

Regulatory Notice 17-15

Attachment B

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

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5110. Corporate Financing Rule — Underwriting Terms and Arrangements

[(a) Definitions redesignated as paragraph (i) and alphabetized]

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[(2) Net Offering Proceeds]

[Offering proceeds less all expenses of issuance and distribution.]

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[(6) Underwriter and Related Persons]

[Consists of underwriter's counsel, financial consultants and advisors, finders, any participating member, and any other persons related to any participating member.]

[(7) Listed Securities]

[securities meeting the listing standards to trade on the national securities exchanges identified in Securities Act Rule 146, markets registered with the SEC under Section 6 of the Exchange Act, and any offshore market that is a "designated offshore securities market" under Rule 902(b) of SEC Regulation S.]

[(8) Derivative Instruments]

[A derivative instrument is any "eligible OTC derivative instrument" as defined in SEA Rule 3b-13(a)(1), (2) and (3).]

[(9) Fair Price]

[A derivative instrument or non-convertible or non-exchangeable debt security has been acquired or entered into at a fair price for purposes of paragraphs (b)(6)(A)(iv), (c)(3)(B)(vi) and (vii), and (e)(5) if the underwriters and related persons have priced the debt security or derivative instrument 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.]

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[(b)](a) [Filing] Requirements for Public Offerings

(1) General

[(f)(1)](A) No member or person associated with a member shall participate [in any manner] in a public offering [of securities after any arrangement proposed in connection with the public offering, or the] in which the terms and conditions relating thereto, including the aggregate amount of underwriting compensation, [has been determined to be] 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 [or person associated with a member shall participate in any manner] may engage in the distribution or sale of securities in any public offering [of securities subject to] required to be filed by this Rule, Rule 2310 or Rule 5121 unless:

(i) documents and information [as] specified [herein relating to the offering] in paragraph (a)(4) have been filed with [and reviewed by] FINRA[.]; and

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

[(2) Means of Filing]

[Documents or information required by this Rule to be filed with FINRA shall be considered to be filed only upon receipt by its Corporate Financing Department.]

[(b)(3) redesignated as paragraph (a)(4)(D)]

[(9)](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).

[Documents and information relating to all other public offerings including, but not limited to, the following must be filed with FINRA for review:]

[(A) direct participation programs as defined in Rule 2310(a);]

[(B) mortgage and real estate investment trusts;]

[(C) rights offerings;]

[(D) securities exempt from registration with the SEC pursuant to Section 3(a)(11) of the Securities Act;]

[(E) securities exempt from registration with the SEC pursuant to Rule 504 of SEC Regulation D, unless the securities are "restricted securities" under Securities Act Rule 144(a)(3);]

[(F) securities offered by a bank, savings and loan association, or common carrier even though such offering may be exempt from registration with the SEC;]

[(G) securities offered pursuant to SEC Regulation A;]

[(H) exchange offers that are exempt from registration with the SEC under Sections 3(a)(4), 3(a)(9), or 3(a)(11) of the Securities Act (if a member's participation involves active solicitation activities) or registered with the SEC (if a member is acting as dealer-manager) (collectively "exchange offers"), except for exchange offers exempt from filing pursuant to subparagraph (7)(F) above that are not subject to filing by subparagraph (9)(I) below;]

[(I) 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]

[(J) any offerings of a similar nature that are not exempt under subparagraph (7) or (8) above.]

[(4)](3) [Requirement for Filing] Timely Filing Requirements

(A) [Unless filed by the issuer, the managing underwriter, or another member, a] A member that [anticipates participating] participates in a public offering [of securities subject to this Rule shall] that is required to be filed under paragraph (a)(2) must file [with FINRA] the documents and information [with respect to the offering] specified in [sub]paragraph[s] (a)(4[5]) [and (6) below]:

(i) no later than [one] three business days after any [of such] 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 [fifteen]15 business days prior to the [anticipated date on which offers will commence] 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.

[No sales of securities subject to this Rule shall commence unless:]

[(i) the documents and information specified in subparagraphs (5) and (6) below have been filed with and reviewed by FINRA; and]

[(ii) FINRA has provided an opinion that it has no objections to the proposed underwriting and other terms and arrangements or an opinion that the proposed underwriting and other terms and arrangements are unfair and unreasonable. If FINRA's opinion states that the proposed underwriting and other terms and arrangements are unfair and unreasonable, the member may file modifications to the proposed underwriting and other terms and arrangements for further review.]

[(C) Any member acting as a managing underwriter or in a similar capacity that has been informed of an opinion by FINRA, or a determination by the appropriate standing committee of the Board of Governors, that the proposed underwriting terms and arrangements of a proposed offering are unfair or unreasonable, and the proposed terms and arrangements have not been modified to conform to the standards of fairness and reasonableness, shall notify all other members proposing to participate in the offering of that opinion or determination at a time sufficiently prior to the effective date of the offering or the commencement of sales so the other members will have an opportunity as a result of specific notice to comply with their obligation not to participate

in any way in the distribution of a public offering containing arrangements, terms and conditions that are unfair or unreasonable.]

[(5)](4) Documents and Information Required to be Filed

(A) The following documents [relating to all proposed public offerings of securities that are] required to be filed under paragraph [(b)(4)](a) [above shall] must be filed [through] in FINRA's Public Offering [electronic filing s]System for review:

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

(ii) all documents relevant to the underwriting terms and arrangements, including [A]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 [and any other document that describes the underwriting or other arrangements in connection with or related to the distribution, and the terms and conditions relating thereto; and any other information or documents that may be material to or part of the said arrangements,

terms and conditions and that may have a bearing on FINRA's review];

(iii) [Each pre- and post-effective amendment to the registration statement or other offering document, with a copy marked to show changes; and any other amended document previously filed pursuant to subparagraphs (i) and (ii) above, with a copy marked to show changes; and] 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 [The final registration statement declared effective by the SEC or equivalent final offering document and a list of the members of the underwriting syndicate, if not indicated therein, and one copy of the executed form of the final underwriting documents and any other document submitted to FINRA for review.]

(v[B]) 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.

[Documents that are filed with the SEC through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") System that are referenced in FINRA's electronic filing system shall be treated as filed with FINRA.]

[(6) Information Required to be Filed]

(B[A]) Any [person] member filing documents with FINRA pursuant to [sub]paragraph (a)(4)(A) [above shall] must file [provide] the following information with respect to the offering [through] in FINRA's Public Offering [electronic filing s]System:

(i) an estimate of the maximum public offering price;

(ii) an estimate of the maximum value for each item of underwriting compensation [an estimate of the maximum underwriting discount or commission; maximum reimbursement of underwriter's expenses, and underwriter's counsel's fees (except for reimbursement of "blue sky" fees); maximum financial consulting and/or advisory fees to the underwriter and related persons; maximum finder's fees; and a statement of any other type and amount of compensation which may accrue to the underwriter and related persons];

(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;

[(iii) a statement of the association or affiliation with any participating member of any officer or director of the issuer, of any beneficial owner of 5% or more of any class of the issuer's securities, and of any beneficial owner of the issuer's unregistered equity securities that were acquired during the 180-day period immediately preceding the required filing date of the public offering, except for purchases described in paragraph (c)(3)(B)(iv) below. This statement must identify:]

[a. the person;]

[b. the member; and]

[c. the number of equity securities or the face value of debt securities owned by such person, the date such securities were acquired, and the price paid for such securities.]

[(iv) a detailed explanation of any other arrangement entered into during the 180-day period immediately preceding the required filing date of the public offering, which arrangement provides for the receipt of any item of value or the transfer of any

warrants, options, or other securities from the issuer to the underwriter and related persons, provided however:]

[a. information regarding debt securities and derivative instruments not considered an item of value under paragraphs (c)(3)(B)(vi) and (vii) is not required to be filed; and]

[b. information initially filed in connection with debt securities and derivative instruments acquired or entered into for "fair price" as defined in paragraph (a)(9), but not excluded from items of value under paragraph (c)(3)(B)(vi) or (vii), may be limited to a brief description of the transaction (additional information may be required in the review process) and a representation by the member that a registered principal or senior manager on behalf of the member has determined that the transaction was or (if the pricing terms have not been set) will be entered into at a fair price as defined in paragraph (a)(9).]

(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.

[(v) a statement demonstrating compliance with all of the criteria of an exception from underwriting compensation in paragraph (d)(5) below, when applicable; and]

(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 [any] documents related to[:]

[a.] 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. [or of any item of underwriting compensation including the information required in paragraph (b)(6)(A)(iii) above with respect to any securities of the issuer acquired subsequent to the required filing date

and prior to the effectiveness or commencement of the offering; or]

[b. any new arrangement that provides for the receipt of any additional item of value by any participating member subsequent to the issuance of an opinion of no objections to the underwriting terms and arrangements by FINRA and within 90 days immediately following the date of effectiveness or commencement of sales of the public offering, provided, however, that information filed in connection with debt securities and derivative instruments acquired or entered into for a "fair price" as defined in paragraph (a)(9) may be limited as described in paragraph (b)(6)(A)(iv)b.]

[(vii) any other information required to be filed under this Rule.]

(C[B]) [Any person filing documents pursuant to paragraph (b)(5) above shall notify FINRA through its electronic filing system that the offering has been declared effective or approved by the SEC or other agency no later than one business day following such declaration or approval or that the offering has been withdrawn or abandoned within three business days following the withdrawal or decision to abandon the offering.]

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.

[(b)(3)](D) [Confidential Treatment]

FINRA [shall accord] will provide confidential treatment to all documents and information filed pursuant to this Rule and [shall utilize] use such documents and information solely for the purpose of review in connection with [to determine compliance with the provisions of] applicable FINRA rules or for other regulatory purposes deemed appropriate by FINRA.

[(b)(7) and (b)(8) redesignated as paragraphs (g)(1) and (g)(2), respectively]

[(c)](b) Disclosure Requirements for Underwriting Compensation [and Arrangements]

[(1) General]

[No member or person associated with a member shall participate in any manner in any public offering of securities in which the underwriting or other terms or arrangements in connection with or relating to the distribution of the securities, or the terms and conditions related thereto, are unfair or unreasonable.]

[(2) Amount of Underwriting Compensation]

[(A) No member or person associated with a member shall receive an amount of underwriting compensation in connection with a public offering that is unfair or unreasonable and no member or person associated with a member shall underwrite or participate in a public offering of securities if the underwriting compensation in connection with the public offering is unfair or unreasonable.]

[(B) For purposes of determining the amount of underwriting compensation, all items of value received or to be received from any source by the underwriter and related persons which are deemed to be in connection with or related to the distribution of the public offering as determined pursuant to subparagraph (3) below shall be included.]

[(C)1] [All items of] 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 [shall] be disclosed in the section on [underwriting or] distribution arrangements in the prospectus or similar document.

(2) [and, if the underwriting compensation includes items of compensation in addition to the] 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 [underwriting or] distribution arrangements.

[(D) For purposes of determining the currently effective guideline on the maximum amount of underwriting compensation considered fair and reasonable, the following factors, as well as any other relevant factors and circumstances, shall be taken into consideration:]

[(i) the offering proceeds;]

[(ii) the amount of risk assumed by the underwriter and related persons, which is determined by:]

[a. whether the offering is being underwritten on a "firm commitment" or "best efforts" basis and]

[b. whether the offering is an initial or secondary offering; and]

[(iii) the type of securities being offered.]

[(E) The maximum amount of compensation (stated as a percentage of the dollar amount of the offering proceeds) that is considered fair and reasonable generally will vary directly with the amount of risk to be assumed by participating members and inversely with the dollar amount of the offering proceeds.]

[(3) Items of Value]

[(A) For purposes of determining the amount of underwriting compensation received or to be received by the underwriter and related persons pursuant to paragraph (c)(2) above, the following items and all

other items of value received or to be received by the underwriter and related persons in connection with or related to the distribution of the public offering, as determined pursuant to paragraph (d) below shall be included:]

[(i) discounts or commissions;]

[(II) reimbursement of expenses to or on behalf of the underwriter and related persons;]

[(iii) fees and expenses of underwriter's counsel (except for reimbursement of "blue sky" fees);]

[(iv) finder's fees, whether in the form of cash, securities or any other item of value;]

[(v) wholesaler's fees;]

[(vi) financial consulting and advisory fees, whether in the form of cash, securities, or any other item of value;]

[(vii) common or preferred stock, options, warrants, and other equity securities, including debt securities convertible to or exchangeable for equity securities, received;]

[a. for acting as private placement agent for the issuer;]

[b. for providing or arranging a loan, credit facility, merger or acquisition services, or any other service for the issuer;]

[c. as an investment in a private placement made by the issuer; or]

[d. at the time of the public offering;]

[(viii) sales incentive items;]

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

[(x) compensation to be received by the underwriter and related persons or by any person nominated by the underwriter as an advisor to the issuer's board of directors in excess of that received by other members of the board of directors;]

[(xi) commissions, expense reimbursements, previously or other compensation to be received by the underwriter and related persons as a result of the exercise or conversion within twelve months following the effective date of the offering of warrants, options, convertible securities, or similar securities distributed as part of the public offering;]

[(xii) fees of a qualified independent underwriter; and]

[(xiii) compensation, including expense reimbursements, paid to any member in connection with a proposed public offering

that was not completed, unless if the member does not participates in the revised public offering.]

[(B) Notwithstanding paragraph (c)(3)(A) above, the following shall not be considered an item of value:]

[(i) expenses customarily borne by an issuer, such as printing costs; SEC, "blue sky" and other registration fees; FINRA filing fees; and accountant's fees, whether or not paid through a participating member;]

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

[(iii) listed securities purchased in public market transactions;]

[(iv) securities acquired through any stock bonus, pension, or profit-sharing plan that qualifies under Section 401 of the Internal Revenue Code;]

[(v) securities acquired by an investment company registered under the Investment Company Act;]

[(vi) nonconvertible or non-exchangeable debt securities acquired for a fair price in the ordinary course of business in a transaction unrelated to the public offering; and]

[(vii) derivative instruments entered into for a fair price in the ordinary course of business in a transaction unrelated to the public offering.]

(c)[(d) Determination of Whether Items of Value Are Included In Underwriting Compensation] Securities Acquisitions Not Considered Underwriting Compensation

[(1) Pre-Offering Compensation]

[All items of value received and all arrangements entered into for the future receipt of an item of value by the underwriter and related persons during the period commencing 180 days immediately preceding the required filing date of the registration statement or similar document pursuant to paragraph (b)(4) above until the date of effectiveness or commencement of sales of the public offering will be considered to be underwriting compensation in connection with the public offering.]

[(2) Undisclosed and Post-Offering Compensation]

[All items of value received and all arrangements entered into for the future receipt of an item of value by any participating member that are not disclosed to FINRA prior to the date of effectiveness or commencement of sales of a public offering, including items of value received subsequent to the public offering, are subject to post-offering review to determine whether such items of value are, in fact, underwriting compensation for the public offering.]

[(3) Date of Receipt of Securities]

[Securities of the issuer acquired by the underwriter and related persons will be considered to be received for purposes of paragraphs (d)(1) and (d)(5) as of the date of the:]

[(A) closing of a private placement, if the securities were purchased in or received for arranging a private placement; or]

[(B) execution of a written contract with detailed provisions for the receipt of securities as compensation for a loan, credit facility, or put option; or]

[(C) transfer of beneficial ownership of the securities, if the securities were received as compensation for consulting or advisory services, merger or acquisition services, acting as a finder, or for any other service.]

[(4) Definitions]

[For purposes of paragraph (d)(5) below, the following terms will have the meanings stated below.]

[(A) An entity:]

[(i) includes a group of legal persons that either:]

[a. are contractually obligated to make co-investments and have previously made at least one such investment; or]

[b. have filed a Schedule 13D or 13G with the SEC that identifies the legal persons as members of a group that have agreed to act together for the purpose of acquiring,

holding, voting or disposing of equity securities of an issuer in connection with a previous investment; and]

[(ii) may make its investment or loan through a wholly owned subsidiary (except when the entity is a group of legal persons).]

[(B) redesignated as paragraph (i)(10)]

[(C) redesignated as paragraph (i)(2)]

[(D) A 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:]

[(i) any option, shareholder agreement, or other contractual right entered into at the time of a purchase of securities;]

[(ii) the terms of the security purchased;]

[(iii) the issuer's charter or by-laws; or]

[(iv) the domestic law of a foreign jurisdiction that regulates the issuance of the securities.]

[(E) redesignated as paragraph (i)(21)]

[(5) Exceptions From Underwriting Compensation]

[Notwithstanding paragraph (d)(1) above, the following items of value] 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 [under an exception] in a transaction that

meets the requirements of this paragraph and any securities ~~[purchased]~~acquired are ~~[purchased]~~acquired at the same price and with the same terms as the securities purchased by all other investors.

(~~[A]~~1) Purchases and Loans ~~by~~ [by] Certain Affiliates [Entities]—
Securities of the issuer purchased in a private placement or received as compensation [for] in connection with the provision of a loan or credit facility before the required filing date of the public offering pursuant to paragraph ~~[(b)(4)](a)~~ [above] by [certain entities] a participating member's affiliate, if:

[i] each entity:]

[a. either:]

[1. 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;]

[2. 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;]

[3. 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]

[4. 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; and]

(A)[b.] 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)[c.] [makes] the investments and [or] loans were 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 [entity] affiliate and not based on opportunities for the member participating in the offering to earn investment banking revenues;

(C)[d.] the affiliate does not [participate directly in] receive investment banking fees [received by] paid to any participating member for underwriting public offerings; [and]

(D)[e.] the affiliate, directly or through a subsidiary it controls, is [has been] 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.

[(ii) all entities related to each member in acquisitions that qualify for this exception do not acquire more than 25% of the issuer's total equity securities during the review period in paragraph (d)(1), calculated immediately following the transaction.]

(2[B]) Investments in [in] and Loans to [to] Certain Issuers — Securities of the issuer purchased in a private placement or received as compensation [for] in connection with the provision of a loan or credit facility before the required filing date of the public offering pursuant to paragraph [(b)(4)](a) [above] by [certain entities] a participating member's affiliate if:

(A[i]) the affiliate[each entity]:

(i)[a.] manages capital contributions or commitments of at least \$50 million;

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

(iii)[c.] does not [participate directly in] receive investment banking fees paid to any participating [received by the] member for underwriting public offerings; and

(iv)[d.] directly or through a subsidiary it controls, is [has been] primarily engaged in the business of making investments in or loans to other companies; [and]

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

(C)[iii] 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.; and]

[iv) all entities related to each member in acquisitions that qualify for this exception do not acquire more than 25% of the issuer's total equity securities, calculated immediately following the transaction.]

(3[C]) Private Placements with Institutional Investors — Securities of the issuer purchased in, or received as placement agent compensation [for] in connection with, a private placement before the required filing date of the public offering pursuant to paragraph [(b)(4) above] (a) if:

(A[i]) institutional investors purchase at least 51% of the "total offering" (composed [comprised] 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[ii]) 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[iii]) [underwriters and related persons] the participating members did not, in the aggregate, purchase or receive as placement agent compensation more than [2]40% of the "total offering" (excluding purchases by any [entity] affiliate qualified under paragraph [(d)(5)(A) above] (c)(1).

[(D) Acquisitions and Conversions to Prevent Dilution —
Securities of the issuer if:]

[(i) the securities were acquired as the result of:]

[a. a right of preemption that was granted in
connection with securities that were purchased either:]

[1. in a private placement and the securities
are not deemed by FINRA to be underwriting
compensation; or]

[2. from a public offering or the public
market; or]

[b. a stock-split or a pro-rata rights or similar offering where the securities upon which the acquisition is based were acquired more than 180 days before the required filing date of the public offering pursuant to paragraph (b)(4) above; or]

[c. the conversion of securities that have not been deemed by FINRA to be underwriting compensation; and]

[(ii) the only terms of the purchased securities that are different from the terms of securities purchased by other investors are pre-existing contractual rights that were granted in connection with a prior purchase;]

[(iii) the opportunity to purchase in a rights offering or pursuant to a right of preemption, or to receive additional securities as the result of a stock-split or conversion was provided to all similarly situated security holders; and]

[(iv) the amount of securities purchased or received did not increase the recipient'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, except in the case of conversions and passive increases that result from another investor's failure to exercise its own rights.]

[(E) Purchases Based On A Prior Investment History — Purchases of securities of the issuer if:]

[(i) the amount of securities purchased did not increase the purchaser'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]

[(ii) an initial purchase of securities of the issuer was made at least two years and a second purchase was made more than 180 days before the required filing date of the public offering pursuant to paragraph (b)(4) above.]

[(e) Valuation of Non-Cash Compensation]

[For purposes of determining the value to be assigned to securities received as underwriting compensation, the following criteria and procedures will be applied.]

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

[An underwriter and related person 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 independent market; or]

[(B) the security can be accurately valued, as required by paragraph (f)(2)(I) below.]

[(2) Valuation of Securities That Do Not Have an Exercise or Conversion Price]

[Securities that do not have an exercise or conversion price shall have a compensation value based on:]

[(A) the difference between:]

[(i) either the market price per security on the date of acquisition, or, if no bona fide independent market exists for the security, the public offering price per security; and]

[(ii) the per security cost;]

[(B) multiplied by the number of securities received or to be received as underwriting compensation;]

[(C) divided by the offering proceeds; and]

[(D) multiplied by one hundred.]

[(3) Valuation of Securities That Have an Exercise or Conversion Price]

[Options, warrants or convertible securities that have an exercise or conversion price (“warrants”) shall have a compensation value based on the following formula:]

[(A) the public offering price per security multiplied by .65;]

[(B) minus the resultant of the exercise or conversion price per warrant less either:]

[(i) the market price per security on the date of acquisition, where a bona fide independent market exists for the security; or]

[(ii) the public offering price per security;]

[(C) divided by two;]

[(D) multiplied by the number of securities underlying the warrants;]

[(E) less the total price paid for the warrants;]

[(F) divided by the offering proceeds; and]

[(G) multiplied by one hundred;]

[(H) provided, however, that, notwithstanding paragraph (e)(4) below, such warrants shall have a compensation value of at least .2% of the offering proceeds for each amount of securities that is up to 1% of the securities being offered to the public (excluding securities subject to an overallotment option).]

[(4) Valuation Discount For Securities With a Longer Resale

Restriction]

[A lower value equal to 10% of the calculated value shall be deducted for each 180-day period that the securities or underlying securities are restricted from sale or other disposition beyond the 180-day period of the lock-up restriction required by paragraph (g)(1) below. The transfers permitted during the lock-up restriction by paragraphs (g)(2)(A)(iii) through (iv) are not available for such securities.]

[(5) Valuation of Items of Value Acquired in Connection with a Fair Price Derivative or Debt Transaction]

[Any debt or derivative transaction acquired or entered into at a "fair price" as defined in paragraph (a)(9) and item of value received in or receivable in the settlement, exercise or other terms of such debt or derivative transaction shall not have a compensation value for purposes of determining underwriting compensation. If the actual price for the debt or derivative security is not a fair price, compensation will be calculated pursuant to this paragraph (e) or based on the difference between the fair price and the actual price.]

[(g)](d) Lock-Up Restriction on Securities

(1) Lock-Up Restriction

(A) [In any public equity offering, other than a public equity offering by an issuer that can meet the requirements in paragraph (b)(7)(C)(i) or (ii) any common or preferred stock, options, warrants, and other equity securities of the issuer, including debt securities convertible to or exchangeable for equity securities of the issuer, that are unregistered and acquired by an underwriter and related person during 180 days prior to the required filing date, or acquired after the required filing date of the registration statement and deemed to be] Any underwriting compensation consisting of securities [by FINRA, and securities excluded from underwriting compensation pursuant to paragraph (d)(5)(A), (B), (C) and (E) above, shall not be sold during the offering, or] 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 [by any person] for a period of 180 days [immediately following] beginning on the date of [effectiveness or] commencement of sales of the public offering, except as provided in paragraph (d)(2)(g)(2) below].

(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)(g)(1) above, the following shall not be prohibited]:

(A) the [transfer of any security] 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[i]) [if] the aggregate amount of securities of the issuer [held] beneficially owned by [the underwriter and related persons] a participating member does not exceed 1% of the securities being offered;

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

(iv) [that] 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.[:]

[(v) that is not an item of value under paragraphs (c)(3)(B)(iii) through (vii) above;]

[(vi) that is eligible for the limited filing requirement in paragraph (b)(6)(A)(iv)b. and has not been deemed to be underwriting compensation under the Rule;]

[(vii) that was previously but is no longer subject to the lock-up restriction in paragraph (g)(1) above in connection with a prior public offering (or a lock-up restriction in the predecessor rule), provided that if the prior restricted period has not been completed, the security will continue to be subject to such prior restriction until it is completed; or]

[(viii) that was acquired subsequent to the issuer's initial public offering in a transaction exempt from registration under Securities Act Rule 144A; or]

(B) the following will not be prohibited:

[(A)(ii)](i) the transfer of any security to any member participating in the offering and its officers or partners, [thereof] its registered persons or affiliates, if all transferred securities [so transferred] remain subject to the lock-up restriction in paragraph (d)(1)[(g)(1) above] for the remainder of the [time] 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) [(g)(1) above] for the remainder of the [time] 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.

[(h)](e) Non-Cash Compensation

(1) Definitions

The terms "compensation," "non-cash compensation" and "offeror" as used in this paragraph ([i]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 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 Governors¹ 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.

(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

[(h)(2)](e)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which means 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;

¹ The Current annual amount fixed by the Board of Governors is \$100.

(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 [(h)(2)](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 [(h)(2)] (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 [(h)(2)] (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

[(h)(2)](e)(2)(C) through (E).

(f) Unreasonable Terms and Arrangements

[(1) General redesignated as paragraph (a)(1)(A)]

[(2) Prohibited Arrangements]

Without limiting the [foregoing] requirements of paragraph (a)(1)(A), the following terms and arrangements are prohibited[, when proposed in connection with a public offering of securities, shall be unfair and unreasonable.]:

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

(2[A]) [A]any accountable expense allowance [granted by an issuer to the underwriter and related persons] that includes payment for general overhead, salaries, supplies, or similar expenses [of the underwriter] incurred in the normal conduct of business[.];

[(B) Any non-accountable expense allowance in excess of 3% of offering proceeds.]

(3[C]) [A]any [payment of commissions or reimbursement of expenses directly or indirectly to the underwriter and related persons] underwriting compensation paid prior to the commencement of [the public] sales of the [securities being offered] public offering, except [a reasonable] an advance against [out-of-pocket] accountable expenses actually anticipated to be incurred

[by the underwriter and related persons], which [advance is] must be reimbursed to the issuer to the extent not actually incurred[.];

(4[D]) [A]any underwriting compensation [by an issuer to a member or person associated with a member] in connection with a[n] public offering [of securities] that is not completed according to the terms of an agreement [between] entered into by an [the] issuer and [underwriter] a participating member, except:

(A[i]) the reimbursement of [out-of-pocket] accountable[, bona fide] expenses actually incurred by the participating member [or person associated with a member]; and

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

(i)[a.] 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)[b.] 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)[c.] 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)[d.] 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[E]) [A]any right of first refusal [provided to the underwriter or related persons to [underwrite or] participate in the distribution of a future public offering[s], private placement[s] or other financing[s] that:

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

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

(6[F]) [A]any payment or fee to waive or terminate a right of first refusal [regarding] to participate in a future public offering[s], private placement[s] or other financing[s provided to the underwriter and related persons] that[:]

(i) has a value in excess of the greater of 1% of the offering proceeds in the public offering where the right of first refusal was granted (or an amount in excess of 1% if additional compensation is available under the compensation guideline of the original offering) or 5% of the underwriting discount or commission paid in connection with the future financing (including

any overallotment option that may be exercised), regardless of whether the payment or fee is negotiated at the time of or subsequent to the original public offering; or]

[(ii)] is not paid in cash[.];

(Z[G]) [The terms or the exercise of the terms of an agreement for] the receipt [by the underwriter and related persons] of underwriting compensation consisting of any option, warrant or convertible security that:

(A[i]) is exercisable or convertible more than five years from the [effective date] commencement of sales of the public offering;

[(ii)] is not in compliance with paragraph (e)(1) above;]

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

(C[iv]) has a demand registration right with a duration of more than five years from [the date of effectiveness or] the commencement of sales of the public offering;

(D[v]) has a piggyback registration right with a duration of more than seven years from the [date of effectiveness or the] commencement of sales of the public offering;

(E[vi]) has anti-dilution terms that allow the [underwriter and related persons] 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[vii]) has anti-dilution terms that allow the [underwriter and related persons] participating members to receive or accrue cash dividends prior to the exercise or conversion of the security[.];

[(H) The receipt by the underwriter and related persons of any item of compensation for which a value cannot be determined at the time of the offering.]

(8[I]) [W]hen 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[J]) [T]he receipt by a participating member [or person associated with a member, pursuant to an agreement entered into at any time before or after the effective date of a public offering of warrants, options, convertible securities or units containing such securities,] of any compensation [or expense reimbursement] in connection with the exercise or conversion of any [such] warrant, option, or convertible security [in any of the following circumstances] offered in the public offering if:

(A[i]) 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[ii]) 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[iii]) the compensation arrangements [whereby compensation is to be paid] are not disclosed[:]

[a. in the prospectus or offering circular by which the warrants, options, or convertible securities are offered to the public, if such arrangements are contemplated or any agreement exists as to such arrangements at that time, and]

[b.] in the [prospectus or] offering [circular] documents provided to security holders at the time of exercise or conversion; [or]

(D[iv]) the exercise or conversion [of the warrants, options or convertible securities] is not solicited by the [underwriter or related person] participating members[, provided however, that any request for exercise or conversion will be presumed to be unsolicited unless the customer states in writing that the transaction was solicited and designates in writing the broker-dealer to receive compensation for the exercise or conversion.]; and

(10[K]) [F]for a member to participate with an issuer in the public offering [distribution of a non-underwritten issue] of securities if the issuer hires persons primarily for the purpose of solicitation, marketing, distribution or sales of the offering [distributing or assisting in the distribution of the issue, or for the purpose of assisting in any way in connection with the underwriting], except [to

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

(g) Exemptions

[(b)(7)](1) Offerings Exempt from Filing

[Notwithstanding the provisions of subparagraph (1) above, d]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[. However, it shall be deemed a violation of this Rule or Rule 2310, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Rule or Rule 2310, as applicable]:

(A) securities offered by a [corporate] bank, corporation, foreign government or foreign government agency [issuer which] that has unsecured non-convertible debt with a term of issue of at least four [(4)] years[,], or unsecured non-convertible preferred securities[,], that are investment grade rated [by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories], 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 [except] that an [the] initial public offering of [the] equity [of an issuer] is required to be filed;

(B) investment grade rated non-convertible debt securities and non-convertible preferred securities [rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories];

(C) offerings of securities[:]

[(i)] registered with the SEC on registration statement Forms S-3, [or] F-3 [pursuant to the standards for those Forms prior to October 21, 1992 and offered pursuant to Rule 415 of SEC Regulation C], or F-10, provided that the registrant is an experienced issuer;

[(ii)] of a foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory, and is registered with the SEC on Form F-10 pursuant to the standards for that Form approved in Securities Act Release No. 6902 (June 21, 1991) and offered pursuant to Canadian shelf prospectus offering procedures;]

(D) [securities offered pursuant to a redemption standby "firm commitment" underwriting arrangement registered with the SEC on Forms S-3, F-3 or F-10 (only with respect to Canadian issuers);]

[(E)] investment grade rated financing instrument-backed securities [which are rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories];

(E[F]) exchange offers [of securities] 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 [The Nasdaq Global Market, the New York Stock Exchange, or the American Stock Exchange]; 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 [, pursuant to the standards for those Forms as set forth in subparagraph (C)(i) and (ii) of this paragraph];

(~~F~~[G]) 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; [and]

(~~G~~[H]) 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]; provided that such equity securities] 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.

[(b)(8)](2) [Exempt] Offerings Not Subject to Filing and Rule

Compliance

[Notwithstanding the provisions of subparagraph (1) above, the following offerings are exempt from this Rule, Rule 2310, and Rule 5121. Documents and information relating to the following offerings need not be filed for review:]

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 [or] pursuant to Rule 504 of SEC Regulation D if the securities are “restricted securities” under Securities Act Rule 144(a)(3)[, Rule 505 of SEC Regulation D,] or Rule 506 of Regulation D;

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

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

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

(F) [and] securities of any "closed-end" investment company as defined in Section 5(a)(2) of the Investment Company Act that[:]

[(i)] makes periodic repurchase offers pursuant to Rule 23c-3(b) under the Investment Company Act[:]; and

[(ii)] offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) of SEC Regulation C;

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

(H[E]) 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 paragraph (g)(2)(G) and (H);

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

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

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

(M[I]) 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;
[and]

(N[J]) 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 [offerings required to be filed pursuant to subparagraph (9)(I) below.]

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

(h)(i) Requests for Rule 9600 Exemption[s] from Rule 5110

Pursuant to the Rule 9600 Series, [the appropriate] FINRA [staff, for good cause shown after] 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 [may conditionally or unconditionally grant an exemption from any provision of this Rule to the extent that such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest].

(a)(i) Definitions

[For purposes of this Rule, the following terms shall have the meanings stated below.] 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.

(d)(4)(C)(2) Bank

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

((11))(3) Company

The term “company” means a [A] corporation, a partnership, an association, a joint stock company, a trust, a fund, or an[y] organized group of persons whether incorporated or not; [or] including any receiver, trustee in

bankruptcy or similar official, or [any] liquidating agent [for] of any of the foregoing[, in his capacity as such].

(4) Compensation

The term "compensation" means cash compensation and non-cash compensation.

[(12)](5) Effective Date

The term "effective date" means t[T]he date on which an issue of securities [first] 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 are convertible or exchangeable into an equity security.

[(13)](8) Immediate Family

[The parents, mother-in-law, father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children of an

employee or associated person of a member, except any person other than the spouse and children who does not live in the same household as, have a business relationship with, provide material support to, or receive material support from, the employee or associated person of a member. In addition, the immediate family includes any other person who either lives in the same household as, provides material support to, or receives material support from, an employee or associated person of a member.]

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.

[(5)(B)](9) Independent Financial Adviser

[For purposes of this provision, an "independent financial adviser" is a member that provides advisory or consulting services to the issuer and is neither engaged in, nor affiliated with any entity that is engaged in, the solicitation or distribution of the offering.]

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.

[(d)(4)(B)](10) Institutional Investor

For the purposes of paragraph (c), the term [An] “institutional investor”
[is] means any [individual or legal] person that has an aggregate of at least \$50 million invested in securities [in the aggregate] in its portfolio or under management, including investments held by its wholly owned subsidiaries; provided that no participating members [direct or otherwise] 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.

[(1)](12) Issuer

[The issuer of the securities offered] 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 [issuer] entity or selling security holder, and the officers or general partners, and directors[, employees and security holders] thereof.

[(3)](13) Offering Proceeds

[Public offering price] The term “offering proceeds” means the proceeds of all the securities offered [to] in the public offering by participating members, not including securities subject to an[y] overallotment option, securities to be

received by the [underwriter and related persons] participating members, or [securities] underlying [other] 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.

[(4)](15) Participating Member[(s)]

The term “participating member” means a[A]ny FINRA member that is participating in a public offering, any affiliate or associated person of the member, and any [members of their] immediate family[, and any affiliate of the member].

[(5)](16) Participate, Participation or Participating [in a Public Offering]

The terms “participate,” “participation” or “participating” in a public offering means involvement [Participation] in the preparation of the offering document or other documents, [participation] involvement in the distribution of the offering [on an underwritten, non-underwritten, or any other basis], furnishing of customer [and/]or broker lists for solicitation, or [participation in any] providing advisory or consulting [capacity] 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; [or] 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.

[(14)](17) Person

The term “person” means a[A]ny 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.

[(10)](19) Required Filing Date

(A) The term “required filing date” [shall be] means the dates [provided] referenced in paragraph (a)(3)[(b)(4),]; and

(B) F[f]or a public offering exempt from filing under paragraph [(b)(7)](g), the term “required filing date” [for purposes of paragraphs (d) and (g) shall be] 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.

[(d)(4)(E)](21) Total Equity Securities

For the purposes of paragraph (c), the term "[T]total equity securities" means the aggregate of the total shares of:

(A[i]) common stock outstanding of the issuer; and

(B[ii]) 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, which does 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.

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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)(1~~1~~[2])(E);

(B) through (C) No Change.

(2) No Change.

(b) through (e) No Change.

(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) through (10) No Change.

(11) [Public Offering]

[The term "public offering" means any primary or secondary offering of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition and all other securities offerings of any kind whatsoever, except any offering made pursuant to:]

[(A) an exemption from registration under Sections 4(1), 4(2), or 4(6) of the Securities Act;]

[(B) Securities Act Rule 504, if the securities are "restricted securities" under Securities Act Rule 144(a)(3), Securities Act Rules 505 or 506; or]

[(C) Securities Act Rule 144A or SEC Regulation S.]

[The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Exchange Act.]

(11[2]) 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[3]) 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[4]) 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.

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