

Updated Private Placement Filer Form

FINRA Updates Private Placement Filer Form Pursuant to FINRA Rules 5122 and 5123

Executive Summary

FINRA has updated the form that firms must use to file offering documents and information pursuant to FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placements of Securities) (Filer Form). The updated Filer Form, which will be available in the FINRA Firm Gateway beginning May 22, 2017, includes new and updated questions that will facilitate review of the filed material and eliminates other questions.¹ See Attachment A for a copy of the updated Filer Form.

Questions regarding this *Notice* may be directed to:

- ▶ Minh Le, Director, Corporate Financing, at (240) 386-4638 or Minh.Le@finra.org; or
- ▶ Ryan Smith, Director, Corporate Financing, at (240) 386-4598 or Ryan.Smith@finra.org.

Background and Discussion

FINRA Rule 5122 establishes disclosure and filing requirements for firms that sell a private placement of an unregistered security issued by a broker-dealer or a control entity. Its companion rule, FINRA Rule 5123, requires firms that sell a private placement to file a copy of any offering documents with FINRA within 15 calendar days of the first sale, subject to various exemptions.² FINRA requires firms to submit the Filer Form that contains information about the firm selling the private placement securities, the issuer and the offering terms as well as any offering documents, if applicable, electronically through the Firm Gateway.³ If more than one firm is selling, a firm can make the required filing on behalf of the others.

April 2017

Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Corporate Finance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Senior Management
- ▶ Private Placement
- ▶ Underwriting

Key Topics

- ▶ Private Placement
- ▶ Underwriting

Referenced Rules & Notices

- ▶ FINRA Rule 5122
- ▶ FINRA Rule 5123
- ▶ Regulatory Notice 13-26

The Filer Form has three main components. The “Participating Member Information” section seeks information about the firms that are selling the private placement. The “Issuer Information” section captures basic information about the issuer. The “Offering Information” section seeks information about the offering.

On May 22, 2017, FINRA will begin using an updated Filer Form that adds, clarifies and eliminates questions or other information requested in each section. FINRA describes these changes below. Attachment A is a copy of the revised Filer Form.

Participating Member Information

FINRA will be adding questions to the Participating Member section of the Filer Form regarding whether the member making the filing (filing member) is the exclusive selling agent in the private placement and whether there is any affiliation between the issuer or sponsor of the private placement with any member participating in the offering upon whose behalf the filing member is submitting the Filer Form. This section will no longer require the title and email address for the contact person of the filing member or the contact name, title and telephone number for other members identified in the filing.

Issuer Information

FINRA is adding a question to the Issuer Information section of the Filer Form asking whether the issuer is a reporting company. This section will no longer require the filing member to enter the name, title and email address of the issuer’s contact person.

Offering Information

FINRA is adding questions to the Offering Information section of the Filer Form regarding:

- ▶ the type of security the issuer is offering;
- ▶ whether the issuer raised capital within the preceding 12 months from any source (excluding loans or investments by affiliates);
- ▶ the minimum investment amount that the issuer will accept and whether the issuer can waive that minimum;
- ▶ whether the filing member sold or will sell the offering to any non-accredited investors;
- ▶ the exemption from the Securities Act of 1933 that the issuer is relying upon; and
- ▶ for contingency offerings, whether the contingency has been met as of the date of the filing.

The Offering Information section also will request the date on which the filing member first offered or sold the private placement and allow the filing member to indicate that sales have yet to commence. The Offering Information section will no longer include the requirements to provide the aggregate amount of non-commission compensation and the offering's conclusion date. This section also will no longer include the questions asking whether the firm used a term sheet, whether the issuer has any independently audited financial statements, and whether the issuer's directors are independent. In addition, the Offering Information section will clarify that the requirement to provide the stated or target rate of return is relevant only if an offering document states that the investment will provide an actual or target rate of return to investors. Finally, this section also will clarify the question regarding general solicitation only seeks information regarding whether the filing member or the issuer has, in fact, engaged in general solicitation in connection with the private placement at or before the time of filing.

Endnotes

1. See Securities Exchange Act Release No. 80321 (March 28, 2017); 82 FR 16245 (April 3, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2017-008).
2. Rule 5123(a) requires broker-dealers to "provide FINRA with the required documents or notification and related information, if known, by filing an electronic form in a manner prescribed by FINRA."
3. If a firm sells a private placement without using an offering document, the firm must state that fact.

Attachment A

5122 / 5123 Notification Filing

All fields are mandatory unless noted.

Identify Rule

Filing Under: Rule 5122 Rule 5123

Participating Member Information

Firm Name: CRD:
 Contact Name: Phone:
 Relationship to Issuer or Sponsor: Affiliate Non-Affiliate
 Is your Firm the exclusive selling agent in the offering? Yes No Unknown

Identify any other participating members:

Firm Name	Firm CRD	Relationship to Issuer or Sponsor
<div style="border: 1px solid #ccc; padding: 5px;"> <p>Add Participating Member</p> <p>Firm Name: <input type="text"/></p> <p>Firm CRD: <input type="text"/></p> <p>Relationship to Issuer or Sponsor: <input type="radio"/> Affiliate <input type="radio"/> Non-Affiliate <input type="radio"/> Unknown</p> <p style="text-align: right;"><input type="button" value="Add Row"/> <input type="button" value="Close"/></p> </div>		
0 Row(s)		

Issuer Information

Issuer Name:
 Is the Issuer a reporting company? Yes No Unknown
 Issuer's Industry:
 Street: City: State:
 Postal Code: Country: Phone:

Please provide the issuer CIK Number No CIK
(when applicable):

Offering Information (Please complete based on the information contained in the offering document or if otherwise known by the firm.)

Maximum Amount to be Raised (in \$): Unknown

Offering Commencement Date: Unknown

Type of security offered? Debt Equity Unknown

Maximum Sales Commission (% rate): Unknown

Minimum investment amount accepted from an investor (in \$): Unknown

Can the issuer waive the minimum investment amount? Yes No Unknown

Do(es) the offering document(s) state that the investment will provide an actual or target rate of return for the investor? Yes No Unknown

What exemption(s) from the Securities Act of 1933 is the issuer relying upon?

- Rule 504
- Rule 505
- Rule 506(b)
- Rule 506(c)
- Section 4(a)(2) of the Securities Act of 1933
- Unknown

Is the Form D filing information available? Yes No Not Applicable

Did your firm use any offering documents in connection with any sales in the offering? Yes No

Date on which the member firm first sold Rule 5123 private placement Unknown

If sales have yet to commence, then please check here:

Did your firm sell or will it sell this offering to any non-accredited investors?

 Yes No Unknown

Has the issuer raised capital within the preceding 12 months from any source (excluding loans or investments by affiliates)?

 Yes No Unknown

Is this a contingency offering?

 Yes No Unknown

If yes, has the contingency been met at this time?

 Yes No Unknown

Is the issuer able to use offering proceeds to make or repay loans to, or purchase assets from, any officer, director or executive management of the issuer, sponsor, general partner, manager, advisor or any of the issuer's affiliates?

 Yes No Unknown

Has the issuer, any officer, director or executive management of the issuer, sponsor, general partner, manager, advisor, or any of the issuer's affiliates been the subject of SEC, FINRA, or state disciplinary actions or proceedings or criminal complaints within the last 10 years?

 Yes No Unknown

Has the firm or the issuer engaged in a general solicitation in connection with the offering?

 Yes No Unknown

Please enter any additional information you would like to provide to facilitate FINRA's review (optional):

You have 3500 character(s) left.

Save

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