OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 32

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

File No.* SR - 2014 - * 003
Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

- 19b-4(f)(1)
- 19b-4(f)(2)
- 19b-4(f)(3)
- 19b-4(f)(4)
- 19b-4(f)(5)
- 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Proposed Rule Change to amend FINRA's Corporate Financing Rules to Simplify and Refine the Scope of the Rules

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 action.

First Name * Racquel Last Name * Russell

Title * Associate General Counsel

E-mail * Racquel.Russell@finra.org

Telephone * (202) 728-8363 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.

Date 01/09/2014

By Stephanie M. Dumont

(Name *)

(Title *)

Senior Vice President and Director of Capital Markets Policy

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.

Stephanie Dumont,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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 *

Add Remove View

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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

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, security-based swap submission, or advance notice 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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend FINRA's corporate financing rules to simplify and refine the scope of the rules.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on February 12, 2013, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

The effective date of the proposed rule change will be 30 days following Commission approval.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

FINRA proposes to amend Rules 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements) and 5121 (Public Offerings of Securities with Conflicts of Interest). Rule 5110 generally regulates underwriting compensation and prohibits unfair arrangements in connection with the public offering of securities. Among other

---

[1] 15 U.S.C. 78s(b)(1).

provisions, Rule 5110 requires members to file with FINRA information about the securities offerings in which they participate and to disclose affiliations and other relationships that may indicate the presence of conflicts of interest. Rule 5121 generally provides that members with a conflict of interest may not participate in a public offering unless the member complies with certain prescribed disclosures or other protections.

FINRA is proposing amendments to Rule 5110 to: (1) narrow the scope of the definition of "participation or participating in a public offering;" (2) modify the lock-up restrictions to exclude certain securities acquired or converted to prevent dilution; and (3) clarify that the information requirements apply only to relationships with a "participating" member. FINRA also is proposing amendments to Rule 5121 to narrow the scope of the definition of "control."

Participation in a Public Offering

As noted above, Rule 5110 generally regulates underwriting compensation and prohibits unfair arrangements in connection with the public offering of securities. The protections of the rule apply to members that are "participating" in the public offering of an issuer's securities. Rule 5110(a)(5) defines "participating in a public offering" to include "participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis" and the "furnishing of customer and/or broker lists for solicitation." Due to the importance of the role such members serve in the capital raising process and the degree to which issuers must rely on them, those members may be in a position to extract unreasonable underwriting terms, arrangements or compensation from issuers.

However, also included within the definition of "participating in a public offering" is participation in "any advisory or consulting capacity related to the offering." Unlike in cases where a member is involved in distribution and solicitation activities, a member that solely provides advisory or consulting services typically would not have a significant degree of leverage over an issuer. Consequently, FINRA does not believe that the harms sought to be prevented by Rule 5110 are likely to occur in such cases.

Thus, FINRA is proposing to amend the definition of "participating in a public offering" to provide that an "independent financial adviser" that provides advisory or consulting services to an issuer would not be deemed to be "participating" in the public offering of an issuer's securities. The amendments would define "independent financial adviser" as a member that provides advisory or consulting services to the issuer and that is neither engaged in, nor affiliated with any entity that is engaged in, the solicitation or distribution of the offering. To the extent a member engages in solicitation or distribution activities in addition to providing advisory or consulting services, this exclusion would not be available and all of the compensation received by that member in connection with the offering would be included in the compensation limitations of Rule 5110. Rule 5110(a)(5)'s definition of "participating member" also includes affiliates of the member. Thus, if a member provides distribution or solicitation services and its affiliate provides advisory or consulting services, all of the compensation received by the member and its affiliate would be included in the compensation limitations of Rule 5110.

FINRA believes this proposed modification preserves the protections of the rule while also removing a possible obstacle to the ability of issuers to obtain advisory or consulting services from members not participating in the offering, since today the rule

would include the compensation for such services in the limits on overall underwriting compensation. Thus, under the proposed approach, issuers would be free to seek the benefit of consulting services or advice from a member that is not engaged in the distribution or sale of its securities regarding such matters as the options for financing that may be available to the issuer, the benefits and disadvantages of a public offering and the terms proposed by the underwriters.

Lock-up Restrictions

Rule 5110(d)(1) generally includes as underwriting compensation all items of value, which may include unregistered securities, that are acquired (or arranged to be acquired) within 180 days prior to the filing of the registration statement ("180-day review period"). Rule 5110(d)(5) (Exceptions from Underwriting Compensation) provides five exceptions that permit participating members to acquire securities of the issuer during the 180-day review period without the securities being deemed to be underwriting compensation.

The provisions of paragraph (d)(5)(D) of Rule 5110 (Acquisitions and Conversions to Prevent Dilution) exclude from underwriting compensation the receipt of additional securities to prevent dilution of the investor's investment (e.g., securities acquired as a result of a stock-split or a pro-rata rights or similar offering) where such additional securities are received during the 180-day review period or subsequent to the filing of the public offering, but where the original securities were acquired prior to the 180-day review period or otherwise were not deemed by FINRA to be underwriting compensation, as described in Rule 5110(d)(5)(D). Among other things, the exception requires that the right or opportunity to receive the additional securities was provided to

all similarly situated security holders and the receipt of the additional securities does not increase the recipient's percentage ownership of the same class.

The exception is available when securities are acquired as a result of a stock split or pro-rata rights or similar offering, a stock conversion of securities that have not been deemed by FINRA to be underwriting compensation or certain rights of preemption. With respect to a right of preemption, the exception is only available if the right was granted in connection with securities purchased either: (i) in a private placement so long as the securities acquired in the private placement are not deemed to be underwriting compensation (i.e., the private placement did not occur within the 180-day review period); or (ii) from a public offering or the public market.

While these acquisitions and conversions to prevent dilution are excepted from underwriting compensation, they currently continue to be subject to the lock-up restrictions of paragraph (g)(1).[2] For example, if common shares were acquired before the 180-day review period, they are not considered "items of value" and are not subject to the compensation limitations or lock-up restrictions. However, shares received as a result of the preexisting ownership of the common shares during the 180-day review period (e.g., resulting from a stock-split) are not subject to the compensation limitations, but continue to be locked up pursuant to paragraph (g)(1). Subjecting securities acquired or converted to prevent dilution during the 180-day review period to the lock-up restrictions

[2] Paragraph (g)(1) of Rule 5110 generally provides that such securities received as a result of an acquisition or conversion to prevent dilution must not be sold during the offering, or 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 the date of effectiveness or commencement of sales of the public offering ("lock-up restrictions").

even where they are not considered "items of value" under Rule 5110(c)(3) may not provide any useful protection, and this requirement may impose unnecessary burdens on firms to track and monitor compliance with the lock-up provisions. Therefore, FINRA proposes to treat shares received in an acquisition or conversion to prevent dilution during the 180-day review period consistent with the treatment provided for the securities on which their acquisition or conversion was based, thereby eliminating the lock-up restrictions for these securities.

Information Requirements

Subject to certain exceptions, Rule 5110(b)(6)(A)(iii) requires filers to disclose to FINRA information about the affiliation or association with any member of the officers, directors, and certain owners of the issuer. FINRA is proposing to amend Rule 5110(b)(6)(A)(iii) to reduce the scope of this provision from requiring disclosure about the affiliation or association of the specified parties with "any member" to "any participating member." The compensation limitations and other provisions of Rule 5110 and Rule 5121 apply only to members that participate in a public offering. Consequently, affiliations of non-participating members would not present the type of concerns that the rule is designed to address, and requiring that information about these other members be filed with FINRA is unnecessary.

Definition of "Control"

FINRA proposes to revise the scope of the definition of "control" in Rule 5121(f)(6) to exclude beneficial ownership of 10 percent or more of the outstanding subordinated debt of an entity. The scope of the definition of "control" is related to the

determination of whether a member and an issuer are deemed to be affiliated[3] for purposes of the conflicts provisions of Rule 5121 (Public Offerings of Securities With Conflicts of Interest)[4] and for certain informational requirements of Rule 5110.[5] However, ownership of 10 percent or more of the outstanding subordinated debt of an entity is not a meaningful measure of control or affiliation for purposes of Rules 5121 and 5110. The proposed amendment thus would reduce the scope of the information required to be reported by members.

FINRA staff discussed the proposal with industry groups and advisory committees in developing its approach, and these parties were supportive of the proposal. FINRA received one comment from an advisory committee member regarding the proposed reduction of the scope of the Rule 5110's provisions to only "participating" members. Specifically, the committee member suggested that FINRA retain the information requirement for issuer relationships with any financial adviser that owns 5 percent or more of any class of the issuer's securities – even where such financial adviser is not affiliated with a participating member. However, FINRA believes it is more appropriate to limit the information requirement to members that are "participating" in the offering and their affiliates, which would capture advisers who are affiliates of participating members (but would exclude an independent financial advisor).

---

3 Rule 5121(f)(1) provides that the term "affiliate" means an entity that controls, is controlled by or is under common control with a member.

4 Rule 5121 defines "conflict of interest" to include situations where the issuer "controls, is controlled by or is under common control with the member or the member's associated persons."

5 See Rule 5110(b)(6)(A)(iii).

As noted in Item 2 of this filing, the effective date of the proposed rule change will be 30 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change meets these requirements in that it eliminates burdensome provisions that are not justified by the regulatory purposes of the rules, while continuing to preserve important protections addressing abusive arrangements and minimizing the opportunity for abusive practices by members in connection with their participation in public offerings of securities. For example, the proposed amendments to Rule 5110(a)(5) to revise the definition of "participation" to exclude from the definition's scope advisory or consulting services provided to the issuer by an independent financial adviser supports capital formation without compromising investor protection. Specifically, FINRA believes that provision of such services by an independent party, wholly uninvolved with the solicitation or distribution of the offering, is not likely to present the harms sought to be prevented by Rule 5110.

Similarly, the proposed amendments to the provision subjecting securities acquired as a result of an acquisition or conversion to prevent dilution – notwithstanding that the acquisition of the such securities is not deemed underwriting compensation

---

6 15 U.S.C. 78o–3(b)(6).

pursuant to Rule 5110(d)(5) – maintains the goals of preventing fraudulent and manipulative acts and practices as well as protecting investors and the public interest. Since the effective date of the Rule 5110(d)(5)(D) on March 22, 2004,[7] FINRA has not observed abuse in connection with securities acquired prior to the 180-day review period where those securities ultimately split within the 180-day period (or otherwise qualify for the (d)(5)(D) exception). Thus, in addition to the current exception for securities acquisitions or conversion to prevent dilution from the underwriting compensation provisions, FINRA believes it also is appropriate to except these acquisitions or conversions to prevent dilution from the lock-up restrictions of paragraph (g) given the continued application of the protections described in paragraph (d)(5)(D)(ii), (iii) and (iv).

The proposed amendment to limit the scope of the disclosure provision of 5110(b)(6)(A)(iii) to issuer relationships with "any participating member" (rather than "any member") reduces the burden on members to report to FINRA items of information that FINRA does not believe are necessary. The current requirement to obtain information regarding the acquisition of the issuer's unregistered equity securities by any member regardless of whether the member is participating in the offering may facilitate filing when members are moving in and out of a syndicate or selling group prior to an offering. Information regarding members that are not participating in the offering, however, is not useful for purposes of the rule's compensation limits and other

---

[7] See Securities Exchange Act Release No. 48989 (December 23, 2003), 68 FR 75684 (December 31, 2003) (Order Approving File No. SR-NASD-00-04).

requirements. Accordingly, the burden of acquiring this unnecessary information is not justified by a regulatory benefit.

Finally, in proposing amendments to the scope of the definition of "control" in Rule 5121(f)(6), as discussed above, FINRA believes that ownership of 10 percent or more of the outstanding subordinated debt of an entity should be excluded from the scope of the definition of "control" because it is not a meaningful measure of control or affiliation between a member and an issuer for purposes of Rules 5121 and 5110 and, thus, eliminating this aspect of the definition would reduce the information required to be reported to FINRA by members without reducing the rule's efficacy, consistent with the purposes of the Act.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the proposal makes simplifying and streamlining amendments to Rules 5110 and 5121 and would reduce the burden of compliance. The proposed amendments also would provide these benefits to any affected members engaging in activity subject to Rules 5110 and 5121.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[8]

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of proposed rule change.

---

[8] 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2014-003)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to amend FINRA's Corporate Financing Rules to Simplify and Refine the Scope of the Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on , Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA's corporate financing rules to simplify and refine the scope of the rules.

The text of the proposed rule change is available on FINRA's website at http://www.finra.org, at the principal office of FINRA and at the Commission's Public Reference Room.

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend Rules 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements) and 5121 (Public Offerings of Securities with Conflicts of Interest). Rule 5110 generally regulates underwriting compensation and prohibits unfair arrangements in connection with the public offering of securities. Among other provisions, Rule 5110 requires members to file with FINRA information about the securities offerings in which they participate and to disclose affiliations and other relationships that may indicate the presence of conflicts of interest. Rule 5121 generally provides that members with a conflict of interest may not participate in a public offering unless the member complies with certain prescribed disclosures or other protections.

FINRA is proposing amendments to Rule 5110 to: (1) narrow the scope of the definition of "participation or participating in a public offering;" (2) modify the lock-up restrictions to exclude certain securities acquired or converted to prevent dilution; and (3) clarify that the information requirements apply only to relationships with a

"participating" member. FINRA also is proposing amendments to Rule 5121 to narrow the scope of the definition of "control."

Participation in a Public Offering

As noted above, Rule 5110 generally regulates underwriting compensation and prohibits unfair arrangements in connection with the public offering of securities. The protections of the rule apply to members that are "participating" in the public offering of an issuer's securities. Rule 5110(a)(5) defines "participating in a public offering" to include "participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis" and the "furnishing of customer and/or broker lists for solicitation." Due to the importance of the role such members serve in the capital raising process and the degree to which issuers must rely on them, those members may be in a position to extract unreasonable underwriting terms, arrangements or compensation from issuers.

However, also included within the definition of "participating in a public offering" is participation in "any advisory or consulting capacity related to the offering." Unlike in cases where a member is involved in distribution and solicitation activities, a member that solely provides advisory or consulting services typically would not have a significant degree of leverage over an issuer. Consequently, FINRA does not believe that the harms sought to be prevented by Rule 5110 are likely to occur in such cases.

Thus, FINRA is proposing to amend the definition of "participating in a public offering" to provide that an "independent financial adviser" that provides advisory or consulting services to an issuer would not be deemed to be "participating" in the public offering of an issuer's securities. The amendments would define "independent financial

adviser" as a member that provides advisory or consulting services to the issuer and that is neither engaged in, nor affiliated with any entity that is engaged in, the solicitation or distribution of the offering. To the extent a member engages in solicitation or distribution activities in addition to providing advisory or consulting services, this exclusion would not be available and all of the compensation received by that member in connection with the offering would be included in the compensation limitations of Rule 5110. Rule 5110(a)(5)'s definition of "participating member" also includes affiliates of the member. Thus, if a member provides distribution or solicitation services and its affiliate provides advisory or consulting services, all of the compensation received by the member and its affiliate would be included in the compensation limitations of Rule 5110.

FINRA believes this proposed modification preserves the protections of the rule while also removing a possible obstacle to the ability of issuers to obtain advisory or consulting services from members not participating in the offering, since today the rule would include the compensation for such services in the limits on overall underwriting compensation. Thus, under the proposed approach, issuers would be free to seek the benefit of consulting services or advice from a member that is not engaged in the distribution or sale of its securities regarding such matters as the options for financing that may be available to the issuer, the benefits and disadvantages of a public offering and the terms proposed by the underwriters.

Lock-up Restrictions

Rule 5110(d)(1) generally includes as underwriting compensation all items of value, which may include unregistered securities, that are acquired (or arranged to be acquired) within 180 days prior to the filing of the registration statement ("180-day

review period"). Rule 5110(d)(5) (Exceptions from Underwriting Compensation) provides five exceptions that permit participating members to acquire securities of the issuer during the 180-day review period without the securities being deemed to be underwriting compensation.

The provisions of paragraph (d)(5)(D) of Rule 5110 (Acquisitions and Conversions to Prevent Dilution) exclude from underwriting compensation the receipt of additional securities to prevent dilution of the investor's investment (e.g., securities acquired as a result of a stock-split or a pro-rata rights or similar offering) where such additional securities are received during the 180-day review period or subsequent to the filing of the public offering, but where the original securities were acquired prior to the 180-day review period or otherwise were not deemed by FINRA to be underwriting compensation, as described in Rule 5110(d)(5)(D). Among other things, the exception requires that the right or opportunity to receive the additional securities was provided to all similarly situated security holders and the receipt of the additional securities does not increase the recipient's percentage ownership of the same class.

The exception is available when securities are acquired as a result of a stock split or pro-rata rights or similar offering, a stock conversion of securities that have not been deemed by FINRA to be underwriting compensation or certain rights of preemption. With respect to a right of preemption, the exception is only available if the right was granted in connection with securities purchased either: (i) in a private placement so long as the securities acquired in the private placement are not deemed to be underwriting compensation (i.e., the private placement did not occur within the 180-day review period); or (ii) from a public offering or the public market.

While these acquisitions and conversions to prevent dilution are excepted from underwriting compensation, they currently continue to be subject to the lock-up restrictions of paragraph (g)(1).[3] For example, if common shares were acquired before the 180-day review period, they are not considered "items of value" and are not subject to the compensation limitations or lock-up restrictions. However, shares received as a result of the preexisting ownership of the common shares during the 180-day review period (e.g., resulting from a stock-split) are not subject to the compensation limitations, but continue to be locked up pursuant to paragraph (g)(1). Subjecting securities acquired or converted to prevent dilution during the 180-day review period to the lock-up restrictions even where they are not considered "items of value" under Rule 5110(c)(3) may not provide any useful protection, and this requirement may impose unnecessary burdens on firms to track and monitor compliance with the lock-up provisions. Therefore, FINRA proposes to treat shares received in an acquisition or conversion to prevent dilution during the 180-day review period consistent with the treatment provided for the securities on which their acquisition or conversion was based, thereby eliminating the lock-up restrictions for these securities.

Information Requirements

Subject to certain exceptions, Rule 5110(b)(6)(A)(iii) requires filers to disclose to FINRA information about the affiliation or association with any member of the officers,

---

[3] Paragraph (g)(1) of Rule 5110 generally provides that such securities received as a result of an acquisition or conversion to prevent dilution must not be sold during the offering, or 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 the date of effectiveness or commencement of sales of the public offering ("lock-up restrictions").

directors, and certain owners of the issuer. FINRA is proposing to amend Rule 5110(b)(6)(A)(iii) to reduce the scope of this provision from requiring disclosure about the affiliation or association of the specified parties with "any member" to "any participating member." The compensation limitations and other provisions of Rule 5110 and Rule 5121 apply only to members that participate in a public offering. Consequently, affiliations of non-participating members would not present the type of concerns that the rule is designed to address, and requiring that information about these other members be filed with FINRA is unnecessary.

Definition of "Control"

FINRA proposes to revise the scope of the definition of "control" in Rule 5121(f)(6) to exclude beneficial ownership of 10 percent or more of the outstanding subordinated debt of an entity. The scope of the definition of "control" is related to the determination of whether a member and an issuer are deemed to be affiliated[4] for purposes of the conflicts provisions of Rule 5121 (Public Offerings of Securities With Conflicts of Interest)[5] and for certain informational requirements of Rule 5110.[6] However, ownership of 10 percent or more of the outstanding subordinated debt of an entity is not a meaningful measure of control or affiliation for purposes of Rules 5121 and 5110. The proposed amendment thus would reduce the scope of the information required to be reported by members.

---

4 Rule 5121(f)(1) provides that the term "affiliate" means an entity that controls, is controlled by or is under common control with a member.

5 Rule 5121 defines "conflict of interest" to include situations where the issuer "controls, is controlled by or is under common control with the member or the member's associated persons."

6 See Rule 5110(b)(6)(A)(iii).

FINRA staff discussed the proposal with industry groups and advisory committees in developing its approach, and these parties were supportive of the proposal. FINRA received one comment from an advisory committee member regarding the proposed reduction of the scope of the Rule 5110's provisions to only "participating" members. Specifically, the committee member suggested that FINRA retain the information requirement for issuer relationships with any financial adviser that owns 5 percent or more of any class of the issuer's securities – even where such financial adviser is not affiliated with a participating member. However, FINRA believes it is more appropriate to limit the information requirement to members that are "participating" in the offering and their affiliates, which would capture advisers who are affiliates of participating members (but would exclude an independent financial advisor).

The effective date of the proposed rule change will be 30 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change meets these requirements in that it eliminates burdensome provisions that are not justified by the regulatory purposes of the rules, while continuing to preserve important protections addressing abusive

---

7 15 U.S.C. 78o–3(b)(6).

arrangements and minimizing the opportunity for abusive practices by members in connection with their participation in public offerings of securities. For example, the proposed amendments to Rule 5110(a)(5) to revise the definition of "participation" to exclude from the definition's scope advisory or consulting services provided to the issuer by an independent financial adviser supports capital formation without compromising investor protection. Specifically, FINRA believes that provision of such services by an independent party, wholly uninvolved with the solicitation or distribution of the offering, is not likely to present the harms sought to be prevented by Rule 5110.

Similarly, the proposed amendments to the provision subjecting securities acquired as a result of an acquisition or conversion to prevent dilution – notwithstanding that the acquisition of the such securities is not deemed underwriting compensation pursuant to Rule 5110(d)(5) – maintains the goals of preventing fraudulent and manipulative acts and practices as well as protecting investors and the public interest. Since the effective date of the Rule 5110(d)(5)(D) on March 22, 2004,[8] FINRA has not observed abuse in connection with securities acquired prior to the 180-day review period where those securities ultimately split within the 180-day period (or otherwise qualify for the (d)(5)(D) exception). Thus, in addition to the current exception for securities acquisitions or conversion to prevent dilution from the underwriting compensation provisions, FINRA believes it also is appropriate to except these acquisitions or conversions to prevent dilution from the lock-up restrictions of paragraph (g) given the continued application of the protections described in paragraph (d)(5)(D)(ii), (iii) and (iv).

---

8 See Securities Exchange Act Release No. 48989 (December 23, 2003), 68 FR 75684 (December 31, 2003) (Order Approving File No. SR-NASD-00-04).

The proposed amendment to limit the scope of the disclosure provision of 5110(b)(6)(A)(iii) to issuer relationships with "any participating member" (rather than "any member") reduces the burden on members to report to FINRA items of information that FINRA does not believe are necessary. The current requirement to obtain information regarding the acquisition of the issuer's unregistered equity securities by any member regardless of whether the member is participating in the offering may facilitate filing when members are moving in and out of a syndicate or selling group prior to an offering. Information regarding members that are not participating in the offering, however, is not useful for purposes of the rule's compensation limits and other requirements. Accordingly, the burden of acquiring this unnecessary information is not justified by a regulatory benefit.

Finally, in proposing amendments to the scope of the definition of "control" in Rule 5121(f)(6), as discussed above, FINRA believes that ownership of 10 percent or more of the outstanding subordinated debt of an entity should be excluded from the scope of the definition of "control" because it is not a meaningful measure of control or affiliation between a member and an issuer for purposes of Rules 5121 and 5110 and, thus, eliminating this aspect of the definition would reduce the information required to be reported to FINRA by members without reducing the rule's efficacy, consistent with the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the proposal makes simplifying and streamlining amendments

to Rules 5110 and 5121 and would reduce the burden of compliance. The proposed amendments also would provide these benefits to any affected members engaging in activity subject to Rules 5110 and 5121.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2014-003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2014-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2014-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy

Secretary

[9] 17 CFR 200.30-3(a)(12).

Exhibit 5

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

* * * * *

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

5110. Corporate Financing Rule — Underwriting Terms and Arrangements

(a) 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.

(1) through (4) No Change.

(5) Participation or Participating in a Public Offering

Participation in the preparation of the offering or other documents, participation 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 advisory or consulting capacity to the issuer related to the offering, but not:

(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

(B) advisory or consulting services provided to the issuer by an 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.

(6) through (14) No Change.

(b) Filing Requirements

(1) through (5) No Change.

(6) Information Required to be Filed

(A) Any person filing documents with FINRA pursuant to subparagraph (4) above shall provide the following information with respect to the offering through FINRA's electronic filing system:

(i) through (ii) No Change.

(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 whether such member is participating in any capacity in the public offering]; 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) through (vii) No Change.

(B) No Change.

(7) through (9) No Change.

(c) No Change.

(d) Determination of Whether Items of Value Are Included In Underwriting Compensation

(1) through (4) No Change.

(5) Exceptions from Underwriting Compensation

Notwithstanding paragraph (d)(1) above, the following items of value are excluded from underwriting compensation [(but are subject to the lock-up restriction in paragraph (g)(1) below)], provided that the member does not condition its participation in the public offering on an acquisition of securities under an exception and any securities purchased are purchased at the same price and with the same terms as the securities purchased by all other investors.

(A) through (C) No Change.

(D) Acquisitions and Conversions to Prevent Dilution —

Securities of the issuer if:

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

a. No Change.

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. No Change.

(ii) through (iv) No Change.

(E) No Change.

(e) through (f) No Change.

(g) Lock-Up Restriction on Securities

(1) Lock-Up Restriction

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 underwriting compensation 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 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 the date of effectiveness or commencement of sales of the public offering, except as provided in paragraph (g)(2) below.

(2) No Change.

(h) through (i) No Change.

5120. Offerings of Members' Securities

5121. Public Offerings of Securities with Conflicts of Interest

(a) 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 (5) No Change.

(6) Control

(A) The term "control" means:

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

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

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

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

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

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

(7) through (14) No Change.

* * * * *