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. 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. 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. If more than one firm is selling, a firm can make the required filing on behalf of the others.
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


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

Add Participating Member

Add New  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: UNITED STATES  Phone:
Please provide the issuer CIK Number (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 $):

Offering Commencement Date:

Type of security offered?  
  ○ Debt  ○ Equity  ○ Unknown

Maximum Sales Commission (% rate):

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

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  Print Preview  Submit