SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 2 to Proposed Rule Change To Adopt FINRA Capital Acquisition Broker Rules

July 1, 2016.

I. Introduction

On December 4, 2015, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) proposed rule change SR–FINRA–2015–054, pursuant to which FINRA proposed to adopt a rule set that would apply exclusively to firms that meet the definition of “capital acquisition broker” (“CAB”) and that elect to be governed under this rule set.2

The Commission published the proposed rule change for public comment in the Federal Register on December 23, 2015.3 The Commission received 17 comments in response to the proposed rule change.4 On March 23, 2016, the Commission published in the Federal Register an order to solicit comments on the proposed rule change and to institute proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”) 5 to determine whether to approve or disapprove the proposed rule change.6 The Commission received one comment in response to the Order Instituting Proceedings.7

In response to comments on the Notice of Filing, on March 29, 2016, FINRA filed Partial Amendment No. 1, which amended proposed CAB Rule 016(c)(2) to clarify that the definition of “capital acquisition broker” does not include any broker or dealer that effects securities transactions that would require the broker or dealer to report the transaction under the FINRA Rules 6300 Series, 6400 Series, 6500 Series, 6600 Series, 6700 Series, 7300 Series or 7400 Series. The Commission published Partial Amendment No. 1 for comment in the Federal Register on April 15, 2016.8

On June 28, 2016, FINRA filed Partial Amendment No. 2 to its proposed rule change in response to comments on the Notice of Filing, Partial Amendment No. 2 is described in Item II below, which has been prepared by FINRA. The Commission is publishing this notice to solicit comments on Partial Amendment No. 2 from interested persons.

II. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Amendment

In response to comments on the Notice of Filing, the Order Instituting Proceedings, and Partial Amendment No. 1, FINRA filed this Partial Amendment No. 2 to amend proposed CAB Rule 016(c)(1)(F) regarding a CAB’s authority to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder in connection with unregistered securities transactions. As revised by Partial Amendment No. 2, a CAB would be permitted to engage in:

- qualifying, identifying, soliciting, or acting as a placement agent or finder (i) on behalf of an issuer in connection with a sale of newly-issued, unregistered securities to institutional investors or (ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. For purposes of this subparagraph a “control person” is a person who has the power to direct the management or policies of a company through ownership of securities, by contract, or otherwise. Control will be presumed to exist if, before the transaction, the person has the right to vote or the power to sell or direct the sale of 25% or more of a class of voting securities or in the case of a partnership or limited liability company has the right to receive upon dissolution or has contributed 25% or more of the capital. For purposes of this subparagraph a “privately-held company” is a company that does not have any class of securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12 of the Exchange Act or with respect to which the company files, or is required to file, periodic information, documents, or reports under Section 15(d) of the Exchange Act.

The purpose of this proposed rule change is to provide a rule set for member firms that advise companies on mergers and acquisitions, advise issuers on raising debt and equity capital in private placements with institutional investors, or provide advisory services on a consulting basis to companies that need assistance analyzing their strategic and financial alternatives. Consistent with this purpose, this amendment would narrow the range of activities that a CAB would be permitted to engage in with regard to securities transactions involving institutional investors. Previously proposed CAB Rule 016(c)(1)(F) would have permitted a CAB to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder with respect to institutional investors in connection with purchases or sales of unregistered securities. This authority would have been limited by proposed CAB Rule 016(c)(2), which would have prohibited CABS from effecting securities transactions that would require the broker or dealer to report the transaction under the FINRA trade reporting rules.8

As amended, a CAB would be permitted to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder (i) on behalf of an issuer in connection with a sale of


2 7400 Series.


newly-issued, unregistered securities to institutional investors or (ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. “Control” and “privately-held company” would have the same meanings as those terms had in the SEC staff’s 2014 M&A Brokers no-action letter.\(^9\) Accordingly, under revised proposed CAB Rule 016(c)(1)(F), a CAB would be permitted to qualify, identify, solicit or act as a placement agent or finder only in two circumstances. First, a CAB could perform these functions on behalf of an issuer in connection with an initial offering of unregistered securities to institutional investors (as such term is defined in proposed CAB Rule 016(i)). Second, a CAB could perform these functions on behalf of an issuer or control person in connection with an initial or secondary securities transaction related to a change of control of a privately-held company. Except as described in proposed CAB rules 016(c)(1)(F)(ii) and 016(c)(1)(G),\(^10\) a CAB would not otherwise be permitted to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder in connection with secondary securities transactions. With this Partial Amendment No. 2, FINRA included (1) Exhibit 4, which reflects the changes to the current rule text that are proposed in the proposed rule change pursuant to this Partial Amendment No. 2, and (2) Exhibit 5, which reflects the changes to the current rule text that are proposed in the proposed rule change, as amended by this Partial Amendment No. 2.

### III. Date of Effectiveness of the Proposed Rule Change as Modified by Partial Amendments No. 1 and No. 2 and Timing for Commission Action

Within 180 days after the date of publication of the initial Notice of Filing in the Federal Register or within such longer period up to an additional 60 days (i) as the Commission may designate 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 issue an order approving or disapproving such proposed rule change, as amended.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended by Partial Amendment No. 2, is consistent with the Exchange 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 email to rule-comments@sec.gov. Please include File Number SR–FINRA–2015–054 on the subject line.

**Paper Comments**
- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–054 on the subject line.

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

The Exchange proposes to amend Exchange Rules at Chapter I, Section 1, entitled “Definitions” to add specificity to the definition of a Professional with respect to the manner in which the volume threshold will be calculated by the Exchange. The text of the proposed rule change is available on the Exchange’s Web site at http://nasdaqomxbx.cchwallstreet.com/, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed...