

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2011 - * 057

Amendment No. (req. for Amendments *) 1

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934Initial * Amendment * Withdrawal Section 19(b)(2) * Section 19(b)(3)(A) * Section 19(b)(3)(B) *

Rule

Pilot Extension of Time Period
for Commission Action * Date Expires * 19b-4(f)(1) 19b-4(f)(4)
 19b-4(f)(2) 19b-4(f)(5)
 19b-4(f)(3) 19b-4(f)(6)

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Stan Last Name * Macel

Title * Assistant General Counsel

E-mail * stan.macel@finra.org

Telephone * (202) 728-8056 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 01/19/2012

By Gary Goldsholle
(Name *)Vice President and Associate General Counsel
(Title *)NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

Gary L. Goldsholle,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On October 4, 2011, FINRA filed with the Securities and Exchange Commission (“SEC” or “Commission”) SR-FINRA-2011-057, a proposed rule change to adopt new FINRA Rule 5123 (Private Placements of Securities). The Commission published the proposed rule change for comment in the Federal Register on October 24, 2011.¹ The Commission received fifteen comment letters in response to the proposed rule. FINRA is submitting by separate letter its response to comments on the proposed rule contemporaneously with this Partial Amendment. As discussed in that letter, FINRA is filing this Partial Amendment No. 1 to revise certain proposed rule language in response to those comments.

First, FINRA is proposing to clarify that a “private placement” means a “non-public offering” as it does in FINRA Rule 5122.

Second, FINRA is proposing to amend the disclosure requirement to apply only to sales in which a private placement memorandum, term sheet or other disclosure document (“disclosure document”) drafted by or on behalf of the issuer is used.

Third, FINRA is proposing to amend the filing requirement. As amended, the requirement to make a notice filing of the disclosure document may be made either by each participating member, or by a member designated to make such filing on behalf of members identified in the filing. Any material amendments to a previously-filed disclosure document must be filed with FINRA no later than 15 calendar days after the date such document is provided to any investor. In addition, to accommodate sales of a private placement in which no disclosure document is used, the proposed rule change contains a separate notice filing requirement in which each member that sells securities in such private placement, or a member acting on behalf of each such member, must make a filing with FINRA no later than 15 calendar days after the date of first sale identifying the private placement and that no disclosure document was used.

Fourth, FINRA is proposing to clarify certain exemptions and add several others. The proposed rule change clarifies that a member qualifies for an exemption based upon the sales it makes rather than those of all members participating in the offering. Thus, the actions of one member do not affect the availability of an exemption for another member.

The proposed rule change also updates a reference to the definition of institutional accounts, which is now found in FINRA Rule 4512(c), as well as clarifies that the exemption for offerings filed with FINRA under Rules 2310, 5110, 5121 and 5122 also applies to offerings exempt from filing thereunder in accordance with Rule 5110(b)(7).

In addition, FINRA is proposing to add exemptions for the following:

- offerings sold to knowledgeable employees as defined in Investment Company Act Rule 3c-5;

¹ See Securities Exchange Act Release No. 65585 (October 18, 2011), 76 FR 65758 (October 24, 2011) (Notice of Filing of SR-FINRA-2011-057) (“Proposing Release”).

- offerings sold to eligible contract participants, as defined in Section 3(a)(65) of the Exchange Act;
- offerings sold to accredited investors described in Securities Act Rule 501(a)(1), (2), (3) or (7);
- business combination transactions as defined in Securities Act Rule 165(f);
- offerings of registered investment companies; and
- standardized options, as defined in Securities Act Rule 238.

FINRA also is proposing to exempt offerings of debt securities sold by members pursuant to Section 4(2) of the Securities Act so long as the maturity does not exceed 397 days and the securities are issued in minimum denominations of \$150,000 (or the equivalent thereof in another currency). The proposed rule also clarifies the exemption for offerings of non-convertible debt or preferred securities that meet the transaction eligibility criteria for registering primary offerings of non-convertible securities on Forms S-3 and F-3.

Fifth, FINRA is proposing to add Supplementary Material to Proposed Rule 5123. Supplementary Material .01 defines “affiliate” as having the same meaning as in Rule 5121. Supplementary Material .02 provides guidance regarding delivery of a disclosure document to a single customer, and states:

The disclosure requirement in this Rule shall not require delivery of multiple copies of a disclosure document to a single customer. To the extent that disclosure is required, each member must deliver the disclosure document only to persons to whom it sells shares in the private placement.

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed additions in this Partial Amendment No. 1 appear underlined; proposed deletions appear in brackets.

* * * * *

5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

* * * * *

5120. Offerings of Members' Securities

* * * * *

5123. Private Placements of Securities

(a) Disclosure and Filing Requirements for Private Placements with

Disclosure Documents

If a [No]member or person associated with a member [may offer or]sell[s] a[ny] security in a non-public offering in reliance on an available exemption from registration under the Securities Act (“private placement”), and [or participate in the preparation of]a private placement memorandum, term sheet or other disclosure document (“disclosure document”) drafted by or on behalf of the issuer is used in connection with such sale[private placement], then[unless the member or associated person]:

- (1) the member must provide[s] the [a private placement memorandum or term sheet]disclosure document to each investor (other than investors exempt under paragraph (c)) to whom it sells the security prior to sale;

(2) the disclosure document must include a description of [that contains disclosures describing]the anticipated use of offering proceeds, the amount and type of offering expenses, and the amount and type of compensation provided or to be provided to sponsors, finders, consultants, and members and their associated persons in connection with the offering; and

(3) the disclosure document must be filed with FINRA either by each participating member or by a member designated to make such filing on behalf of members identified in the filing no later than 15 calendar days after the date of first sale. Any material amendments to the previously-filed disclosure document must be filed with FINRA no later than 15 calendar days after the date such document is provided to any investor. [; or]

[(2) if such private placement does not have a private placement memorandum or term sheet, prepares a disclosure document that contains the disclosures required in paragraph (a)(1) and provides such document to each investor prior to sale.]

(b) Filing Requirement for Private Placements without Disclosure

Documents

If a member or person associated with a member sells a security in a private placement in which no [The private placement memorandum, term sheet or such other]disclosure document is used, [and any exhibits thereto, must be filed with FINRA by]then each [participating]member that sells securities in such private placement or a member acting on behalf of each such member must make a notice filing no later than 15 calendar days after the date of first sale identifying the private placement and the

participating members and stating that no disclosure document was used.[or associated person no later than 15 calendar days after the date of first sale. Any material amendments to the private placement memorandum, term sheet or other disclosure document, or any amendments to the disclosures mandated by this Rule, must be filed with FINRA no later than 15 calendar days after the date such document is provided to any investor or prospective investor.]

(c) Exemptions

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

(1) offerings sold by the member or person associated with the member

solely to any one or more of the following:

(A) institutional accounts, as defined in [NASD]Rule 4512(c)
[3110(c)(4)];

(B) qualified purchasers, as defined in Section 2(a)(51)(A) of the
Investment Company Act;

(C) qualified institutional buyers, as defined in Securities Act Rule
144A;

(D) investment companies, as defined in Section 3 of the
Investment Company Act;

(E) an entity composed exclusively of qualified institutional
buyers, as defined in Securities Act Rule 144A;

(F) banks, as defined in Section 3(a)(2) of the Securities Act;
[and]

(G) employees and affiliates of the issuer;[.]

(H) knowledgeable employees as defined in Investment Company

Act Rule 3c-5;

(I) eligible contract participants, as defined in Section 3(a)(65) of the Exchange Act; and

(J) accredited investors described in Securities Act Rule 501(a)(1), (2), (3) or (7).

(2) offerings of exempted securities, as defined in Section 3(a)(12) of the Exchange Act;

(3) offerings made pursuant to Securities Act Rule 144A or SEC Regulation S;

(4) offerings of exempt securities with short term maturities under Section 3(a)(3) of the Securities Act and debt securities sold by members pursuant to Section 4(2) of the Securities Act so long as the maturity does not exceed 397 days and the securities are issued in minimum denominations of \$150,000 (or the equivalent thereof in another currency);

(5) offerings of subordinated loans under SEA Rule 15c3-1, Appendix D (see NASD Notice to Members 02-32 (June 2002));

(6) offerings of “variable contracts,” as defined in Rule 2320(b)(2);

(7) offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in Rule 5110(b)(8)(E);

(8) offerings of non-convertible debt or preferred securities [by issuers] that meet the transaction eligibility criteria for [incorporation by

reference]registering primary offerings of non-convertible securities on [in
]Forms S-3 and F-3;

(9) offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;

(10) offerings of securities of a commodity pool operated by a commodity pool operator, as defined under Section 1a(11) of the Commodity Exchange Act;

(11) business combination transactions as defined in Securities Act Rule 165(f);

(12) offerings of registered investment companies;

(13) standardized options, as defined in Securities Act Rule 238;

and

(14[1]) offerings filed with FINRA under Rules 2310, 5110, 5121 and 5122, or exempt from filing thereunder in accordance with Rule 5110(b)(7).

(d) Confidential Treatment

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

(e) Application for Exemption

Pursuant to the Rule 9600 Series, FINRA may exempt a member or associated person from the provisions of this Rule for good cause shown.

••• Supplementary Material: -----

.01 Definition.

(a) “Affiliate” shall have the same meaning as in Rule 5121.

.02 Delivery of Disclosure Document To A Single Customer. The disclosure requirement in this Rule shall not require delivery of multiple copies of a disclosure document to a single customer. To the extent that disclosure is required, each member must deliver disclosure documents only to persons to whom it sells shares in the private placement.

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EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined.

* * * * *

5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

* * * * *

5120. Offerings of Members' Securities

* * * * *

5123. Private Placements of Securities

(a) Disclosure and Filing Requirements for Private Placements with

Disclosure Documents

If a member or person associated with a member sells a security in a non-public offering in reliance on an available exemption from registration under the Securities Act ("private placement"), and a private placement memorandum, term sheet or other disclosure document ("disclosure document") drafted by or on behalf of the issuer is used in connection with such sale, then:

(1) the member must provide the disclosure document to each investor (other than investors exempt under paragraph (c)) to whom it sells the security prior to sale;

(2) the disclosure document must include a description of the anticipated use of offering proceeds, the amount and type of offering expenses, and the

amount and type of compensation provided or to be provided to sponsors, finders, consultants, and members and their associated persons in connection with the offering; and

(3) the disclosure document must be filed with FINRA either by each participating member or by a member designated to make such filing on behalf of members identified in the filing no later than 15 calendar days after the date of first sale. Any material amendments to the previously-filed disclosure document must be filed with FINRA no later than 15 calendar days after the date such document is provided to any investor.

(b) Filing Requirement for Private Placements without Disclosure

Documents

If a member or person associated with a member sells a security in a private placement in which no disclosure document is used, then each member that sells securities in such private placement or a member acting on behalf of each such member must make a notice filing no later than 15 calendar days after the date of first sale identifying the private placement and the participating members and stating that no disclosure document was used.

(c) Exemptions

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

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

(A) institutional accounts, as defined in Rule 4512(c);

(B) qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act;

(C) qualified institutional buyers, as defined in Securities Act Rule 144A;

(D) investment companies, as defined in Section 3 of the Investment Company Act;

(E) an entity composed exclusively of qualified institutional buyers, as defined in Securities Act Rule 144A;

(F) banks, as defined in Section 3(a)(2) of the Securities Act;

(G) employees and affiliates of the issuer;

(H) knowledgeable employees as defined in Investment Company Act Rule 3c-5;

(I) eligible contract participants, as defined in Section 3(a)(65) of the Exchange Act; and

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days and the securities are issued in minimum denominations of \$150,000 (or the equivalent thereof in another currency);

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(6) offerings of “variable contracts,” as defined in Rule 2320(b)(2);

(7) offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in Rule 5110(b)(8)(E);

(8) offerings of non-convertible debt or preferred securities that meet the transaction eligibility criteria for registering primary offerings of non-convertible securities on Forms S-3 and F-3;

(9) offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;

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(d) Confidential Treatment

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