.

Rule 5110 Amendments

The amendments to Rule 5110 improve and clarify parts of the rule covering the valuation method for securities deemed underwriting compensation. The amendments also include new exclusions from underwriting compensation that codify positions FINRA staff has taken and clarifications of other provisions. Further, the amendments include several changes that will improve the operation of the rule and reduce common questions encountered during the review process.

Valuation Method for Securities Acquisitions That Are Considered Underwriting Compensation

When participating members⁶ acquire securities that are deemed underwriting compensation, Rule 5110 governs how those securities are valued.⁷ Amended Rule

5110(c)(2) and (3) replaces the “bona fide public market”⁸ valuation method with a more predictable valuation method based on the closing market price 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 the acquisition.⁹

Dually Listed Securities

For securities listed on both a U.S. national securities exchange and a foreign exchange that qualifies as a “designated offshore securities market” under Securities Act of 1933 (Securities Act) Rule 902(b), Rule 5110(a)(4)(B)(ii) continues to require an estimate of the maximum value for each item of underwriting compensation. Accordingly, members must use the price that results in the maximum compensation value of the securities acquired as underwriting compensation.

For example, where a member acquires securities at \$9 per share listed on both a U.S. exchange and a foreign exchange, and the closing price on the designated offshore securities market is equivalent to \$10 per share, the closing price on the U.S. registered national securities exchange is \$10.10 per share, and the public offering price is \$10.05 per share, the member must use the U.S. closing price of \$10.10 per share, as it produces the maximum value for the securities included as underwriting compensation.

Securities with No Available Closing Price

Where a security trades on a U.S. national securities exchange but no closing price is available on the specific date of acquisition (e.g., due to a trading halt or an absence of trades on that date), members must use the public offering price per security for valuation purposes.

Exclusions From Underwriting Compensation for Certain Securities Acquisitions

Rule 5110 provides for exclusions from underwriting compensation for certain types of investments by participating members in anticipation of, or concurrently with, a public offering.¹⁰ The amended rule expands the exclusions to include: (1) debt-for-equity exchanges;¹¹ (2) capital investments for direct participation programs (DPPs) and unlisted real estate investment trusts (REITs);¹² and (3) non-convertible preferred securities.¹³

1. Debt-for-Equity Exchanges

A debt-for-equity exchange is composed of a series of transactions in which a lender acquires equity securities of the issuer, often referred to as exchange shares, in return for a cash loan. The exchange shares are subsequently or concurrently registered and offered by underwriters in a public offering, and the offering proceeds are used, in whole or in part, as repayment of the loan. When the lender

is an affiliate of an underwriter, the lender falls within the definition of participating member, and the equity securities acquired by the affiliated lender for making the loan fall within the definition of underwriting compensation.

The amended rule adds new Rule 5110.01(b)(23) to provide an exclusion from underwriting compensation for securities acquired by a lender affiliated with a participating member in connection with debt-for-equity exchange transactions if the following conditions are met:

- ▶ the debt-for-equity exchange is structured to provide economic and tax benefits to the issuer and not the lender or affiliated member, except for negotiated customary compensation for the subsequent equity offering;¹⁴
- ▶ the affiliated member subsequently offered all of the equity securities the lender acquired in a firm commitment offering following the debt exchange;¹⁵
- ▶ the parties determined the terms of the debt exchange and the subsequent equity issued through arms' length negotiations based on the market price of the equity, subject to negotiated customary compensation for the subsequent equity offering;¹⁶ and
- ▶ the affiliated member negotiated customary compensation for the subsequent equity offering.¹⁷

2. Capital Investments for DPPs and Unlisted REITs

Participating members commonly make capital investments in DPP and unlisted REIT offerings, providing equity capital or financing to an issuer in exchange for an equity stake. This financing arrangement may happen in advance of or concurrently with a public offering.

The amended rule adds new Rule 5110.01(b)(24) to provide an exclusion from underwriting compensation for securities acquired before or during the distribution of an offering by a participating member in the issuer or an affiliated entity in connection with DPPs and unlisted REITs if the following conditions are met:

- ▶ the acquisition of securities is disclosed in the prospectus;¹⁸
- ▶ the securities offered to the public and the securities acquired in the capitalization transaction are valued and priced on a net asset value (NAV) basis;¹⁹
- ▶ the offering for which the participating member is engaged is an offering subject to the requirements of Rule 2310 (Direct Participation Programs);²⁰ and
- ▶ the securities acquired are restricted for a period of 180 days beginning on the date of the commencement of sales.²¹

3. Non-Convertible Preferred Securities

Rule 5110 provides that non-convertible or non-exchangeable debt securities and derivative instruments acquired by any participating member in a transaction related to a public offering at a fair price are considered underwriting compensation but have no compensation value.²² The amended rule adds non-convertible preferred securities, treating them in a comparable manner to non-convertible debt securities. Thus, to the extent non-convertible preferred securities are acquired by any participating member in a transaction related to a public offering at a fair price, those securities are considered underwriting compensation but have no compensation value.²³

Additional Modifications to Rule 5110

Amended Rule 5110 includes other modifications that will improve the operation of the rule. First, amended Rule 5110(g)(5)(B) permits tail fees, in addition to termination fees and the receipt of compensation in the form of rights of first refusal in connection with a public offering that is not completed according to the terms of an agreement, provided specific requirements are met:

- ▶ the agreement specifies that the issuer has a right of “termination for cause,” which shall include the participating member’s material failure to provide the underwriting services contemplated in the written agreement;²⁴
- ▶ the 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;²⁵
- ▶ 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;²⁶ and
- ▶ 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.²⁷

If those requirements are not met, the receipt of any tail fees in connection with a public offering would constitute an unreasonable term or arrangement under Rule 5110.

Rule 5123 Amendments

Rule 5123 contains an exemption from filing for offerings sold to certain types of “accredited investors” under Rule 501 of the Securities Act.²⁸ The amendments to Rule 5123 expand the filing exemption under Rule 5123 for sales to specified

accredited investors to include offerings sold to investors meeting two additional accredited investor categories,²⁹ consistent with the SEC's addition of those categories to the accredited investor definition:³⁰

- ▶ any entity,³¹ of a type not listed in paragraphs (a)(1), (2), (3), (7), or (8) of Rule 501, not formed for the specific purpose of acquiring the securities offered, owning investments in excess of \$5,000,000;³² and
- ▶ any "family office" with assets under management in excess of \$5,000,000, that is not formed for the specific purpose of acquiring the securities offered and its prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment.³³

Implementation

The amendments to Rule 5123 are effective on October 21, 2026. The amendments to Rule 5110 are effective on December 21, 2026. For any offering subject to Rule 5110 for which the initial required filing date under Rule 5110(j)(19) falls before December 21, 2026, members must comply with the existing rule for the duration of that offering. For any offering subject to Rule 5110 for which the initial required filing date under Rule 5110(j)(19) falls on or after December 21, 2026, members must comply with the amended rule.

Members with questions about unique circumstances are encouraged to contact FINRA's Corporate Financing Department at AskCorpFin@finra.org or (240) 386-4623. For questions related to specific offerings filed and assigned to staff, please direct your questions to the reviewers associated with the filing.

Endnotes

- 1 See Securities Exchange Act Release No. 105987 (July 24, 2026), 91 FR 47903 (July 29, 2026) (Order Approving File No. SR-FINRA-2026-002) (Approval Order).
- 2 Filings of public offerings are made electronically with FINRA through FINRA's [public offering filing system](#). The filing and review processes are described on the "Public Offerings" page available on the FINRA.org website. The following are some examples of public offerings that are routinely filed: (1) initial public offerings; (2) follow-on offerings; (3) shelf offerings; (4) rights offerings; (5) offerings by direct participation programs as defined in Rule 2310(a)(4); (6) offerings by real estate investment trusts; (7) offerings by a bank or savings and loan association; (8) exchange offerings; (9) offerings pursuant to SEC Regulation A; and (10) offerings by closed-end funds.
- 3 See Rule 5110(c).
- 4 See Rule 5110.01(b).
- 5 FINRA does not approve or disapprove an offering; rather, it issues an opinion based on a review that relates solely to the FINRA rules governing underwriting terms and arrangements and the opinion does not purport to express any determination of compliance with any federal or state laws, or other regulatory or self-regulatory requirements regarding the offering. A member may proceed with a public offering required to be filed only if FINRA has provided an opinion that it has no objection to the proposed underwriting terms and arrangements. See Rule 5110(a)(1)(C)(ii).
- 6 The term "participating member" means any FINRA member that is participating in a public offering, any affiliate or associated person of the member, and any immediate family, but does not include the issuer. See Rule 5110(j)(15).
- 7 See Rule 5110(c).
- 8 The definition of "bona fide public market" includes the requirement that the securities be traded on a national securities exchange and relies on SEC Regulation M's definitions of average daily trading volume and public float. See Rule 5121(f)(3).
- 9 See Rule 5110(c)(2) and (3).
- 10 See Rule 5110.01(b).
- 11 See Rule 5110.01(b)(23).
- 12 See Rule 5110.01(b)(24).
- 13 See Rule 5110(a)(4), 5110(c)(5), 5110(e), and 5110.06.
- 14 See Rule 5110.01(23)(A).
- 15 See Rule 5110.01(23)(B).
- 16 See Rule 5110.01(23)(C).
- 17 See Rule 5110.01(23)(D).
- 18 See Rule 5110.01(24)(A).
- 19 See Rule 5110.01(24)(B). Capitalization transactions occurring before the issuer has material assets would be deemed to occur at or above NAV. See Approval Order, *supra* note 1, at note 57.
- 20 See Rule 5110.01(24)(C).
- 21 See Rule 5110.01(24)(D).
- 22 See Rule 5110(c)(5) and 5110.06.
- 23 If securities are not received at a fair price, the value of underwriting compensation that is attributed to these securities is the difference between their fair price and their actual price.
- 24 See Rule 5110(g)(5)(B)(i).

25 See Rule 5110(g)(5)(B)(ii).

26 See Rule 5110(g)(5)(B)(iii).

27 See Rule 5110(g)(5)(B)(iv).

28 See Rule 5123(b)(1)(j).

29 *Id.*

30 See Accredited Investor Definition, Securities Exchange Act Release No. 89669 (Aug. 26, 2020), 85 FR 64234 (Oct. 9, 2020).

31 *Id.* The Commission distinguished between natural persons and entities when describing the new categories of accredited investor, including this category. 85 FR 64237.

32 See 17 CFR 230.501(a)(9).

33 See 17 CFR 230.501(a)(12).