Regulatory Notice 17-15

Attachment A

Below is the text of the proposed rule change.

* * * * *

5110. Corporate Financing Rule — Underwriting Terms and Arrangements

(a) Requirements for Public Offerings

(1) General

(A) No member or person associated with a member shall participate in a public offering in which the terms and conditions relating thereto, including the aggregate amount of underwriting compensation, are unfair or unreasonable pursuant to this Rule or inconsistent with any By-Law or any rule or regulation of FINRA.

(B) Any member acting as a managing underwriter or in a similar capacity must notify the other members participating in the public offering if the underwriting terms and arrangements are unfair and unreasonable and the proposed terms and arrangements have not been appropriately modified.

(C) No member may engage in the distribution or sale of securities in any public offering required to be filed by this Rule, Rule 2310 or Rule 5121 unless:

(i) documents and information specified in paragraph (a)(4) have been filed with FINRA; and

(ii) FINRA has provided an opinion that it has no objection to the proposed underwriting terms and arrangements.

(2) Offerings Required to be Filed

All public offerings in which a member participates must be filed with FINRA for review, except as exempted from the filing requirement under paragraph (g).

(3) Timely Filing Requirements

(A) A member that participates in a public offering that is required to be filed under paragraph (a)(2) must file the documents and information specified in paragraph (a)(4):

(i) no later than three business days after any documents are filed with or submitted to:

a. the SEC, including confidential filings or submissions; or

b. any state securities commission or other similar U.S. regulatory authority; or

(ii) if not filed with or submitted to any such regulatory authority, at least 15 business days prior to the commencement of sales.

(B) A member that participates in a public offering is not required to make a filing if the filing has been made by a member that is responsible for managing the offering or by another member that is in the syndicate or selling group.

(4) Documents and Information Required to be Filed

(A) The following documents required to be filed under paragraph (a) must be filed in FINRA's Public Offering System for review:

(i) the registration statement, offering circular, offering memorandum, notification of filing, notice of intention, application for conversion, and any other document used to offer securities to the public;

(ii) all documents relevant to the underwriting terms and arrangements, including any proposed underwriting agreement, agreement among underwriters, selected dealers agreement, agency agreement, purchase agreement, letter of intent, engagement letter, consulting agreement, partnership agreement, underwriter's warrant agreement, or escrow agreement, provided that industry-standard master forms of agreement need not be filed unless otherwise specifically requested by FINRA;

(iii) if amendments to any documents previously filed contain changes to the offering and the underwriting terms and arrangements for the public offering, marked pages showing the changes to such document;

(iv) the final registration statement declared effective by the SEC, or the equivalent final offering document, the notice of effectiveness issued by the SEC or any other U.S. regulatory authority, the executed form of the final distribution-related documents and any other document submitted to FINRA for review, each if applicable; and

(v) all requests for withdrawal filed with or submitted to the SEC or any other U.S. regulatory authority, including any correspondence submitted to the SEC for the withdrawal of confidential filings or submissions.

(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) an estimate of the maximum public offering price;

(ii) an estimate of the maximum value for each item of underwriting compensation;

(iii) a description of the methodology used to value any security received or to be received as underwriting compensation;

(iv) a representation as to whether any officer or director of the issuer and any beneficial owner of 5% or more of any class of the issuer's equity and equity-linked securities is an associated person or affiliate of a participating member;

(v) 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 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; and

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

(vi) if applicable, a representation of compliance with all of the criteria for any exception from underwriting compensation provided in paragraph (c); and

(vii) a detailed explanation and all documents related to the modification of any information or representation previously provided to FINRA during the review period, whether or not FINRA has issued a no objections opinion.

(C) In the event an offering filed pursuant to this Rule is not completed according to the terms of an agreement entered into by the issuer and a participating member, any member receiving underwriting compensation must provide written notification to FINRA of all underwriting compensation received or to be received pursuant to paragraph (f)(4), including a copy of any agreement governing the arrangement.

(D) FINRA will provide confidential treatment to all documents and information filed pursuant to this Rule and use such documents and information solely for the purpose of review in connection with applicable FINRA rules or for other regulatory purposes deemed appropriate by FINRA.

(b) Disclosure Requirements for Underwriting Compensation

(1) A description of each item of underwriting compensation received or to be received by a participating member, including the maximum aggregate amount of all

underwriting compensation, must be disclosed in the section on distribution arrangements in the prospectus or similar document.

(2) Any underwriting compensation consisting of a commission or discount to the public offering price must be disclosed on the cover page of the prospectus or similar document. If the underwriting compensation includes items of compensation in addition to the commission or discount disclosed on the cover page of the prospectus or similar document, a footnote to the offering proceeds table on the cover page of the prospectus or similar document shall include a cross-reference to the section on distribution arrangements.

(c) Securities Acquisitions Not Considered Underwriting Compensation

Securities acquired in transactions that meet the requirements of this paragraph (c) are excluded from underwriting compensation and not subject to the lock-up requirements of paragraph (d)(1), provided that the member does not condition its participation in the public offering on an acquisition of securities in a transaction that meets the requirements of this paragraph and any securities acquired are acquired at the same price and with the same terms as the securities purchased by all other investors.

(1) Purchases and Loans *by* Certain Affiliates — Securities of the issuer purchased in a private placement or received as compensation in connection with the provision of a loan or credit facility before the required filing date of the public offering pursuant to paragraph (a) by a participating member's affiliate, if:

(A) the affiliate is a separate and distinct legal person from any member participating in the offering and is not registered as a broker-dealer;

(B) the investment and loan were made subject to the evaluation of individuals who have a contractual or fiduciary duty to select investments and loans based on the risks and rewards to the affiliate and not based on opportunities for the member participating in the offering to earn investment banking revenues;

(C) the affiliate does not receive investment banking fees paid to any participating member for underwriting public offerings;

(D) the affiliate, directly or through a subsidiary it controls, is primarily engaged in the business of making investments in or loans to other companies; and

(E) the affiliate either:

(i) manages capital contributions or commitments of $100 million or more, at least $75 million of which has been contributed or committed by persons that are not participating members;

(ii) manages capital contributions or commitments of $25 million or more, at least 75% of which has been contributed or committed by persons that are not participating members;

(iii) is an insurance company as defined in Section 2(a)(13) of the Securities Act or is a foreign insurance company that has been granted an exemption under this Rule; or

(iv) is a bank as defined in Section 3(a)(6) of the Exchange Act or is a foreign bank that has been granted an exemption under this Rule.

(2) Investments *in* and Loans *to* Certain Issuers — Securities of the issuer purchased in a private placement or received as compensation in connection with the

provision of a loan or credit facility before the required filing date of the public offering pursuant to paragraph (a) by a participating member's affiliate if:

(A) the affiliate:

(i) manages capital contributions or commitments of at least $50 million;

(ii) is a separate and distinct legal person from any member participating in the offering and is not registered as a broker-dealer;

(iii) does not receive investment banking fees paid to any participating member for underwriting public offerings; and

(iv) directly or through a subsidiary it controls, is primarily engaged in the business of making investments in or loans to other companies;

(B) institutional investors beneficially own at least 33% of the issuer's total equity securities, calculated immediately prior to the transaction; and

(C) the transaction was approved by a majority of the issuer's board of directors (if the issuer has a board of directors) and a majority of any institutional investors, or the designees of institutional investors, that are board members.

(3) Private Placements with Institutional Investors — Securities of the issuer purchased in, or received as placement agent compensation in connection with, a private placement before the required filing date of the public offering pursuant to paragraph (a) if:

(A) institutional investors purchase at least 51% of the "total offering" (composed of the total number of securities sold in the private placement and

received or to be received as placement agent compensation by any member participating in the offering);

(B) an institutional investor was the lead negotiator or, if the terms were not negotiated, was the lead investor with the issuer to establish or approve the terms of the private placement; and

(C) the participating members did not, in the aggregate, purchase or receive as placement agent compensation more than 40% of the "total offering" (excluding purchases by any affiliate qualified under paragraph (c)(1)).

(d) Lock-Up Restriction on Securities

(1) Lock-Up Restriction

(A) Any underwriting compensation consisting of securities must not be 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 offering, except as provided in paragraph (d)(2).

(B) The lock-up restriction must be disclosed in the section on distribution arrangements in the prospectus or similar document.

(2) Exceptions to Lock-Up Restriction

Notwithstanding paragraph (d)(1):

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

(i) the security is required to be transferred by operation of law or by reason of reorganization of the issuer;

(ii) the aggregate amount of securities of the issuer beneficially owned by a participating member does not exceed 1% of the securities being offered;

(iii) the security is of an issuer that meets the registration requirements of SEC Registration Forms S-3, F-3 or F-10; or

(iv) the security is beneficially owned on a pro-rata basis by all equity owners of an investment fund, provided that no participating member manages or otherwise directs investments by the fund, and participating members in the aggregate do not own more than 10% of the equity in the fund.

(B) the following will not be prohibited:

(i) the transfer of any security to any member participating in the offering and its officers or partners, its registered persons or affiliates, if all transferred securities remain subject to the lock-up restriction in paragraph (d)(1) for the remainder of the 180-day lock-up period;

(ii) the exercise or conversion of any security, if all securities received remain subject to the lock-up restriction in paragraph (d)(1) for the remainder of the 180-day lock-up period; or

(iii) the transfer or sale of the security back to the issuer in a transaction exempt from registration with the SEC.

(e) Non-Cash Compensation

(1) Definitions

The terms "compensation," "non-cash compensation" and "offeror" as used in this paragraph (e) shall have the following meanings:

(A) "Compensation" shall mean cash compensation and non-cash compensation.

(B) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(C) "Offeror" shall mean an issuer, an adviser to an issuer, an underwriter and any affiliated person of such entities.

(2) Restrictions on Non-Cash Compensation

In connection with the sale and distribution of a public offering of securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Non-cash compensation arrangements are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors[1] and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

[1] The current annual amount fixed by the Board of Governors is $100.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by paragraph (e)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which shall mean an office of the issuer or affiliate thereof, the office of the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(iv) the payment or reimbursement by the issuer or affiliate of the issuer is not conditioned by the issuer or an affiliate of the issuer on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (e)(2)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a company that controls a member company and the member's associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or

non-member's organization of a permissible non-cash compensation arrangement; and

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (e)(2)(D).

A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by paragraphs (e)(2)(C) through (E). The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with paragraphs (e)(2)(C) through (E).

(f) Unreasonable Terms and Arrangements

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

(1) receipt of any underwriting compensation, including in the form of securities, for which a value cannot be determined;

(2) any accountable expense allowance that includes payment for general overhead, salaries, supplies, or similar expenses incurred in the normal conduct of business;

(3) any underwriting compensation paid prior to the commencement of sales of the public offering, except an advance against accountable expenses actually anticipated to be incurred, which must be reimbursed to the issuer to the extent not actually incurred;

(4) 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) the reimbursement of accountable expenses actually incurred by the participating member; and

(B) a termination 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) 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;

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

(iii) the amount of any termination 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 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.

(5) any right of first refusal to participate in the distribution of a future public offering, private placement or other financing that:

(A) has a duration of more than three years from the commencement of sales of the public offering or the termination date of the engagement between the issuer and member; or

(B) has more than one opportunity to waive or terminate the right of first refusal in consideration of any payment or fee;

(6) any payment or fee to waive or terminate a right of first refusal to participate in a future public offering, private placement or other financing that is not paid in cash;

(7) the receipt of underwriting compensation consisting of any option, warrant or convertible security that:

(A) is exercisable or convertible more than five years from the commencement of sales of the public offering;

(B) has more than one demand registration right at the issuer's expense;

(C) has a demand registration right with a duration of more than five years from the commencement of sales of the public offering;

(D) has a piggyback registration right with a duration of more than seven years from the commencement of sales of the public offering;

(E) has anti-dilution terms that allow the participating members to receive more shares or to exercise at a lower price than originally agreed upon at the time

of the public offering, when the public shareholders have not been proportionally affected by a stock split, stock dividend, or other similar event; or

(F) has anti-dilution terms that allow the participating members to receive or accrue cash dividends prior to the exercise or conversion of the security;

(8) when proposed in connection with the distribution of a public offering of securities on a “firm commitment” basis, any overallotment option providing for the overallotment of more than 15% of the amount of securities being offered, computed excluding any securities offered pursuant to the overallotment option;

(9) the receipt by a participating member of any compensation in connection with the exercise or conversion of any warrant, option, or convertible security offered in the public offering if:

(A) the market price of the security into which the warrant, option, or convertible security is exercisable or convertible is lower than the exercise or conversion price;

(B) the warrant, option, or convertible security is held in a discretionary account at the time of exercise or conversion, except where prior specific written approval for exercise or conversion is received from the customer;

(C) the compensation arrangements are not disclosed in the offering documents provided to security holders at the time of exercise or conversion;

(D) the exercise or conversion is not solicited by the participating members; and

(10) for a member to participate with an issuer in the public offering of securities if the issuer hires persons primarily for the purpose of solicitation, marketing, distribution

or sales of the offering, except in compliance with Section 15(a) of the Exchange Act or SEA Rule 3a4-1 and applicable state law.

(g) Exemptions

(1) Offerings Exempt from Filing

Documents and information related to the following public offerings need not be filed with FINRA for review, unless subject to the provisions of Rule 5121(a)(2), provided that the following public offerings must comply with this Rule and, if applicable, Rules 2310 and 5121:

(A) securities offered by a bank, corporation, foreign government or foreign government agency that has unsecured non-convertible debt with a term of issue of at least four years or unsecured non-convertible preferred securities that are investment grade rated, as defined in Rule 5121(f)(8), or are securities in the same series that have equal rights and obligations as investment grade rated securities, provided that an initial public offering of equity is required to be filed;

(B) investment grade rated non-convertible debt securities and non-convertible preferred securities;

(C) offerings of securities registered with the SEC on registration statement Forms S-3, F-3, or F-10, provided that the registrant is an experienced issuer;

(D) investment grade rated financing instrument-backed securities;

(E) exchange offers where:

(i) the securities to be issued or the securities of the company being acquired are listed on a national securities exchange as defined in Section 6 of the Exchange Act; or

(ii) the company issuing securities qualifies to register securities with the SEC on registration statement Forms S-3, F-3, or F-10 and is an experienced issuer;

(F) public offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act;

(G) offerings of securities issued by a pooled investment vehicle, whether formed as a trust, partnership, corporation, limited liability company or other collective investment vehicle, that is not registered as an investment company under the Investment Company Act and has a class of equity securities listed for trading on a national securities exchange and that may be created or redeemed on any business day at their net asset value per share; and

(H) offerings of securities by a “closed-end” investment company as defined in Section 5(a)(2) of the Investment Company Act that is operated as a tender offer fund, provided that the fund:

(i) makes continuous offerings pursuant to Securities Act Rule 415;

(ii) prices its securities monthly;

(iii) limits the total amount of compensation paid to participating members to the amount permitted by the sales charge limitations of Rule

2341, in which case the underwriting compensation provisions of Rule 5110 will not apply;

(iv) makes at least two repurchase offers per calendar year for its securities pursuant to SEA Rule 13e-4 and Schedule TO under the Exchange Act;

(v) does not list its securities on a national securities exchange; and

(vi) files its initial public offering of equity with FINRA.

(2) Offerings Not Subject to Filing and Rule Compliance

The following offerings are not subject to this Rule, Rule 2310 and Rule 5121 including not being required to file documents and information for review:

(A) securities exempt from registration with the SEC pursuant to the provisions of Sections 4(a)(1), 4(a)(2) or 4(a)(6) of the Securities Act;

(B) securities exempt from registration with the SEC pursuant to Rule 504 of SEC Regulation D if the securities are restricted securities under Securities Act Rule 144(a)(3) or Rule 506 of SEC Regulation D;

(C) securities exempt from registration with the SEC pursuant to Securities Act Rule 144A or SEC Regulation S;

(D) securities which are defined as "exempted securities" in Section 3(a)(12) of the Exchange Act;

(E) securities of "open-end" investment companies as defined in Section 5(a)(1) of the Investment Company Act;

(F) securities of any “closed-end” investment company as defined in Section 5(a)(2) of the Investment Company Act that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the Investment Company Act and offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) of SEC Regulation C;

(G) variable contracts as defined in Rule 2320(b)(2);

(H) modified guaranteed annuity contracts and modified guaranteed life insurance policies, which are deferred annuity contracts or life insurance policies the value of which are guaranteed if held for specified periods, and the nonforfeiture value of which are based upon a market-value adjustment formula for withdrawals made before the end of any specified period;

(I) insurance contracts not otherwise included in paragraphs (g)(2)(G) and (H);

(J) municipal securities as defined in Section 3(a)(29) of the Exchange Act;

(K) tender offers made pursuant to SEC Regulation 14D under the Exchange Act;

(L) securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Utility Holding Company Act;

(M) securities of a subsidiary or other affiliate distributed by a company in a spin-off or reverse spin-off or similar transaction to its existing security holders exclusively as a dividend or other distribution;

(N) securities registered with the SEC in connection with a merger or acquisition transaction or other similar business combination, except for any exchange offer, merger and acquisition transaction, or other similar corporate reorganization involving an issuance of securities that results in the direct or indirect public ownership of the member; and

(O) securities of a unit investment trust as defined in Section 4(2) of the Investment Company Act.

(h) Requests for Rule 9600 Exemption from Rule 5110

Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member unconditionally or on specified terms from any or all of the provisions of this Rule that it deems appropriate.

(i) Definitions

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

(1) Associated Person

The term "associated person" has the meaning defined in Article I, Section (rr) of the FINRA By-Laws.

(2) Bank

For the purposes of paragraph (c), the term "bank" refers only to the regulated entity, not its subsidiaries or other affiliates.

(3) Company

The term "company" means a corporation, a partnership, an association, a joint stock company, a trust, a fund, or an organized group of persons whether incorporated or

not; including any receiver, trustee in bankruptcy or similar official, or liquidating agent of any of the foregoing.

(4) Compensation

The term “compensation” means cash compensation and non-cash compensation.

(5) Effective Date

The term “effective date” means the date on which an issue of securities becomes legally eligible for distribution to the public.

(6) Experienced Issuer

The term “experienced issuer” means an entity that has:

(A) a reporting history of 36 calendar months immediately preceding the filing of the registration statement; and

(B) at least $150 million aggregate market value of voting stock held by non-affiliates; or alternatively the aggregate market value of the voting stock held by non-affiliates of the issuer is $100 million or more and the issuer has had an annual trading volume of such stock of three million shares or more.

(7) Equity-Linked Securities

The term “equity-linked securities” means any security that is convertible or exchangeable into an equity security.

(8) Immediate Family

The term “immediate family” means:

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

(B) any relative who either lives in the same household as, has a business relationship with, provides material support to, or receives material support from,

an associated person of a member, including, but not limited to, a parent, sibling, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(9) Independent Financial Adviser

The term “independent financial adviser” means a member or a person affiliated or associated with a member that provides advisory or consulting services to the issuer and is neither engaged in, nor affiliated or associated with any entity that is engaged in, the solicitation or distribution of the offering.

(10) Institutional Investor

For the purposes of paragraph (c), the term “institutional investor” means any person that has an aggregate of at least $50 million invested in securities in its portfolio or under management, including investments held by its wholly owned subsidiaries; provided that no participating members manage the institutional investor’s investments or have an equity interest in the institutional investor, either individually or in the aggregate, that exceeds 5% for a publicly owned entity or 1% for a nonpublic entity.

(11) Insurance Company

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

(12) Issuer

The term “issuer” means an entity that is offering its securities to the public, registrant, any selling security holder offering securities to the public, any affiliate of the entity or selling security holder, and the officers or general partners, and directors thereof.

(13) Offering Proceeds

The term “offering proceeds” means the proceeds of all the securities offered in the public offering by participating members, not including securities subject to an overallotment option, securities to be received by the participating members, or underlying securities.

(14) Overallotment Option

The term “overallotment option” means an option granted by the issuer to the participating members for the purpose of offering additional shares to the public in connection with the distribution of the public offering.

(15) Participating Member

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 other than the issuer.

(16) Participate, Participation or Participating

The terms “participate,” “participation” or “participating” in a public offering means involvement in the preparation of the offering document or other documents, involvement in the distribution of the offering, furnishing of customer or broker lists for solicitation, or providing advisory or consulting services to the issuer related to the offering, but not including:

(A) the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion pursuant to SEA Rule 13e-3; and

(B) advisory or consulting services provided to the issuer by an independent financial adviser, provided that another member or members are participating in the public offering.

(17) Person

The term "person" means any natural person, partnership, corporation, company, association, or other legal entity.

(18) Public Offering

The term "public offering" means any primary or secondary offering of securities made pursuant to a registration statement, offering circular or similar offering document including exchange offers, rights offerings, and offerings of securities made pursuant to a merger or acquisition.

(19) Required Filing Date

(A) The term "required filing date" means the dates referenced in paragraph (a)(3); and

(B) For a public offering exempt from filing under paragraph (g), 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) Review Period

The term "review period" means:

(A) for a firm commitment offering, the 180-day period preceding the required filing date through the 60-day period following the effective date of the offering;

(B) for a best efforts offering, the 180-day period preceding the required filing date through the 60-day period following the final closing of the offering; and

(C) for a firm commitment or best efforts takedown or any other continuous offering on behalf of selling securityholders made pursuant to Securities Act Rule 415, the 180-day period preceding the required filing date of the takedown or continuous offering through the 60-day period following the final closing of the takedown or continuous offering.

(21) Total Equity Securities

For the purposes of paragraph (c), 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) Underwriting Compensation

The term "underwriting compensation" means any payment, right, interest, or benefit received or to be received by a participating member from any source for underwriting, allocation, distribution, advisory and other investment banking services in connection with a public offering. In addition, underwriting compensation shall include finder fees, and underwriter's counsel fees, including expense reimbursements and securities.

• • • Supplementary Material: ----------

.01 Underwriting Compensation.

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

(1) discounts or commissions;

(2) fees and expenses paid or reimbursed to, or paid on behalf of, the participating members, including but not limited to road show fees and expenses and due diligence expenses;

(3) fees and expenses of counsel to participating members (except for reimbursement of "blue sky" fees);

(4) finder fees;

(5) wholesaling fees and expenses;

(6) financial consulting and advisory fees;

(7) common or preferred stock, options, warrants, and other equity securities, including debt securities convertible to or exchangeable for equity securities, beneficially owned, as defined in Rule 5121 by the participating members the value of which is determined pursuant to this Rule, and acquired during the review period, as defined in this Rule;

(8) sales incentive items;

(9) any right or rights of first refusal provided to any participating member to participate in future public offerings, private placements or other financings, the value of which will be 1% of the offering proceeds or a dollar amount contractually agreed to by the issuer and the participating member to waive the right of first refusal;

(10) compensation to be received by a participating member or by any person nominated by the participating member as an advisor to the issuer's board of directors in excess of that received by other members of the board of directors;

(11) any compensation to be received by the participating members as a result of the exercise or conversion of warrants, options, convertible securities, or similar securities distributed as part of the public offering within 12 months following the commencement of sales;

(12) fees of a qualified independent underwriter required by Rule 5121;

(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; and

(14) non-cash compensation, such as gifts, training and education expenses, sale incentives, and business entertainment expenses.

(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) printing costs; SEC, "blue sky" and other registration fees; FINRA filing fees; fees of independent financial advisers; and accountant's fees, and other fees and expenses customarily borne by an issuer, whether or not paid by or through a participating member;

(2) cash compensation for acting as placement agent for a private placement or for providing or arranging for a loan, credit facility, or for services in connection with a merger or acquisition;

(3) records management and advisory fees and expenses in connection with the conversion of the issuer from a mutual holding company to a stock holding company;

(4) payment or reimbursement of legal costs resulting from a contractual breach or misrepresentation by the issuer;

(5) compensation for providing brokerage, trust and insurance services to the issuer that is received in the ordinary course of business;

(6) fees for commercial banking services that do not require registration as a broker-dealer, provided to the issuer in the ordinary course of business;

(7) compensation for providing services in a prior or concurrent public offering separately filed or exempt from filing pursuant to this Rule;

(8) a right of first refusal that is provided to a participating member in connection with a prior financing if the right of first refusal does not extend beyond the initial closing of the public offering currently under review or if the right of first refusal has already been included as underwriting compensation in a prior or concurrent public offering;

(9) dividends paid to shareholders of a class of the issuer’s securities when participating members are shareholders of that class;

(10) securities of the issuer pledged as collateral for a bona fide loan;

(11) listed securities purchased in public market transactions;

(12) compensation received through any stock bonus, pension, or profit-sharing plan that qualifies under Section 401 of the Internal Revenue Code or a similar plan;

(13) securities acquired by an investment company registered under the Investment Company Act;

(14) securities acquired as the result of a conversion of securities that were originally acquired prior to the review period;

(15) securities acquired as the result of an exercise of options or warrants that were originally acquired prior to the review period;

(16) securities acquired as the result of a stock-split, a pro-rata rights or similar offering where the securities upon which the acquisition is based were acquired prior to the review period;

(17) securities acquired as the result of a right of preemption that was granted prior to the review period;

(18) securities acquired in order to prevent dilution of a long-standing interest in the issuer, if:

(A) the amount of securities does not increase a member's percentage ownership of the same generic class of securities of the issuer or of the class of securities underlying a convertible security calculated immediately prior to the investment; and

(B) an initial purchase of securities of the issuer was made at least two years preceding the required filing date and a second purchase was made before the review period.

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

(20) securities acquired subsequent to the issuer's initial public offering in a transaction exempt from registration under Securities Act Rule 144A; and

(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; 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).

(c) Definitions.

(1) The term "listed securities" means securities that are traded on the national securities exchanges identified in Securities Act Rule 146, on markets registered with the SEC under Section 6 of the Exchange Act, and on any "designated offshore securities market" as defined in Rule 902(b) of SEC Regulation S.

(2) The term "right of pre-emption" means the right of a shareholder to acquire additional securities in the same company in order to avoid dilution when additional securities are issued, pursuant to: (A) any option, shareholder agreement, or other contractual right entered into at the time of purchase of securities; (B) the terms of the securities purchased; (C) the issuer's charter or by-laws; or (D) the domestic law of a foreign jurisdiction that regulates the issuance of the securities.

.02 Valuation of Underwriting Compensation.

The value of non-convertible securities received as underwriting compensation will have a compensation value based on the difference between (i) the public offering price per security; and (ii) the per security cost.

The value of options, warrants and other convertible securities received as underwriting compensation must be based on a securities valuation method that is commercially available and appropriate for the type of securities to be valued, such as, for example, the Black-Scholes model for options. Consideration paid by the participating member to acquire such securities will be taken into account and credited against the value as so calculated.

If a participating member wishes to reduce the proposed maximum value of any securities received as underwriting compensation, they may do so by voluntarily agreeing to lock-up such securities for successive 180-day periods (in addition to the initial lock-up period required by paragraph (d) of this Rule if applicable). Each additional 180-day period will reduce the proposed maximum value attributable to such securities by 10%.

.03 Disclosure of Underwriting Compensation. A description of each item of underwriting compensation received or to be received by a participating member, including the maximum aggregate amount of all underwriting compensation, must be disclosed in the section on distribution arrangements in the prospectus (or other similar offering document). The description need not include the dollar amount ascribed to each individual item of compensation (other than the underwriting discounts or commissions). When securities are acquired by a participating member, material terms and arrangements of the acquisition must also be disclosed in the section on distribution arrangements in the prospectus (or other similar offering document) when applicable, such as exercise terms, demand and piggyback registration rights and lock-up periods that may apply. Similarly, if underwriting compensation consists of a right of first refusal to participate in the distribution of a future public offering, private placement or other financing, the description should reference the existence of such right and its duration. The

finder fees, legal fees and expenses of the participating member may be aggregated with other underwriting expenses in the distribution arrangements section of the offering document.

.04 Non-Convertible or Non-Exchangeable Debt Securities and Derivatives.

(a) Non-convertible or non-exchangeable debt 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 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 and members must provide a description of the methodology used to value the security as required by paragraph (a)(4)(B)(iii) 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 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 for acting as a private placement agent for the issuer, for providing or arranging a loan, credit facility, merger, acquisition or any other service, including underwriting services, is not included within this fair price definition.

* * * * *

5121. Public Offerings of Securities With Conflicts of Interest

(a) Requirements for Participation in Certain Public Offerings

No member that has a conflict of interest may participate in a public offering unless the offering complies with subparagraphs (1) or (2).

(1) There must be prominent disclosure of the nature of the conflict of interest in the prospectus, offering circular or similar document for the public offering, and one of the following conditions must be met:

(A) the member(s) primarily responsible for managing the public offering does not have a conflict of interest, is not an affiliate of any member that does have a conflict of interest, and meets the requirement of paragraph (f)(11)(E);

(B) the securities offered have a bona fide public market; or

(C) the securities offered are investment grade rated or are securities in the same series that have equal rights and obligations as investment grade rated securities.

(2) (A) A qualified independent underwriter has participated in the preparation of the registration statement and the prospectus, offering circular, or similar document and has exercised the usual standards of "due diligence" in respect thereto; and

(B) there must be prominent disclosure in the prospectus, offering circular or similar document for the offering of:

(i) the nature of the conflict of interest;

(ii) the name of the member acting as qualified independent underwriter; and

(iii) a brief statement regarding the role and responsibilities of the qualified independent underwriter.

(b) Escrow of Proceeds; Net Capital Computation

(1) All proceeds from a public offering by a member of its securities shall be placed in a duly established escrow account and shall not be released therefrom or used by the member in any manner until the member has complied with subparagraph (2) hereof.

(2) Any member offering its securities pursuant to this Rule shall immediately notify FINRA when the public offering has been terminated and settlement effected and shall file with FINRA a computation of its net capital computed pursuant to the provisions of SEA Rule 15c3-1 (the net capital rule) as of the settlement date. If at such time its net capital ratio as so computed is more than 10:1 or, net capital fails to equal 120 percent of the minimum dollar amount required by Rule 15c3-1 or, in the event the member calculates its net capital requirement using the alternative standard (set forth in Rule 15c3-1(a)(1)(ii)), its net capital is less than seven percent of aggregate debit items as computed in accordance with Rule 15c3-3a, all monies received from sales of securities of the public offering must be returned in full to the purchasers thereof and the offering withdrawn, unless the member has obtained from the SEC a specific exemption from the net capital rule. Proceeds from the sales of securities in the public offering may be taken into consideration in computing net capital ratio for purposes of this paragraph.

(3) Any member offering its securities pursuant to this Rule shall disclose in the registration statement, offering circular or similar document a date by which the offering is reasonably expected to be completed and the terms upon which the proceeds will be released from the escrow account described in paragraph (b)(1).

(c) Discretionary Accounts

Notwithstanding NASD Rule 2510, no member that has a conflict of interest may sell to a discretionary account any security with respect to which the conflict exists, unless the member has received specific written approval of the transaction from the account holder and retains documentation of the approval in its records.

(d) Application of Rule 5110

Any public offering subject to paragraph (a)(2) is subject to Rule 5110, whether or not the offering would be otherwise exempted from the filing or other requirements of that rule.

(e) Requests for Exemption from Rule 5121

Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member unconditionally or on specified terms from any or all of the provisions of this Rule that it deems appropriate.

(f) Definitions

The definitions in Rule 5110 are incorporated herein by reference. For purposes of this Rule, the following words shall have the stated meanings:

(1) Affiliate

The term "affiliate" means an entity that controls, is controlled by or is under common control with a member.

(2) Beneficial Ownership

The term "beneficial ownership" means the right to the economic benefits of a security.

(3) Bona Fide Public Market

The term "bona fide public market" means a market for a security of an issuer that has been reporting under the Exchange Act for at least 90 days and is current in its

reporting requirements, and whose securities are traded on a national securities exchange with an Average Daily Trading Volume (as provided by SEC Regulation M) of at least $1 million, provided that the issuer's common equity securities have a public float value of at least $150 million.

(4) Common Equity

The term "common equity" means the total number of shares of common stock outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company.

(5) Conflict of Interest

The term "conflict of interest" means, if at the time of a member's participation in an entity's public offering, any of the following applies:

(A) the securities are to be issued by the member;

(B) the issuer controls, is controlled by or is under common control with the member or the member's associated persons;

(C) at least five percent of the net offering proceeds, not including underwriting compensation, are intended to be:

(i) used to reduce or retire the balance of a loan or credit facility extended by the member, its affiliates and its associated persons, in the aggregate; or

(ii) otherwise directed to the member, its affiliates and associated persons, in the aggregate; or

(D) as a result of the public offering and any transactions contemplated at the time of the public offering:

(i) the member will be an affiliate of the issuer;

(ii) the member will become publicly owned; or

(iii) the issuer will become a member or form a broker-dealer subsidiary.

(6) Control

(A) The term "control" means:

(i) beneficial ownership of 10 percent or more of the outstanding common equity of an entity, including any right to receive such securities within 60 days of the member's participation in the public offering;

(ii) the right to 10 percent or more of the distributable profits or losses of an entity that is a partnership, including any right to receive an interest in such distributable profits or losses within 60 days of the member's participation in the public offering;

(iii) beneficial ownership of 10 percent or more of the outstanding preferred equity of an entity, including any right to receive such preferred equity within 60 days of the member's participation in the public offering; or

(iv) the power to direct or cause the direction of the management or policies of an entity.

(B) The term "common control" means the same natural person or entity controls two or more entities.

(7) Entity

For purposes of the definitions of affiliate, conflict of interest and control under this Rule, the term "entity":

(A) includes a company, corporation, partnership, trust, sole proprietorship, association or organized group of persons; and

(B) excludes the following:

(i) an investment company registered under the Investment Company Act;

(ii) a "separate account" as defined in Section 2(a)(37) of the Investment Company Act;

(iii) a "real estate investment trust" as defined in Section 856 of the Internal Revenue Code; or

(iv) a "direct participation program" as defined in Rule 2310.

(8) Investment Grade Rated

The term "investment grade rated" refers to securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

(9) Preferred Equity

The term "preferred equity" means the aggregate capital invested by all persons in the preferred securities outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company.

(10) Prominent Disclosure

A member may make "prominent disclosure" for purposes of paragraphs (a)(1) and (a)(2)(B) by:

(A) providing the notation "(Conflicts of Interest)" following the listing of the Plan of Distribution in the Table of Contents section required in Item 502 of SEC Regulation S-K, and by providing such disclosures in the Plan of Distribution section required in Item 508 of SEC Regulation S-K and any Prospectus Summary section required in Item 503 of SEC Regulation S-K; or

(B) for an offering document not subject to SEC Regulation S-K, by providing disclosure on the front page of the offering document that a conflict exists, with a cross-reference to the discussion within the offering document and in the summary of the offering document if one is included.

(11) Qualified Independent Underwriter

The term "qualified independent underwriter" means a member:

(A) that does not have a conflict of interest and is not an affiliate of any member that has a conflict of interest;

(B) that does not beneficially own as of the date of the member's participation in the public offering, more than 5% of the class of securities that would give rise to a conflict of interest, including any right to receive any such securities exercisable within 60 days;

(C) that has agreed in acting as a qualified independent underwriter to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act, specifically including those inherent in Section 11 thereof; and

(D) that has served as underwriter in at least three public offerings of a similar size and type during the three-year period immediately preceding the filing of the registration statement or the date of first sale in an offering without a registration statement. This requirement will be deemed satisfied if, during the past three years, the member:

(i) with respect to a proposed public offering of debt securities, has acted as sole underwriter or book-running lead or co-manager of at least three public offerings of debt securities each with gross proceeds of not less than 25% of the anticipated gross proceeds of the proposed offering; and

(ii) with respect to a proposed public offering of equity securities, has acted as sole underwriter or book-running lead or co-manager of at least three public offerings of equity securities (or of securities convertible into equity securities), each with gross proceeds of not less than 50% of the anticipated gross proceeds of the proposed offering.

(E) none of whose associated persons in a supervisory capacity who are responsible for organizing, structuring or performing due diligence with respect to corporate public offerings of securities:

(i) has been convicted within ten years prior to the filing of the registration statement or the preparation of an offering circular in an offering without a registration statement of a violation of the anti-fraud provisions of the federal or state securities laws, or any rules or

regulations promulgated thereunder, in connection with a registered or unregistered offering of securities;

(ii) is subject to any order, judgment, or decree of any court of competent jurisdiction entered within ten years prior to the filing of the registration statement, or the preparation of an offering circular in an offering without a registration statement, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder in connection with a registered or unregistered offering of securities; or

(iii) has been suspended or barred from association with any member by an order or decision of the SEC, any state, FINRA or any other self-regulatory organization within ten years prior to the filing of the registration statement, or the preparation of an offering circular in an offering without a registration statement, for any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules, or regulations promulgated thereunder, or the anti-fraud rules of any self-regulatory organization in connection with a registered or unregistered offering of securities.

(12) Registration Statement

The term "registration statement" means a registration statement as defined by Section 2(a)(8) of the Securities Act; notification on Form 1A filed with the SEC pursuant to the provisions of Securities Act Rule 252; or any other document, by

whatever name known, initiating a registration or similar process for an issue of securities which is required to be filed by the laws or regulations of any federal or state agency.

(13) Subordinated Debt

The term "subordinated debt" includes (A) debt of an issuer which is expressly subordinate in right of payment to, or with a claim on assets subordinate to, any existing or future debt of such issuer; or (B) all debt that is specified as subordinated at the time of issuance. Subordinated debt shall not include short-term debt with maturity at issuance of less than one year and secured debt and bank debt not specified as subordinated debt at the time of issuance.

* * * * *