

Guidance for Private Placements

2023

The following is a guide to assist applicants as they prepare and submit information and documentation for FINRA Form New Member Application (NMA) or Form Continuing Member Application (CMA) regarding new private placement business. This checklist is designed to help applicants provide basic information FINRA staff may ask them to submit in order to begin a meaningful review and to aid the applicant in understanding the information and documentation needed as part of the application process.

However, the specific information and documentation staff may request will be based on facts and circumstances presented in each filing. Firms should review FINRA Rule [1014](#) (Department Decision) and our [Standards of Admission](#) for guidance and information regarding FINRA's membership requirements.

1

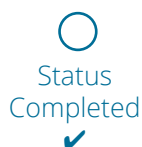
STANDARD 1: COMPLETE AND ACCURATE APPLICATION



- Provide a description of your firm's business plan for this activity, including, but not limited to:
 - Your firm's role (e.g., placement agent or structuring deals);
 - Type of offerings (e.g., Regulation D, Regulation A/A+);
 - The range of size of the offerings;
 - Type of entities or issuers (e.g., private and/or public companies).
 - Type of industry/sector for the entities or issuers;
 - Type of investors (e.g., retail, accredited, institutional) and how your firm fulfills related obligations, such as those relating to Regulation Best Interest for retail investors; and
 - Flow chart(s) that outlines each step of a typical transaction from start to finish.
- If your firm will be involved in (1) crowdfunding offerings, (2) affiliate-related offerings or (3) retail offerings that are required to be submitted pursuant to FINRA Rules [5122](#) (Private Placements of Securities Issued by Members) and [5123](#) (Private Placements of Securities), provide:
 - If the offerings contain contingencies, a description of your firm's contingency process and intermediaries to be utilized. If applicable, discuss escrow arrangements and related compliance obligations under Securities Exchange Act of 1934 (Exchange Act) Rule 15c2-4.
 - Books and records that your firm will be utilizing and maintaining in conducting the private placement business activity, including your firm's recordkeeping vendors and whether your firm will be using hard copy or electronic retention.

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STANDARD 2: LICENSES AND REGISTRATIONS REQUIRED BY STATE AND FEDERAL AUTHORITIES AND SELF-REGULATORY ORGANIZATIONS



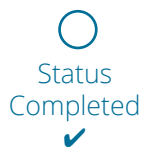
- Identify your firm's supervisors and their qualifications, including all securities licenses. Provide evidence to demonstrate that the supervisors have 1 year direct or 2 years related experience supervision for the proposed business lines.
- Identify if any such supervisors will be taking any qualification [examinations](#) and the timeline for when staff will complete such examinations (if applicable, note open testing windows for relevant staff).
- If your firm seeks approval to structure private placements, note that a [Series 79](#) is required.

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STANDARD 3: APPLICANT'S CAPABILITY TO COMPLY WITH INDUSTRY RULES, REGULATIONS AND LAWS

- Provide information regarding adjudicated and pending disciplinary and regulatory actions (including adjudicated and pending FINRA and other federal and state Enforcement actions).
- FINRA reminds firms that staff will closely review:
 - Adjudicated and pending disciplinary and regulatory actions (including pending FINRA Enforcement actions), some of which may trigger the presumption to deny the application;
 - Pending and unpaid arbitrations for associated person(s) of your firm;
 - How your firm will pay for any pending and unpaid award (e.g., escrow agreement) and documentation supporting that funds are available to cover these costs.

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STANDARD 4: CONTRACTUAL OR OTHER ARRANGEMENTS AND BUSINESS RELATIONSHIPS

- For Form NMA, provide final or drafts of:
 - Your firm's business continuity plan;
 - Fidelity bond;
 - Auditor engagement letter;
 - Expense sharing agreement (if applicable); and
 - Third-party vendor agreements.
- For Form CMA, provide:
 - Updated business continuity plan addressing the new business activity; and
 - Any new third-party vendor agreements regarding the new business activity.

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STANDARD 6: ADEQUACY OF COMMUNICATIONS AND OPERATIONAL SYSTEMS¹

- Prepare "demo" ready platform of your communication and operational systems by the time of filing. During the membership interview, or during a separate meeting, your firm should expect to demonstrate:
 - Functionality and purpose of the platform;
 - Onboarding of customers;
 - Flow of a typical transaction from start to finish, including execution, clearance and settlement;
 - Trade reporting, if applicable;
 - Risk management controls and supervisory systems; and
 - Surveillance and reporting functionality.

1. Please note that we are not covering Standard 5 in this Checklist. FINRA reminds applicants that they be required to provide the materials requested in Standard 5.

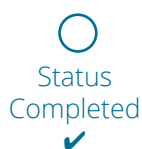
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STANDARD 7: DETERMINING THE ADEQUACY OF AN APPLICANT'S CAPITAL²

- Provide your firm's minimum net capital requirement pursuant to Exchange Act Rule 15c3-1 and the supporting rationale for your firm's net capital requirement.
- Provide your firm's operation status pursuant to customer protection Exchange Act Rule 15c3-3. If your firm will be operating pursuant an exemption, such as Footnote 74, provide the supporting rationale for your firm's exemptive status from net capital requirements.
- Provide pro forma financial statements:
 - If your firm is filing Form NMA:
 - Pro forma financial statements listing fixed v. variable expenses for first 12 months;
 - Evidence that your firm's bank account has been established (*e.g.*, copy of most recent bank statement);
 - If your firm received funding, evidence of such funding covering month of withdrawal of funds from source account(s) and three previous months., (*e.g.*, bank account statements, copies of checks (front and back) and wire advances); and
 - If your firm did not receive funding, provide most recent bank statements on behalf of source account evidencing that there is sufficient financial wherewithal to provide funding to meet 12 months of your firm's fixed expenses, plus 120% of net capital.
 - If your firm is filing Form CMA:
 - Pro forma financial statements indicating 1-month projected revenue from your firm's business activity and any new expenses your firm expects (*e.g.*, new vendor agreements to be signed or new equipment to be purchased); and
 - Evidence (such as bank statements) of financial capacity to fund new business activity and meet net capital requirements.

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STANDARD 9: CONTROL MECHANISMS CONSISTENT WITH INDUSTRY PRACTICES



- Written Supervisory Procedures (WSPs) related to proposed private placement business (as well as any other new business the firm is proposing), including, but not limited to:
 - Your firm's overall supervisory controls;
 - FINRA's private placement rules, including FINRA Rules [5122](#) (Private Placements of Securities Issued by Members) and [5123](#) (Private Placements of Securities);
 - Regulation Best Interest (Reg BI) and Form CRS requirements, as well as obligations under FINRA Rule [2111](#) (Suitability), if applicable;
 - Scope and approach to due diligence review;
 - Compensation and payments, including Exchange Act Rule 15c2-4;
 - Books and records maintenance and retention; and
 - Review, approval and filing (if applicable under FINRA Rule [2210](#) (Communications with the Public), of communications used to market the offering.
- Confirm that all WSPs clearly state:
 - Who – Identify the principal or supervisor responsible for conducting the subject procedure;
 - What – Provide a description of the specific procedure that is to be conducted by the principal or supervisor;
 - When – State when or how often the specific procedure is to be conducted; and
 - How Evidenced – Address how your firm will evidence the fact that the procedure has been conducted.

2. Please note that we are not covering Standard 8 in this Checklist. FINRA reminds applicants that they be required to provide the materials requested in Standard 8.

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STANDARD 10: ADEQUATE SUPERVISORY SYSTEM³

- Provide information relating to the experience of the proposed supervisors for your firm to demonstrate an adequate supervisory system for private placement business, including:
 - Providing their resume and or biographies describing direct or related experience with private placements;
 - Identifying any dually registered individuals and including time allotment to describe how much time these individuals will devote to the applicant versus other responsibilities; and
 - If applicable, procedures regarding OBAs and PSTs, including those describing the manner in which OBAs and PSTs are to be reported to the firm and how the firm will assess them in accordance with FINRA Rules [3270](#) (Outside Business Activities of Registered Persons) and [3280](#) (Private Securities Transactions of an Associated Person).

FINRA Compliance Tool Disclaimer

This optional tool is provided to assist member firms in fulfilling their regulatory obligations. This tool is provided as a starting point and you must tailor this tool to reflect the size and needs of your firm. Using this tool does not guarantee compliance with or create any safe harbor with respect to FINRA rules, the federal securities laws or state laws, or other applicable federal or state regulatory requirements. This tool does not create any new legal or regulatory obligations for firms or other entities.

Updates – This tool was last updated on April 7, 2023. This tool does not reflect any regulatory changes since that date. FINRA periodically reviews and updates these tools. FINRA reminds member firms to stay apprised of new or amended laws, rules and regulations, and update their WSPs and compliance programs on an ongoing basis.

Additional Guidance – Member firms seeking additional guidance on certain regulatory obligations should review the [Broker-Dealer Registration Topic Page](#), [Private Placements Topic Page](#) and other relevant FINRA [Topic Pages](#). Applicants are also encouraged to avail themselves of MAP's pre-filing meeting process by contacting MAP at membership@finra.org or 212-858-4000 – Option 5 – Membership Applications.

Staff Contact(s) – FINRA's Office of General Counsel (OGC) staff provides broker-dealers, attorneys, registered representatives, investors and other interested parties with interpretative guidance relating to FINRA's rules. Please see [Interpreting the Rules](#) for more information.

OGC staff contacts:

[Paul Mathews](#), [Minh Le](#) and [Jim Wrona](#)
1735 K Street, NW
Washington, DC 20006
(202) 728-8000

MAP staff contacts:

[Jante Turner](#)
(202) 728-8317

[MAP Intake](#)
membership@finra.org
(212) 858-4000 (Option 5 – Membership Applications)

3. This checklist does not address Standards 11-14. FINRA may require your firm to provide materials to address Standards 11-14.