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**VIA E-MAIL ([pubcom@finra.org](mailto:pubcom@finra.org))**

June 11, 2025

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA 1700 K Street, NW  
Washington, DC 20006

Re: FINRA Regulatory Notice 25-06

Dear Ms. Mitchell:

On behalf of the Alternative & Direct Investment Securities Association (“ADISA”)<sup>1</sup>, we are submitting this comment letter regarding the request for public comment set forth in Regulatory Notice 25-06 (the “Notice”). The Notice contains a broad request for comments on ways to modernize certain FINRA rules. ADISA members include retail broker-dealers, managing broker-dealers (collectively “BDs”), and registered persons. ADISA appreciates the opportunity to provide comments on behalf of its members.

We are providing our comments with regard to Rule 2310 – Direct Participation Programs; Rule 5110 – Corporate Financing Rule – Underwriting Terms and Arrangements; and Rule 5123 – Private Placements of Securities. ADISA previously commented on proposals regarding these Rules and continues to believe that its previously expressed views remain relevant and, hopefully, helpful. For your convenience, we have provided cross references to comments contained in prior letters submitted by ADISA on these issues.

**1. Rule 2310 – Direct Participation Programs.**

**ADISA recommends that limited liability companies which have elected to be treated as a partnership for federal income tax purposes be included in the definition of a Direct Participation Program.**

Our thought had been to also suggest that the Board of Governors increase the limit on non-cash compensation from \$100 to \$150. We note that, in the interim, FINRA has proposed to move the limit to \$250; we endorse that proposal and will be submitting a comment letter in support.

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<sup>1</sup> ADISA (Alternative & Direct Investment Securities Association) is the nation’s largest trade association for the non-traded alternative investment space (i.e., retail vs. institutional). Through its 5,000 financial industry members (over 1,000 firms), ADISA reaches over 220,000 finance professionals, with sponsor members raising in excess of \$200 billion annually, serving more than 1 million investors. ADISA is a non-profit organization (501(c)(6)), registered to lobby, and also has a related 501(c)(3) charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

**2. Rule 5110 – Corporate Financing Rule – Underwriting Terms and Arrangements.**

**ADISA recommends that, in addition to those investments made concurrently with or in advance of the public offering, additional contributions of seed capital should not be considered underwriting compensation and should be included in the safe harbor exclusion, subject to the same conditions set forth in the proposed revision.**

ADISA provided comments to Regulatory Notice 24-17 with regard to the exclusions from underwriting compensation in a letter dated March 18, 2025, as follows:

**Safe Harbors: Exclusions From Underwriting Compensation.**

ADISA commends FINRA for excluding from underwriting compensation seed capital investments made by affiliates of underwriters concurrently with or in advance of a public offering. FINRA has proposed this exclusion on the condition that:

- the seed capital investments are disclosed in the prospectus;
- the offering and the acquisitions are valued and priced based on net asset value;
- the offering is subject to the requirements of Rule 2310 (Direct Participation Programs); and
- the securities acquired are restricted for a period of 180 days following the commencement of sales.

These seed capital investments are typically required by state securities regulators pursuant to the North American Securities Administrators Association’s Statement of Policy Regarding Real Estate Investment Trusts (“NASAA REIT Guidelines”) in an amount equal to the lesser of 10% of the total net assets upon completion of the offering or \$200,000, which amount is required to remain invested in the issuer but may be transferred to other affiliates.<sup>2</sup>

The explicit exclusion of these investments from underwriting compensation is welcome; however, ADISA urges FINRA to also include capital contributions after sales have commenced. While the exclusion from underwriting compensation is only for those investments made concurrently with or in advance of the public offering, the sponsor or an affiliate may determine to make additional contributions of capital following the effectiveness of the offering and after sales have commenced either because of an investment opportunity that exceeds currently available investment proceeds or for other business considerations, such as breaking escrow or requirements from selling group members in order to add the program to its platform. It does not appear that these additional investments would be included under the safe harbor provisions because they were not made concurrently with or in advance of the public offering.

**A. ADISA recommends that the safe harbor restrictions fully align with the NASAA REIT Guidelines.**

The proposed restrictions on the sale of the securities acquired pursuant to the safe harbor provisions are different than those contained in the NASAA REIT Guidelines because the proposed restrictions do not provide that those securities may be transferred to an affiliate of the sponsor which is allowable pursuant to Section II.A.2. of the NASAA REIT Guidelines. ADISA believes that there should be consistency between the FINRA safe harbor and the NASAA REIT Guidelines regarding the ability to transfer those securities to affiliates. In order to effectuate that consistency, ADISA proposes that the following language be added to the end of .05(d):

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<sup>2</sup> NASAA REIT Guidelines, Section II.A.

*“; provided, however, the securities acquired and excluded may be transferred to other affiliated entities, which transfer would not be deemed to constitute an economic disposition of the securities during the 180 day period.”*

**B. ADISA recommends that for purpose of calculating the lockup restriction period, FINRA use the definitive date of effectiveness of the offering as a measurement rather than commencement of sales.**

ADISA believes that “commencement of sales” is not a date certain and can be difficult to pinpoint for purposes of measuring the lockup restriction period whereas the date of effectiveness is readily available to the public. Many of ADISA member’s offerings are “best efforts” and there can be a significant time lag between the date of effectiveness and the date of first sale (or the breaking of escrow). If the lockup restrictions do not begin until the commencement of sales, is that the date selling agreements are entered into, the date that the first subscription agreement is received, the date that escrow is broken, or some other date? The date of effectiveness is a date certain that is publicly available on the SEC’s website and would provide clarity to all participants in the offering rather than a date that will be more difficult to determine and harder yet to notify the holders of the securities subject to such restrictions.

**ADISA urges FINRA to provide guidance on what constitutes a reasonable underwriting compensation limit, but asserts that due diligence costs should not be classified as underwriting compensation.**

*ADISA provided comments to Regulatory Notice 23-09 with regard to the categorizing of due diligence expenses as underwriting compensation in a letter dated August 7, 2023 as follows:*

**Rule 5110 - Corporate Financing Rule — Underwriting Terms and Arrangements**

FINRA Rule 5110 sets forth filing, disclosure, valuation and other terms concerning underwriting compensation in public offerings.

Rule 5110 Supplementary Material .01 Underwriting Compensation categorizes all due diligence expenses as underwriting compensation.

ADISA membership expressed the need for guidance on what is considered a reasonable underwriting compensation limit. By not providing a limit, in the form of percent of offering proceeds or otherwise, this has the result of potentially lengthening the FINRA review process by way of additional comments and responses, increasing costs to the issuer and thus to investors, and lengthening the time to it takes to go to market with offerings.

ADISA membership expressed that due diligence costs under Rule 5110 should not be considered underwriting compensation as those costs are operational in nature and associated with the member’s obligations under Regulation BI and assessing adequate disclosure in offering documents, among others.

In the alternative, ADISA recommends that due diligence costs be bifurcated in a manner similar to Rule 2310. Rule 2310 bifurcates due diligence expense reimbursement to the member between issuer costs and underwriting compensation based on the presence of a detailed and itemized invoice – where costs based on a detailed and itemized invoice are considered issuer costs and other are included in non-accountable expense allowance.

**3. Rule 5123 – Private Placements of Securities.**

*ADISA provided comments to Regulatory Notice 24-17 with regard to the addition of categories of accredited investors to the exemptions for filing private offerings as the definition of accredited investor continues to evolve in a letter dated March 18, 2025, as follows:*

**A. ADISA urges FINRA to include additional categories of accredited investors to the exemptions for filing private offerings as the definition of accredited investor continues to evolve.**

ADISA agrees with and appreciates FINRA adding the two additional categories of accredited investor contained in Rule 501(a)(9) and (12) pursuant to Regulation D to the exemption for filing private placement offering documents and retail communications pursuant to FINRA Rule 5123. ADISA believes that FINRA should continue to review and consider adding further categories of investors pursuant to which the exemption for filing would apply as the definition of accredited investor continues to evolve pursuant to future SEC rulemaking or legislation.

ADISA appreciates the opportunity to provide input. We would be happy to discuss our concerns further and to continue to assist FINRA in modernizing its rules while appropriately protecting investors.

Sincerely,



Catherine Bowman

Co-Chair of the ADISA Legislative and Regulatory Committee

cc: Drafting Committee: Deborah S. Froling and Catherine Bowman, Co-Chairs ADISA Legislative & Regulatory Committee; John H. Grady.