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5110. Corporate Financing Rule — Underwriting Terms and Arrangements

(a) Requirements for Public Offerings

(1) General

(A) No member or person associated with a member shall participate in a public offering in which the terms and conditions relating thereto, including the aggregate amount of underwriting compensation, are unfair or unreasonable pursuant to this Rule or inconsistent with any By-Law or any rule or regulation of FINRA.

(B) Any member acting as a managing underwriter or in a similar capacity must notify the other members participating in the public offering if informed of an opinion by FINRA that the underwriting terms and arrangements are unfair and unreasonable and the proposed terms and arrangements have not been appropriately modified.

(C) No member may engage in the distribution or sale of securities in any public offeringrequired to be filed by this Rule, Rule 2310 or Rule 5121 unless:

(i) documents and information specified in paragraph (a)(4) have been filed with FINRA; and

(ii) FINRA has provided an opinion that it has no objection to the proposed underwriting terms and arrangements.

(2) Offerings Required to be Filed

All public offerings in which a member participates must be filed with FINRA for review, except as exempted from the filing requirement under paragraph (h).

(3) Timely Filing Requirements

(A) A member that participates in a public offering that is required to be filed under paragraph (a)(2) must file the documents and information specified in paragraph (a)(4):

(i) no later than three business days after any documents are filed with or submitted to:

a. the SEC, including confidential filings or submissions; or

b. any state securities commission or other similar U.S. regulatory authority; or

(ii) if not filed with or submitted to any such regulatory authority, at least 15 business days prior to the commencement of sales.

(B) A member that participates in a public offering is not required to make a filing if the filing has been made by a member that is responsible for managing the offering or by another member that is in the syndicate or selling group.

(4) Documents and Information Required to be Filed

(A) The following documents required to be filed under paragraph (a) must be filed in FINRA's Public Offering System for review by providing the SEC document identification number if available:

(i) the registration statement, offering circular, offering memorandum, notification of filing, notice of intention, application for conversion, and any other document used to offer securities to the public;

(ii) all documents relevant to the underwriting terms and arrangements, including any proposed underwriting agreement, agreement among underwriters, selected dealer's agreement, agency agreement, purchase agreement, letter of intent, engagement letter, consulting agreement, partnership agreement, underwriter's warrant agreement, or escrow agreement, provided that industry-standard master forms of agreement need not be filed unless otherwise specifically requested by FINRA;

(iii) if amendments to any documents previously filed contain changes that impact the underwriting terms and arrangements for the public offering, marked pages showing the changes to such document;

(iv) the final registration statement declared effective by the SEC, or the equivalent final offering document, the notice of effectiveness issued by the SEC or any other U.S. regulatory authority, the executed form of the final distribution-related documents and any other document submitted to FINRA for review, each if applicable; and

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(v) all requests for withdrawal filed with or submitted to the SEC or any other U.S. regulatory authority, including any correspondence submitted to the SEC for the withdrawal of confidential filings or submissions.

(B) Any member filing documents with FINRA pursuant to paragraph (a)(4)(A) must file the following information with respect to the offering in FINRA's Public Offering System:

(i) an estimate of the maximum public offering price;

(ii) an estimate of the maximum value for each item of underwriting compensation;

(iii) a representation as to whether any officer or director of the issuer and any beneficial owner of 10% or more of any class of the issuer's equity and equity-linked securities is an associated person or affiliate of a participating member;

(iv) a description of any securities of the issuer acquired and beneficially owned by any participating member during the review period, provided that:

a. non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction related to the public offering must be filed and also accompanied by a representation that a registered principal or senior manager of the participating member has determined if the transaction was or will be entered into at a fair price;

b. non-convertible or non-exchangeable debt securities and derivative instruments need not be filed if acquired in a transaction that is unrelated to the public offering; and

c. securities if acquired in accordance with Supplementary Material .01(b) need not be filed.

(v) if applicable, a representation of compliance with all of the criteria for any exception from underwriting compensation provided in paragraph (d); and

(vi) a detailed explanation and all documents related to the modification of any information or representation previously provided to FINRA during the review period, whether or not FINRA has issued a no objections opinion.

(C) In the event an offering filed pursuant to this Rule is not completed according to the terms of an agreement entered into by the issuer and a participating member, any member receiving underwriting compensation must provide written notification to FINRA of all underwriting compensation received or to be received pursuant to paragraph (g)(5), including a copy of any agreement governing the arrangement.

(D) FINRA will provide confidential treatment to all documents and information filed pursuant to this Rule and use such documents and information solely for regulatory purposes.

(E) Notwithstanding paragraph (a)(4)(A) and (B), with respect to a shelf offering, the following documents and information must be filed in FINRA's Public Offering System for review:

(i) the registration statement number; and

(ii) if requested by FINRA, other documents and information set forth in paragraph (a)(4)(A) and (B).

(b) Disclosure Requirements for Underwriting Compensation

(1) A description of each item of underwriting compensation received or to be received by a participating member must be disclosed in the section on distribution arrangements in the prospectus or similar document.

(2) Any underwriting compensation consisting of a commission or discount to the public offering price must be disclosed on the cover page of the prospectus or similar document. If the underwriting compensation includes items of compensation in addition to the commission or discount disclosed on the cover page of the prospectus or similar document, a footnote to the offering proceeds table on the cover page of the prospectus or similar document shall include a cross-reference to the section on distribution arrangements.

(c) Valuation of Underwriting Compensation

(1) Limitation on Securities Received Upon Exercise or Conversion of Another Security

A participating member may not receive a security (including securities in a unit), a warrant for a security, or a security convertible into another security as underwriting compensation in connection with a public offering unless:

(A) the security received or the security underlying the warrant or convertible security received is identical to the security offered to the public or to a security with a bona fide public market; or

(B) the security can be accurately valued, as required by paragraph (g)(1) of this Rule.

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(2) Valuation of Non-Convertible Securities

Non-convertible securities received as underwriting compensation will have a compensation value based on:

(A) the difference between:

(i) either the market price per security on the date of acquisition, or, if no bona fide public market exists for the security, the public offering price per security; and

(ii) the per security cost;

(B) multiplied by the number of securities received or to be received as underwriting compensation;

(C) divided by the offering proceeds; and

(D) multiplied by one hundred.

(3) Valuation of Convertible Securities

Options, warrants or convertible securities ("warrants") shall have a compensation value based on the following formula:

(A) the public offering price per security multiplied by .65;

(B) minus the resultant of the exercise or conversion price per warrant less either:

(i) the market price per security on the date of acquisition, where a bona fide public market exists for the security; or

(ii) the public offering price per security;

(C) divided by two;

(D) multiplied by the number of securities underlying the warrants;

(E) less the total price paid for the warrants;

(F) divided by the offering proceeds; and

(G) multiplied by one hundred;

(H) provided, however, that, notwithstanding paragraph (c)(4) of this Rule, such warrants shall have a compensation value of at least .2% of the offering proceeds for each amount of securities that is up to 1% of the securities being offered to the public (excluding securities subject to an overallotment option).

(4) Reduction in Valuation

If a participating member wishes to reduce the proposed maximum value of any securities received as underwriting compensation, it may do so by voluntarily agreeing to lock-up such securities for successive 180-day periods (in addition to the initial lock-up period required by paragraph (e) of this Rule if applicable). Each additional 180-day period will reduce the proposed maximum value attributable to such securities by 10%.

(5) Valuation of Securities Acquired in Connection with a Fair Price Non-Convertible or Non-Exchangeable Debt or Derivative Instrument

Any non-convertible or non-exchangeable debt or derivative instrument acquired or entered into at a "fair price" as defined in Supplementary Material .06(b) and underwriting compensation received in or receivable in the settlement, exercise or other terms of such non-convertible or non-exchangeable debt or derivative instrument shall not have a compensation value for purposes of determining underwriting compensation. If the actual price for the non-convertible or non-exchangeable debt or derivative instrument is not a fair price, compensation will be calculated pursuant to this paragraph (c) or based on the difference between the fair price and the actual price

(d) Securities Acquisitions Not Considered Underwriting Compensation

Securities acquired in transactions that meet the requirements of this paragraph (d) are excluded from underwriting compensation and not subject to the lock-up requirements of paragraph (e)(1), provided that the member does not condition its participation in the public offering on an acquisition of securities in a transaction that meets the requirements of this paragraph and any securities acquired are acquired at the same price and with the same terms as the securities purchased by all other investors.

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(1) Purchases and Loans by Certain Affiliates — Securities of the issuer purchased in a private placement or received as compensation in connection with the provision of a loan or credit facility before the required filing date of the public offering pursuant to paragraph (a) by a participating member's affiliate, if:

(A) the affiliate is a separate and distinct legal person from any member participating in the offering and is not registered as a broker-dealer;

(B) the investment or loan was made subject to the evaluation of individuals who have a contractual or fiduciary duty to select investments and loans based on the risks and rewards to the affiliate and not based on opportunities for the member participating in the offering to earn investment banking revenues;

(C) the affiliate does not receive investment banking fees paid to any participating member for underwriting public offerings;

(D) the affiliate, directly or through a subsidiary it controls, is primarily engaged in the business of making investments in or loans to other companies or is an entity that has been newly formed by such affiliate; and

(E) the affiliate either:

i. manages capital contributions or commitments of $100 million or more, at least $75 million of which has been contributed or committed by persons that are not participating members;

ii. manages capital contributions or commitments of $25 million or more, at least 75% of which has been contributed or committed by persons that are not participating members;

iii. is an insurance company as defined in Section 2(a)(13) of the Securities Act or is a foreign insurance company that has been granted an exemption under this Rule; or

iv. is a bank.

(2) Investments in and Loans to Certain Issuers — Securities of the issuer purchased in a private placement or received as compensation in connection with the provision of a loan or credit facility before the required filing date of the public offering pursuant to paragraph (a) by a participating member's affiliate if:

(A) the affiliate:

(i) manages capital contributions or commitments of at least $50 million;

(ii) is a separate and distinct legal person from any member participating in the offering and is not registered as a broker-dealer;

(iii) does not receive investment banking fees paid to any participating member for underwriting public offerings; and

(iv) directly or through a subsidiary it controls, is primarily engaged in the business of making investments in or loans to other companies or is an entity that has been newly formed by such affiliate;

(B) institutional investors beneficially own at least 33% of the issuer's total equity securities, calculated immediately prior to the transaction; and

(C) the transaction was approved by a majority of the issuer's board of directors (if the issuer has a board of directors) and a majority of any institutional investors, or the designees of institutional investors, that are board members.

(3) Private Placements with Institutional Investors — Securities of the issuer purchased in, or received as compensation for services provided in connection with, a private placement before the required filing date of the public offering pursuant to paragraph (a) if:

(A) institutional investors, none of whom is an affiliate of a member participating in the offering purchase at least 51% of the total number of securities sold in the private placement at the same time and on the same terms;

(B) an institutional investor was the lead negotiator or, if the terms were not negotiated, was the lead investor with the issuer to establish or approve the terms of the private placement; and

(C) the participating members did not, in the aggregate, purchase or receive as compensation more than 40% of the "total number of securities sold in the private placement" (excluding purchases by any affiliate qualified under paragraph (d)(1)).

(4) Co-Investments with Certain Regulated Entities — Securities of the issuer acquired in a private placement before the required filing date of the public offering pursuant to paragraph (a) by a participating member if at least 15% of the total number of securities sold in the private placement were acquired, at the same time and on the same terms, by one or more entities that is an open-end investment company not traded on an exchange, and no such entity is an affiliate of a FINRA member participating in the offering.

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(e) Lock-Up Restriction on Securities

(1) Lock-Up Restriction

(A) Any underwriting compensation consisting of securities must not be 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 for a period of 180 days beginning on the date of commencement of sales of the public equity offering, except as provided in paragraph (e)(2).

(B) The lock-up restriction must be disclosed in the section on distribution arrangements in the prospectus or similar document.

(2) Exceptions to Lock-Up Restriction

Notwithstanding paragraph (e)(1):

(A) the lock-up restriction will not apply:

(i) if the security is required to be transferred by operation of law or by reason of reorganization of the issuer;

(ii) if the aggregate amount of securities of the issuer beneficially owned by a participating member does not exceed 1% of the securities being offered;

(iii) to a security of an issuer that meets the registration requirements of SEC Registration Forms S-3, F-3 or F-10;

(iv) to a non-convertible or non-exchangeable debt security acquired in a transaction related to the public offering;

(v) to a derivative instrument acquired in connection with a hedging transaction related to the public offering and at a fair price;

(vi) if the security was acquired in a transaction that met the requirements of paragraph (d);

(vii) if the security is beneficially owned on a pro-rata basis by all equity owners of an investment fund, provided that no participating member manages or otherwise directs investments by the fund, and participating members in the aggregate do not own more than 10% of the equity in the fund;

(viii) if the security was received as underwriting compensation, and is registered and sold as part of a firm commitment offering; or

(ix) to a security that is “actively-traded” (as defined in Rule 101(c)(1) of SEC Regulation M).

(B) the following will not be prohibited:

(i) the transfer of any security to any member participating in the offering and its officers or partners, its registered persons or affiliates, if all transferred securities remain subject to the lock-up restriction in paragraph (e)(1) for the remainder of the 180-day lock-up period;

(ii) the exercise or conversion of any security, if all securities received remain subject to the lock-up restriction in paragraph (e)(1) for the remainder of the 180-day lock-up period; or

(iii) the transfer or sale of the security back to the issuer in a transaction exempt from registration with the SEC.

(f) Non-Cash Compensation

(1) Definitions

The terms "compensation," "non-cash compensation" and "offeror" as used in this paragraph (f) shall have the following meanings:

(A) “Compensation” shall mean cash compensation and non-cash compensation.

(B) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of securities that is not cash compensation, including, but not limited to, merchandise, gifts and prizes, travel expenses, meals and lodging.

(C) "Offeror" shall mean an issuer, an adviser to an issuer, an underwriter and any affiliated person of such entities.

(2) Restrictions on Non-Cash Compensation

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In connection with the sale and distribution of a public offering of securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided below. Non-cash compensation arrangements must be consistent with the applicable requirements of SEA Rule 15l-1 ("Regulation Best Interest") and are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors[1] and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by paragraph (f)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which shall mean an office of the issuer or affiliate thereof, the office of the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(iv) the payment or reimbursement by the issuer or affiliate of the issuer is not conditioned by the issuer or an affiliate of the issuer on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (f)(2)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a company that controls a member company and the member's associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (f)(2)(D).

A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by paragraphs (f)(2)(C) through (E). The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with paragraphs (f)(2)(C) through (E).

(g) Unreasonable Terms and Arrangements

Without limiting the requirements of paragraph (a)(1)(A), the following terms and arrangements are prohibited:

(1) receipt of any underwriting compensation, including in the form of securities, for which a value cannot be determined;

(2) any accountable expense allowance that includes payment for general overhead, salaries, supplies, or similar expenses incurred in the normal conduct of business;

(3) any non-accountable expense allowance in excess of 3% of offering proceeds;

(4) any underwriting compensation paid prior to the commencement of sales of the public offering, except:

(A) an advance against accountable expenses actually anticipated to be incurred, which must be reimbursed to the issuer to the extent not actually incurred; or

(B) advisory or consulting fees for services provided in connection with the offering that subsequently is completed according to the terms of an agreement entered into by an issuer and a participating member;

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(5) any underwriting compensation in connection with a public offering that is not completed according to the terms of an agreement entered into by an issuer and a participating member, except

(A) the reimbursement of accountable expenses actually incurred by the participating member; and

(B) a termination fee or a right of first refusal, as set forth in a written agreement entered into by an issuer and a participating member, provided that:

(i) the agreement specifies that the issuer has a right of "termination for cause," which shall include the participating member's material failure to provide the underwriting services contemplated in the written agreement;

(ii) an issuer's exercise of its right of "termination for cause" eliminates any obligations with respect to the payment of any termination fee or provision of any right of first refusal;

(iii) the amount of any termination fee must be reasonable in relation to the underwriting services contemplated in the agreement and any fees arising from underwriting services provided under a right of first refusal must be customary for those types of services; and

(iv) the issuer shall not be responsible for paying the termination fee unless an offering or other type of transaction (as set forth in the agreement) is consummated within two years of the date the engagement is terminated by the issuer;

(6) any right of first refusal to participate in the distribution of a future public offering, private placement or other financing that:

(A) has a duration of more than three years from the commencement of sales of the public offering or the termination date of the engagement between the issuer and member; or

(B) has more than one opportunity to waive or terminate the right of first refusal in consideration of any payment or fee;

(7) any payment or fee to waive or terminate a right of first refusal to participate in a future public offering, private placement or other financing that is not paid in cash;

(8) the receipt of underwriting compensation consisting of any option, warrant or convertible security that:

(A) is exercisable or convertible more than five years from the commencement of sales of the public offering;

(B) has more than one demand registration right at the issuer's expense;

(C) has a demand registration right with a duration of more than five years from the commencement of sales of the public offering;

(D) has a piggyback registration right with a duration of more than seven years from the commencement of sales of the public offering;

(E) has anti-dilution terms that allow the participating members to receive more shares or to exercise at a lower price than originally agreed upon at the time of the public offering, when the public shareholders have not been proportionally affected by a stock split, stock dividend, or other similar event; or

(F) has anti-dilution terms that allow the participating members to receive or accrue cash dividends prior to the exercise or conversion of the security;

(9) when proposed in connection with the distribution of a public offering of securities on a “firm commitment” basis, any overallotment option providing for the overallotment of more than 15% of the amount of securities being offered, computed excluding any securities offered pursuant to the overallotment option;

(10) the receipt by a participating member of any compensation in connection with the exercise or conversion of any warrant, option, or convertible security offered in the public offering if:

(A) the market price of the security into which the warrant, option, or convertible security is exercisable or convertible is lower than the exercise or conversion price;

(B) the warrant, option, or convertible security is held in a discretionary account at the time of exercise or conversion, except where prior specific written approval for exercise or conversion is received from the customer;

(C) the compensation arrangements are not disclosed in the offering documents provided to security holders at the time of exercise or conversion;

(D) the exercise or conversion is not solicited by the participating members; and

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(11) for a member to participate with an issuer in the public offering of securities if the issuer hires persons primarily for the purpose of solicitation, marketing, distribution or sales of the offering, except in compliance with Section 15(a) of the Exchange Act or SEA Rule 3a4-1 and applicable state law.

(h) Exemptions

(1) Offerings Exempt from Filing

Documents and information related to the following public offerings need not be filed with FINRA for review, unless subject to the provisions of Rule 5121(a)(2), provided that the following public offerings must comply with this Rule and, if applicable, Rules 2310 and 5121:

(A) securities offered by a bank, foreign bank, corporate issuer, foreign government or foreign government agency that has outstanding unsecured non-convertible debt with a term of issue of at least four years or unsecured non-convertible preferred securities that are investment grade rated, as defined in Rule 5121(f)(8), or are outstanding securities in the same series that have equal rights and obligations as investment grade rated securities, provided that an initial public offering of equity is required to be filed;

(B) investment grade rated non-convertible debt securities and non-convertible preferred securities;

(C) offerings of securities registered with the SEC on registration statement Forms S-3, F-3, or F-10, provided that the registrant is an experienced issuer;

(D) investment grade rated financing instrument-backed securities;

(E) exchange offers where:

(i) the securities to be issued or the securities of the company being acquired are listed, or convertible into securities that are listed, on a national securities exchange as defined in Section 6 of the Exchange Act; or

(ii) the company issuing securities qualifies to register securities with the SEC on registration statement Forms S-3, F-3, or F-10 and is an experienced issuer;

(F) public offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act; and

(G) offerings of securities issued by a pooled investment vehicle, whether formed as a trust, partnership, corporation, limited liability company or other collective investment vehicle, that is not registered as an investment company under the Investment Company Act and has a class of equity securities listed for trading on a national securities exchange and that may be created or redeemed on any business day at their net asset value per share.

(2) Offerings Not Subject to Filing and Rule Compliance

The following offerings are not subject to this Rule, Rule 2310 and Rule 5121 including not being required to file documents and information for review:

(A) securities of "open-end" investment companies as defined in Section 5(a)(1) of the Investment Company Act;

(B) securities of any "closed-end" investment company as defined in Section 5(a)(2) of the Investment Company Act that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the Investment Company Act and offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) of SEC Regulation C;

(C) variable contracts as defined in Rule 2320(b)(2);

(D) modified guaranteed annuity contracts and modified guaranteed life insurance policies, which are deferred annuity contracts or life insurance policies the value of which are guaranteed if held for specified periods, and the nonforfeiture value of which are based upon a market-value adjustment formula for withdrawals made before the end of any specified period;

(E) insurance contracts not otherwise included in paragraph (h)(2)(C) and (D);

(F) municipal securities as defined in Section 3(a)(29) of the Exchange Act;

(G) tender offers made pursuant to SEC Regulation 14D or Rule 13e-4 under the Exchange Act;

(H) securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Utility Holding Company Act;

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(I) securities of a subsidiary or other affiliate distributed by a company in a spin-off or reverse spin-off or similar transaction to its existing security holders exclusively as a dividend or other distribution;

(J) securities registered with the SEC in connection with a merger or acquisition transaction or other similar business combination, except for any exchange offer, merger and acquisition transaction, or other similar corporate reorganization involving an issuance of securities that results in the direct or indirect public ownership of the member;

(K) securities of a unit investment trust as defined in Section 4(2) of the Investment Company Act; and

(L) offerings of securities by a "closed-end" investment company as defined in Section 5(a)(2) of the Investment Company Act that is operated as a tender offer fund, provided that the fund:

(i) makes continuous offerings pursuant to Securities Act Rule 415;

(ii) prices its securities at least quarterly;

(iii) limits the total amount of compensation paid to participating members to the amount permitted by the sales charge limitations of Rule 2341, in which case the underwriting compensation provisions of Rule 5110 will not apply;

(iv) makes at least two repurchase offers per calendar year for its securities pursuant to SEA Rule 13e-4 and Schedule TO under the Exchange Act; and

(v) does not list its securities on a national securities exchange.

(i) Requests for Rule 9600 Exemption from Rule 5110

Pursuant to the Rule 9600 Series, FINRA, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally grant an exemption from any provision of this Rule to the extent that such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(j) Definitions

The definitions in Rule 5121 are incorporated herein by reference. For purposes of this Rule, the following terms have the meanings stated below:

(1) Associated Person

The term "associated person" has the meaning defined in Article I, Section (rr) of the FINRA By-Laws.

(2) Bank

The term "bank" means a bank as defined in Section 3(a)(6) of the Exchange Act, a branch or agency in the United States of a foreign bank that is supervised and examined by a federal or state banking authority and otherwise meets the requirements of Section 3(a)(6) of the Exchange Act, or a foreign bank that has been granted an exemption under this Rule and shall refer only to the regulated entity, not its subsidiaries or other affiliates.

(3) Company

The term "company" means a corporation, a partnership, an association, a joint stock company, a trust, a fund, or an organized group of persons whether incorporated or not; including any receiver, trustee in bankruptcy or similar official, or liquidating agent of any of the foregoing.

(4) Compensation

The term "compensation" means cash compensation and non-cash compensation.

(5) Effective Date

The term "effective date" means the date on which an issue of securities becomes legally eligible for distribution to the public.

(6) Experienced Issuer

The term "experienced issuer" means an entity that has:

(A) a reporting history of 36 calendar months immediately preceding the filing of the registration statement; and

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(B) at least $150 million aggregate market value of voting stock held by non-affiliates; or alternatively the aggregate market value of the voting stock held by non-affiliates of the issuer is $100 million or more and the issuer has had an annual trading volume of such stock of three million shares or more.

(7) Equity-Linked Securities

The term "equity-linked securities" means any security that is convertible or exchangeable into an equity security.

(8) Immediate Family

The term "immediate family" means:

(A) the spouse or child of an associated person of a member; and

(B) any relative who either lives in the same household as, has a business relationship with, provides material support to, or receives material support from, an associated person of a member, including, but not limited to, a parent, sibling, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(9) Independent Financial Adviser

The term "independent financial adviser" means a member or a person affiliated or associated with a member that provides advisory or consulting services to the issuer and is neither engaged in, nor affiliated or associated with any entity that is engaged in, the solicitation or distribution of the offering.

(10) Institutional Investor

For the purposes of paragraph (d), the term "institutional investor" means any person that has an aggregate of at least $50 million invested in securities in its portfolio or under management, including investments held by its wholly owned subsidiaries; provided that no participating members manage the institutional investor's investments or have an equity interest in the institutional investor, either individually or in the aggregate, that exceeds 5% for a publicly owned entity or 1% for a nonpublic entity.

(11) Insurance Company

For the purposes of paragraph (d), the term "insurance company" refers only to the regulated entity, not its subsidiaries or other affiliates.

(12) Issuer

The term "issuer" means a registrant or other person that is offering its securities to the public, any selling security holder offering securities to the public, any affiliate of the registrant or such other person or selling security holder, and the officers or general partners, and directors thereof, but does not include a participating member unless the participating member is itself the registrant or a selling security holder offering its own beneficially held securities to the public.

(13) Offering Proceeds

The term "offering proceeds" means the proceeds of all the securities offered in the public offering by participating members, not including securities subject to an overallotment option, securities to be received by the participating members, or underlying securities.

(14) Overallotment Option

The term "overallotment option" means an option granted by the issuer to the participating members for the purpose of offering additional shares to the public in connection with the distribution of the public offering.

(15) Participating Member

The term "participating member" means any FINRA member that is participating in a public offering, any affiliate or associated person of the member, and any immediate family, but does not include the issuer.

(16) Participate, Participation or Participating

The terms "participate," "participation" or "participating" in a public offering means involvement in the preparation of the offering document or other documents, involvement in the distribution of the offering, furnishing of customer or broker lists for solicitation, or providing advisory or consulting services to the issuer related to the offering, but do not include:

(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; and

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

(17) Person

The term "person" means any natural person, partnership, corporation, company, association, or other legal entity.

(18) Public Offering

The term "public offering" means any primary or secondary offering of securities made in whole or in part in the United States pursuant to a registration statement, offering circular or similar offering document including exchange offers, rights offerings, and offerings of securities made pursuant to a merger or acquisition except for:

(A) securities exempt from registration with the SEC pursuant to the provisions of Sections 4(a)(1), 4(a)(2) or 4(a)(5) of the Securities Act;

(B) securities exempt from registration with the SEC pursuant to Rule 504 of SEC Regulation D if the securities are restricted securities under Securities Act Rule 144(a)(3) or Rule 506 of SEC Regulation D;

(C) securities exempt from registration with the SEC pursuant to Securities Act Rule 144A or SEC Regulation S; or

(D) securities which are defined as "exempted securities" in Section 3(a)(12) of the Exchange Act.

(19) Required Filing Date

(A) The term "required filing date" means the dates referenced in paragraph (a)(3); and

(B) For a public offering exempt from filing under paragraph (h), the term "required filing date" means the date the public offering would have been required to be filed with FINRA but for the exemption.

(20) Review Period

The term "review period" means:

(A) for a firm commitment offering, the 180-day period preceding the required filing date through the 60-day period following the effective date of the offering;

(B) for a best efforts offering, the 180-day period preceding the required filing date through the 60-day period following the final closing of the offering; and

(C) for a firm commitment or best efforts takedown or any other continuous offering made pursuant to Securities Act Rule 415, the 180-day period preceding the required filing date of the takedown or continuous offering through the 60-day period following the final closing of the takedown or continuous offering.

(21) Total Equity Securities

For the purposes of paragraph (d), the term "total equity securities" means the aggregate of the total shares of:

(A) common stock outstanding of the issuer; and

(B) common stock of the issuer underlying all convertible securities outstanding that convert without the payment of any additional consideration.

(22) Underwriting Compensation

The term "underwriting compensation" means any payment, right, interest, or benefit received or to be received by a participating member from any source for underwriting, allocation, distribution, advisory and other investment banking services in connection with a public offering. In addition, underwriting compensation shall include finder's fees, underwriter's counsel fees, and securities.

• • • Supplementary Material: ----------

.01 Underwriting Compensation

(a) The following are examples of payments or benefits that are considered underwriting compensation:

(1) discounts or commissions;

(2) fees and expenses paid or reimbursed to, or paid on behalf of, the participating members, including but not limited to road show fees and expenses and due diligence expenses;

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(3) fees and expenses of participating members' counsel paid or reimbursed to, or paid on behalf of, the participating members (except for reimbursement of "blue sky" fees);

(4) finder's fees paid or reimbursed to, or paid on behalf of, the participating members;

(5) wholesaling fees and expenses;

(6) financial consulting and advisory fees;

(7) common or preferred stock, options, warrants, and other equity securities, including debt securities convertible to or exchangeable for equity securities, beneficially owned, as defined in Rule 5121 by the participating members the value of which is determined pursuant to this Rule, and acquired during the review period, as defined in this Rule, except that any such securities purchased during the review period by a participating member in a public offering at the public offering price and on the same terms as all others purchasing in the public offering that are not participating members shall not be deemed underwriting compensation;

(8) sales incentive items;

(9) any right or rights of first refusal provided to any participating member to participate in future public offerings, private placements or other financings, the value of which will be 1% of the offering proceeds or a dollar amount contractually agreed to by the issuer and the participating member to waive the right of first refusal;

(10) compensation to be received by a participating member or by any person nominated by the participating member as an advisor to the issuer's board of directors in excess of that received by other members of the board of directors;

(11) any compensation to be received by the participating members as a result of the exercise or conversion of warrants, options, convertible securities, or similar securities distributed as part of the public offering within 12 months following the commencement of sales;

(12) fees of a qualified independent underwriter required by Rule 5121;

(13) any compensation paid to any participating member in connection with a prior proposed public offering that was not completed, if the member firm participates in the revised public offering, except that accountable expenses received pursuant to paragraph (g)(5)(A) shall not be deemed underwriting compensation; and

(14) non-cash compensation, such as gifts, training and education expenses, sales incentives, and business entertainment expenses.

(b) Participating members may receive payments from an issuer or another source during the review period that may be unrelated to a particular offering. Such payments generally would not be deemed to be underwriting compensation. The following list, while not comprehensive, provides examples of payments that are not deemed to be underwriting compensation:

(1) printing costs; SEC, "blue sky" and other registration fees; FINRA filing fees; fees of independent financial advisers; and accountant's fees, and other fees and expenses customarily borne by an issuer, whether or not paid by or through a participating member;

(2) cash compensation for providing services for a private placement or for providing or arranging for a loan, credit facility, or for services in connection with a merger or acquisition;

(3) records management and advisory fees and expenses in connection with the conversion of the issuer from a mutual holding company to a stock holding company;

(4) payment or reimbursement of legal costs resulting from a contractual breach or misrepresentation by the issuer;

(5) compensation for providing brokerage, trust and insurance services to the issuer that is received in the ordinary course of business;

(6) fees for commercial banking services, which does not require registration as a broker-dealer, provided to the issuer in the ordinary course of business;

(7) compensation for providing services in a prior or concurrent public offering separately filed or exempt from filing pursuant to this Rule;

(8) a right of first refusal that is provided to a participating member in connection with a prior financing if the right of first refusal does not extend beyond the initial closing of the public offering currently under review or if the right of first refusal has already been included as underwriting compensation in a prior or concurrent public offering;

(9) dividends paid to shareholders of a class of the issuer's securities when participating members are shareholders of that class;

(10) securities of the issuer pledged as collateral for a bona fide loan;

(11) listed securities purchased in public market transactions;

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(12) compensation received through any stock bonus, pension, employee benefit plan, or profit-sharing plan that qualifies under Section 401 of the Internal Revenue Code or a similar plan, including, but not limited to, an employee benefit plan as defined in Securities Act Rule 405 or a compensatory benefit plan or compensatory benefit contract exempt from registration pursuant to Securities Act Rule 701;

(13) securities acquired by an investment company registered under the Investment Company Act;

(14) securities acquired as the result of a conversion of securities that were originally acquired prior to the review period;

(15) securities acquired as the result of an exercise of options or warrants that were originally acquired prior to the review period;

(16) securities acquired as the result of a stock-split, a pro-rata rights or similar offering where the securities upon which the acquisition is based were acquired prior to the review period;

(17) securities acquired as the result of a right of preemption that was granted prior to the review period;

(18) securities acquired in order to prevent dilution of a long-standing interest in the issuer, if:

(A) the amount of securities does not increase a member's percentage ownership of the same generic class of securities of the issuer or of the class of securities underlying a convertible security calculated immediately prior to the investment; and

(B) an initial purchase of securities of the issuer was made at least two years preceding the required filing date and a second purchase was made before the review period;

(19) non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction that is unrelated to the public offering;

(20) securities acquired subsequent to the issuer's initial public offering in a transaction exempt from registration under Securities Act Rule 144A;

(21) securities acquired in the secondary market by a participating member that is a broker-dealer in connection with the performance of bona fide customer facilitation activities and bona fide market making activities; provided that securities acquired from the issuer will be considered "underwriting compensation" if the securities were not acquired at a fair price (taking into account, among other things customary commissions, mark-downs and other charges); and

(22) securities acquired pursuant to a governmental or court-approved proceeding or plan of reorganization as a result of action by the government or court (e.g., bankruptcy or tax court proceeding).

(c) Definitions

(1) The term "listed securities" means securities that are traded on the national securities exchanges identified in Securities Act Rule 146, on markets registered with the SEC under Section 6 of the Exchange Act, and on any "designated offshore securities market" as defined in Rule 902(b) of SEC Regulation S.

(2) The term "right of pre-emption" means the right of a shareholder to acquire additional securities in the same company in order to avoid dilution when additional securities are issued, pursuant to: (A) any option, shareholder agreement, or other contractual right entered into at the time of purchase of securities; (B) the terms of the securities purchased; (C) the issuer's charter or by-laws; or (D) the domestic law of a foreign jurisdiction that regulates the issuance of the securities.

.02 Venture Capital Transactions and Significantly Delayed Offerings. Notwithstanding paragraph (d), in the event that an offering is significantly delayed and the issuer needs funding pending consummation of the public offering, FINRA may exclude from underwriting compensation any securities acquired in a transaction that otherwise meets the requirements in paragraph (d), but occurs after the required filing date. To determine whether an acquisition of securities that occurs after the required filing date may be excluded from underwriting compensation, FINRA will consider the following factors, as well as any other relevant factors and circumstances:

(a) the length of time between the required filing of the registration statement or similar document and the date of the transaction in which securities were acquired;

(b) the length of time between the date of the transaction in which the securities were acquired and the anticipated commencement of the public offering; and

(c) the nature of the funding provided, including, but not limited to the issuer's need for funding before the public offering.

.03 Underwriting Compensation Securities Acquired Other than from the Issuer. Notwithstanding paragraph (j)(22), FINRA may exclude securities acquired from a third-party entity from underwriting compensation. To determine whether an acquisition of securities from a third-party entity may be excluded from underwriting compensation, FINRA will consider the following factors, as well as any other relevant factors and circumstances:

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(a) the nature of the relationship between the issuer and the third party, if any;

(b) the nature of the transactions in which the securities were acquired, including, but not limited to, whether the transactions are engaged in as part of the participating member's ordinary course of business; and

(c) any disparity between the price paid and the offering price or market price.

.04 Underwriting Compensation Resulting from Issuer Directed Sales Programs. Notwithstanding paragraph (j)(15) and (22), FINRA may exclude from underwriting compensation securities acquired by a participating member's associated persons or their immediate family pursuant to an issuer directed sales program. To determine whether an acquisition of securities by a participating member's associated persons or their immediate family pursuant to an issuer directed sales program may be excluded from underwriting compensation, FINRA will consider the following factors, as well as any other relevant factors and circumstances:

(a) the existence of a pre-existing relationship between the issuer and the person acquiring the securities;

(b) the nature of the relationship; and

(c) whether the securities were acquired on the same terms and at the same price as other similarly-situated persons participating in the directed sales program.

.05 Disclosure of Underwriting Compensation. A description of each item of underwriting compensation received or to be received by a participating member must be disclosed in the section on distribution arrangements in the prospectus (or other similar offering document). The description shall include the dollar amount ascribed to each individual item of compensation. When securities are acquired by a participating member, material terms and arrangements of the acquisition must also be disclosed in the section on distribution arrangements in the prospectus (or other similar offering document) when applicable, such as exercise terms, demand and piggyback registration rights and lock-up periods that may apply. Similarly, if underwriting compensation consists of a right of first refusal to participate in the distribution of a future public offering, private placement or other financing, the description should reference the existence of such right and its duration.

.06 Non-Convertible or Non-Exchangeable Debt Securities and Derivatives

(a) Non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction related to the public offering and at a fair price, will be considered underwriting compensation but will have no compensation value. Non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction related to the public offering but not at a fair price, will be considered underwriting compensation and subject to the normal valuation requirements of this Rule.

(b) The term "derivative instrument" means any "eligible OTC derivative instrument" as defined in SEA Rule 3b-13(a)(1), (2) and (3). The term "fair price" means the participating members have priced a derivative instrument or non-convertible or non-exchangeable debt security in good faith; on an arm's length, commercially reasonable basis, and in accordance with pricing methods and models and procedures used in the ordinary course of their business for pricing similar transactions. A derivative instrument or other security received as compensation for providing services for the issuer, for providing or arranging a loan, credit facility, merger, acquisition or any other service, including underwriting services will not be deemed to be entered into or acquired at a fair price.

.07 Venture Capital Transactions. The determination of whether a securities acquisition may be excluded from underwriting compensation pursuant to paragraph (d) is to be made at the time of the securities acquisition.

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[1] The current annual amount fixed by the Board of Governors is $100.

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Amended by SR-FINRA-2019-012. eff. Mar. 20, 2020 and Sept. 16, 2020.
Amended by SR-FINRA-2020-007 eff. June 30, 2020.
Amended by SR-FINRA-2014-006 eff. April 11, 2016.
Amended by SR-FINRA-2014-003 eff. May 28, 2014.
Amended by SR-FINRA-2014-004 eff. May 15, 2014.
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Amended by SR-FINRA-2010-047 eff. Oct. 15, 2010.
Amended by SR-FINRA-2009-062 eff. Oct. 19, 2009.
Amended by SR-FINRA-2007-009 eff. Sep. 14, 2009.
Amended by SR-FINRA-2009-046 eff. Aug. 17, 2009.
Amended by SR-FINRA-2008-057 eff. Dec. 15, 2008.
Amended by SR-FINRA-2008-039 eff. Dec. 15, 2008.
Amended by SR-NASD-2006-068 eff. July 1, 2006.
Amended by SR-NASD-2000-04 eff. March 22, 2004.
Amended by SR-NASD-2003-139 eff. Oct. 15, 2003.
Amended by SR-NASD-2003-75 eff. July 9, 2003.
Amended by SR-NASD-2003-68 eff. April 7, 2003.
Amended by SR-NASD-2001-46 eff. July 12, 2002.
Amended by SR-NASD-2000-13 eff. April 16, 2001.
Amended by SR-NASD-99-74 eff. June 20, 2000.
Amended by SR-NASD-99-02 eff. Dec. 7, 1999.
Amended by SR-NASD-99-01 eff. May 17, 1999.
Amended by SR-NASD-98-81 eff. Dec. 21, 1998.
Amended by SR-NASD-98-87 eff. Nov. 23, 1998.
Amended by SR-NASD-97-38 eff. Dec. 15, 1997.
Amended by SR-NASD-97-68 eff. Oct. 3, 1997.
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Amended by SR-NASD-97-18 eff. Mar. 14, 1997.
Amended by SR-NASD-97-15 eff. Mar. 4, 1997.
Amended by SR-NASD-95-29 eff. Jan. 1, 1996.
Amended by SR-NASD-95-18 eff. June 19, 1995.
Amended by SR-NASD-94-61 eff. Mar. 2, 1995.
Amended by SR-NASD-94-64 eff. Feb. 9, 1995.
Amended by SR-NASD-94-12 eff. Mar. 7, 1994.
Amended by SR-NASD-93-13 eff. Feb. 1, 1994.
Amended by SR-NASD-93-45 eff. Dec. 13, 1993.
Corporate Financing Rule adopted by SR-NASD-91-19 eff. Apr. 15, 1992.

Replaced *Interpretation of the Board of Governors — Review of Corporate Financing*, Art. III, Sec. 1 of the Rules of Fair Practice, which was amended eff. May 4, 1971; June 17, 1971; Mar. 19, 1982; amended by SR-NASD-83-27 eff. May 31, 1983; Aug. 4, 1983; July 13, 1984; Sept. 12, 1985; amended by SR-NASD-86-6 eff. Mar. 1, 1986; Oct. 14, 1988; amended by SR-NASD-88-13 eff. Jan. 1, 1989.

Selected Notices: 75-14, 76-27, 81-16, 81-17, 83-12, 83-15, 83-43, 83-44, 84-37, 85-6, 86-27, 88-32, 88-88, 88-92, 90-10, 92-28, 93-84, 93-88, 94-82, 95-22, 95-73, 95-95, 97-80, 98-88, 99-17, 99-50, 00-53, 02-26, 03-53, 04-13, 08-57, 09-49, 14-22, , .

‹ 5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION UP 5120. OFFERINGS OF MEMBERS' SECURITIES ›

VERSIONS

Sep 16, 2020 onwards

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5121. Public Offerings of Securities With Conflicts of Interest

(a) Requirements for Participation in Certain Public Offerings

No member that has a conflict of interest may participate in a public offering unless the offering complies with subparagraph (1) or (2).

(1) There must be prominent disclosure of the nature of the conflict of interest in the prospectus, offering circular or similar document for the public offering, and one of the following conditions must be met:

(A) the member(s) primarily responsible for managing the public offering does not have a conflict of interest, is not an affiliate of any member that does have a conflict of interest, and meets the requirement of paragraph (f)(12)(E);

(B) the securities offered have a bona fide public market; or

(C) the securities offered are investment grade rated or are securities in the same series that have equal rights and obligations as investment grade rated securities.

(2) (A) A qualified independent underwriter has participated in the preparation of the registration statement and the prospectus, offering circular, or similar document and has exercised the usual standards of "due diligence" in respect thereto; and

(B) there must be prominent disclosure in the prospectus, offering circular or similar document for the offering of:

(i) the nature of the conflict of interest;

(ii) the name of the member acting as qualified independent underwriter; and

(iii) a brief statement regarding the role and responsibilities of the qualified independent underwriter.

(b) Escrow of Proceeds; Net Capital Computation

(1) All proceeds from a public offering by a member of its securities shall be placed in a duly established escrow account and shall not be released therefrom or used by the member in any manner until the member has complied with subparagraph (2) hereof.

(2) Any member offering its securities pursuant to this Rule shall immediately notify FINRA when the public offering has been terminated and settlement effected and shall file with FINRA a computation of its net capital computed pursuant to the provisions of SEA Rule 15c3-1 (the net capital rule) as of the settlement date. If at such time its net capital ratio as so computed is more than 10:1 or, net capital fails to equal 120 percent of the minimum dollar amount required by Rule 15c3-1 or, in the event the member calculates its net capital requirement using the alternative standard (set forth in Rule 15c3-1(a)(1)(ii)), its net capital is less than seven percent of aggregate debit items as computed in accordance with Rule 15c3-3a, all monies received from sales of securities of the public offering must be returned in full to the purchasers thereof and the offering withdrawn, unless the member has obtained from the SEC a specific exemption from the net capital rule. Proceeds from the sales of securities in the public offering may be taken into consideration in computing net capital ratio for purposes of this paragraph.

(3) Any member offering its securities pursuant to this Rule shall disclose in the registration statement, offering circular or similar document a date by which the offering is reasonably expected to be completed and the terms upon which the proceeds will be released from the escrow account described in paragraph (b)(1).

(c) Discretionary Accounts

Notwithstanding NASD Rule 2510, no member that has a conflict of interest may sell to a discretionary account any security with respect to which the conflict exists, unless the member has received specific written approval of the transaction from the account holder and retains documentation of the approval in its records.

(d) Application of Rule 5110

Any public offering subject to paragraph (a)(2) is subject to Rule 5110, whether or not the offering would be otherwise exempted from the filing or other requirements of that rule.

(e) Requests for Exemption from Rule 5121

Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member unconditionally or on specified terms from any or all of the provisions of this Rule that it deems appropriate.

(f) Definitions

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The definitions in Rule 5110 are incorporated herein by reference. For purposes of this Rule, the following words shall have the stated meanings:

(1) Affiliate

The term "affiliate" means an entity that controls, is controlled by or is under common control with a member.

(2) Beneficial Ownership

The term "beneficial ownership" means the right to the economic benefits of a security.

(3) Bona Fide Public Market

The term "bona fide public market" means a market for a security of an issuer that has been reporting under the Exchange Act for at least 90 days and is current in its reporting requirements, and whose securities are traded on a national securities exchange with an Average Daily Trading Volume (as provided by SEC Regulation M) of at least $1 million, provided that the issuer's common equity securities have a public float value of at least $150 million.

(4) Common Equity

The term "common equity" means the total number of shares of common stock outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company.

(5) Conflict of Interest

The term "conflict of interest" means, if at the time of a member's participation in an entity's public offering, any of the following applies:

(A) the securities are to be issued by the member;

(B) the issuer controls, is controlled by or is under common control with the member or the member's associated persons;

(C) at least five percent of the net offering proceeds, not including underwriting compensation, are intended to be:

(i) used to reduce or retire the balance of a loan or credit facility extended by the member, its affiliates and its associated persons, in the aggregate; or

(ii) otherwise directed to the member, its affiliates and associated persons, in the aggregate; or

(D) as a result of the public offering and any transactions contemplated at the time of the public offering:

(i) the member will be an affiliate of the issuer;

(ii) the member will become publicly owned; or

(iii) the issuer will become a member or form a broker-dealer subsidiary.

(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 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

(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) Entity

For purposes of the definitions of affiliate, conflict of interest and control under this Rule, the term "entity":

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(A) includes a company, corporation, partnership, trust, sole proprietorship, association or organized group of persons; and

(B) excludes the following:

(i) an investment company registered under the Investment Company Act;

(ii) a "separate account" as defined in Section 2(a)(37) of the Investment Company Act;

(iii) a "real estate investment trust" as defined in Section 856 of the Internal Revenue Code; or

(iv) a "direct participation program" as defined in Rule 2310.

(8) Investment Grade Rated

The term "investment grade rated" refers to securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

(9) Net Offering Proceeds

The term “net offering proceeds” means offering proceeds less all expenses of issuance and distribution.

(10) Preferred Equity

The term "preferred equity" means the aggregate capital invested by all persons in the preferred securities outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company.

(11) Prominent Disclosure

A member may make "prominent disclosure" for purposes of paragraphs (a)(1) and (a)(2)(B) by:

(A) providing the notation "(Conflicts of Interest)" following the listing of the Plan of Distribution in the Table of Contents section required in Item 502 of SEC Regulation S-K, and by providing such disclosures in the Plan of Distribution section required in Item 508 of SEC Regulation S-K and any Prospectus Summary section required in Item 503 of SEC Regulation S-K; or

(B) for an offering document not subject to SEC Regulation S-K, by providing disclosure on the front page of the offering document that a conflict exists, with a cross-reference to the discussion within the offering document and in the summary of the offering document if one is included.

(12) Qualified Independent Underwriter

The term "qualified independent underwriter" means a member:

(A) that does not have a conflict of interest and is not an affiliate of any member that has a conflict of interest;

(B) that does not beneficially own as of the date of the member's participation in the public offering, more than 5% of the class of securities that would give rise to a conflict of interest, including any right to receive any such securities exercisable within 60 days;

(C) that has agreed in acting as a qualified independent underwriter to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act, specifically including those inherent in Section 11 thereof; and

(D) that has served as underwriter in at least three public offerings of a similar size and type during the three-year period immediately preceding the filing of the registration statement or the date of first sale in an offering without a registration statement. This requirement will be deemed satisfied if, during the past three years, the member:

(i) with respect to a proposed public offering of debt securities, has acted as sole underwriter or book-running lead or co-manager of at least three public offerings of debt securities each with gross proceeds of not less than 25% of the anticipated gross proceeds of the proposed offering; and

(ii) with respect to a proposed public offering of equity securities, has acted as sole underwriter or book-running lead or co-manager of at least three public offerings of equity securities (or of securities convertible into equity securities), each with gross proceeds of not less than 50% of the anticipated gross proceeds of the proposed offering.

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(E) none of whose associated persons who function in a supervisory capacity who is responsible for organizing, structuring or performing due diligence with respect to corporate public offerings of securities:

(i) has been convicted within ten years prior to the filing of the registration statement or the preparation of an offering circular in an offering without a registration statement of a violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder, in connection with a registered or unregistered offering of securities;

(ii) is subject to any order, judgment, or decree of any court of competent jurisdiction entered within ten years prior to the filing of the registration statement, or the preparation of an offering circular in an offering without a registration statement, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder in connection with a registered or unregistered offering of securities; or

(iii) has been suspended or barred from association with any member by an order or decision of the SEC, any state, FINRA or any other self-regulatory organization within ten years prior to the filing of the registration statement, or the preparation of an offering circular in an offering without a registration statement, for any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules, or regulations promulgated thereunder, or the anti-fraud rules of any self-regulatory organization in connection with a registered or unregistered offering of securities.

(13) Registration Statement

The term "registration statement" means a registration statement as defined by Section 2(a)(8) of the Securities Act; notification on Form 1A filed with the SEC pursuant to the provisions of Securities Act Rule 252; or any other document, by whatever name known, initiating a registration or similar process for an issue of securities which is required to be filed by the laws or regulations of any federal or state agency.

(14) Subordinated Debt

The term "subordinated debt" includes (A) debt of an issuer which is expressly subordinate in right of payment to, or with a claim on assets subordinate to, any existing or future debt of such issuer; or (B) all debt that is specified as subordinated at the time of issuance. Subordinated debt shall not include short-term debt with maturity at issuance of less than one year and secured debt and bank debt not specified as subordinated debt at the time of issuance.

Amended by SR-FINRA-2019-012. eff. Sept. 16, 2020.
Amended by SR-FINRA-2014-003 eff. May 28, 2014.
Amended by SR-FINRA-2010-026 eff. Dec. 15, 2010.
Amended by SR-FINRA-2007-009 eff. Sep. 14, 2009.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2000-04 eff. March 22, 2004.
Amended by SR-NASD-2002-97 eff. July 29, 2002.
Amended by SR-NASD-99-02 eff. Dec. 7, 1999.
Amended by SR-NASD-97-95 eff. Aug. 17, 1998.
Amended by SR-NASD-97-38 eff. Dec. 15, 1997.
Amended by SR-NASD-97-45 eff. Sept. 10, 1997.
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Amended by SR-NASD-96-17 eff. Aug 15, 1996.
Amended by SR-NASD-92-46 eff. May 10, 1994.
Amended by SR-NASD-94-12 eff. Mar. 7, 1994.
Amended by SR-NASD-88-30 eff. Dec. 1, 1988.
Amended by SR-NASD-87-21 eff. Mar. 29, 1988.
Amended by SR-NASD-76-5 eff. May 19, 1977.
Amended eff. Feb. 8, 1971; Dec. 29, 1971; Sept. 1, 1972; Mar. 21, 1972; Apr. 1, 1974; June 2, 1983; Feb. 22, 1984; Oct. 16, 1992; Jan. 28, 1993.

Selected Notices: 75-14, 77-13, 80-3, 80-39, 83-45, 86-28, 88-33, 88-89, 88-98, 88-100, 90-39, 92-57, 92-58, 94-45, 95-44, 96-53, 04-13, 09-49, 10-49, 20-10.

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5122. Private Placements of Securities Issued by Members

(a) Definitions

(1) Member Private Offering

A "member private offering" means a private placement of unregistered securities issued by a member or a control entity.

(2) Control Entity

A "control entity" means any entity that controls or is under common control with a member, or that is controlled by a member or its associated persons.

(3) Control

The term "control" means beneficial interest, as defined in Rule 5130(i)(1), of more than 50 percent of the outstanding voting securities of a corporation, or the right to more than 50 percent of the distributable profits or losses of a partnership or other non-corporate legal entity. Control will be determined immediately after the closing of an offering, and in the case of an offering with multiple intended closings, immediately following each closing.

(4) Private Placement

The term "private placement" means a non-public offering of securities conducted in reliance on an available exemption from registration under the Securities Act.

(b) Requirements

No member or associated person may offer or sell any security in a Member Private Offering unless the following conditions have been met:

(1) Disclosure Requirements

(A) If an offering has a private placement memorandum or term sheet, then such memorandum or term sheet must be provided to each prospective investor and must contain disclosures addressing:

(i) intended use of the offering proceeds; and

(ii) offering expenses and the amount of selling compensation that will be paid to the member and its associated persons.

(B) If an offering does not have a private placement memorandum or term sheet, then the member must prepare an offering document that contains the disclosures required in paragraph (b)(1)(A)(i) and (ii) and provide such document to each prospective investor.

(2) Filing Requirements

A member must file the private placement memorandum, term sheet, or other offering document, and any retail communication (as defined under Rule 2210) that promotes or recommends the member private offering with the Corporate Financing Department at or prior to the first time the document or retail communication is provided to any prospective investor. Any amendment(s) or exhibit(s) to the private placement memorandum, term sheet, other offering document or retail communication also must be filed with the Department within ten days of being provided to any investor or prospective investor.

(3) Use of Offering Proceeds

For each Member Private Offering, at least 85% of the offering proceeds raised must be used for business purposes, which shall not include offering costs, discounts, commissions or any other cash or non-cash sales incentives. The use of the offering proceeds also must be consistent with the disclosures required in paragraph (b)(1).

If, in connection with the offer and sale of any security in a Member Private Offering, a member or associated person discovers after the fact that one or more of the conditions listed above have not been met, the member or associated person must promptly conform the offering to comply with this Rule.

(c) Exemptions

The following Member Private Offerings are exempt from the requirements of this Rule:

(1) offerings sold solely to:

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(A) institutional accounts, as defined in Rule 4512(c);

(B) qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act;

(C) qualified institutional buyers, as defined in Securities Act Rule 144A;

(D) investment companies, as defined in Section 3 of the Investment Company Act;

(E) an entity composed exclusively of qualified institutional buyers, as defined in Securities Act Rule 144A; and

(F) banks, as defined in Section 3(a)(2) of the Securities Act.

(2) offerings of exempted securities, as defined in Section 3(a)12 of the Exchange Act;

(3) offerings made pursuant to Securities Act Rule 144A or SEC Regulation S;

(4) offerings in which a member acts primarily in a wholesaling capacity (i.e., it intends, as evidenced by a selling agreement, to sell through its affiliate broker-dealers, less than 20% of the securities in the offering);

(5) offerings of exempt securities with short term maturities under Section 3(a)(3) of the Securities Act;

(6) offerings of subordinated loans under SEA Rule 15c3-1, Appendix D (see NASD Notice to Members 02-32 (June 2002));

(7) offerings of "variable contracts", as defined in Rule 2320(b);

(8) offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in Rule 5110(h)(2)(D);

(9) offerings of unregistered investment grade rated debt and preferred securities;

(10) offerings to employees and affiliates of the issuer or its control entities;

(11) offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;

(12) offerings of securities of a commodity pool operated by a commodity pool operator, as defined under Section 1a(11) of the Commodity Exchange Act;

(13) offerings of equity and credit derivatives, including OTC options; provided that the derivative is not based principally on the member or any if its control entities; and

(14) offerings filed with the Department under Rules 2310, 5110 or Rule 5121.

(d) Confidential Treatment

FINRA shall accord confidential treatment to all documents and information filed pursuant to this Rule and shall utilize such documents and information solely for the purpose of review to determine compliance with the provisions of applicable FINRA rules or for other regulatory purposes deemed appropriate by FINRA.

(e) Application for Exemption

Pursuant to the Rule 9600 Series, FINRA may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

• • • Supplementary Material: ----------

.01 Private Placement Memorandum. Nothing in this rule shall require a member to prepare a private placement memorandum. A member may satisfy the disclosure and filing requirements in the Rule with an offering document that does not meet the additional requirements of Securities Act Rule 502.

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Amended by SR-FINRA-2022-022 eff. July 28, 2022.
Amended by SR-FINRA-2020-038. eff. Oct. 1, 2021.
Amended by SR-FINRA-2019-012. eff. Sept. 16, 2020.
Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
Amended by SR-FINRA-2009-078 eff. Dec. 14, 2009.
Amended by SR-FINRA-2009-062 eff. Oct. 19, 2009.
Amended by SR-FINRA-2009-046 eff. Aug. 17, 2009.
Adopted by SR-FINRA-2008-020 eff. June 17, 2009.

Selected Notice: 09-27, 17-17, 20-10, 21-26.

‹ 5121. PUBLIC OFFERINGS OF SECURITIES WITH CONFLICTS OF INTEREST UP 5123. PRIVATE PLACEMENTS OF SECURITIES ›

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5123. Private Placements of Securities

(a) Filing Requirements

Each member that sells a security in a non-public offering in reliance on an available exemption from registration under the Securities Act ("private placement") must: (i) submit to FINRA, or have submitted on its behalf by a designated member, a copy of any private placement memorandum, term sheet or other offering document, and any retail communication (as defined in Rule 2210) that promotes or recommends the private placement, including any materially amended versions thereof, used in connection with such sale within 15 calendar days of the date of first sale; or (ii) notify FINRA that no such offering documents or retail communications were used. Members must provide FINRA with the required documents, retail communications, or notification and related information, if known, by filing an electronic form in the manner prescribed by FINRA.

(b) Exemptions

The following private placements are exempt from the requirements of this Rule:

(1) offerings sold by the member or person associated with the member solely to any one or more of the following:

(A) institutional accounts, as defined in Rule 4512(c);

(B) qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act;

(C) qualified institutional buyers, as defined in Securities Act Rule 144A;

(D) investment companies, as defined in Section 3 of the Investment Company Act;

(E) an entity composed exclusively of qualified institutional buyers, as defined in Securities Act Rule 144A;

(F) banks, as defined in Section 3(a)(2) of the Securities Act;

(G) employees and affiliates, as defined in Rule 5121, of the issuer;

(H) knowledgeable employees as defined in Investment Company Act Rule 3c-5;

(I) eligible contract participants, as defined in Section 3(a)(65) of the Exchange Act; and

(J) accredited investors described in Securities Act Rule 501(a)(1), (2), (3) or (7).

(2) offerings of exempted securities, as defined in Section 3(a)(12) of the Exchange Act;

(3) offerings made pursuant to Securities Act Rule 144A or SEC Regulation S;

(4) offerings of exempt securities with short term maturities under Section 3(a)(3) of the Securities Act and debt securities sold by members pursuant to Section 4(2) of the Securities Act so long as the maturity does not exceed 397 days and the securities are issued in minimum denominations of $150,000 (or the equivalent thereof in another currency);

(5) offerings of subordinated loans under SEA Rule 15c3-1, Appendix D (see NASD Notice to Members 02-32 (June 2002));

(6) offerings of “variable contracts,” as defined in Rule 2320(b)(2);

(7) offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in Rule 5110(h)(2)(D);

(8) offerings of non-convertible debt or preferred securities that meet the transaction eligibility criteria for registering primary offerings of non-convertible securities on Forms S-3 and F-3;

(9) offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;

(10) offerings of securities of a commodity pool operated by a commodity pool operator, as defined under Section 1a(11) of the Commodity Exchange Act;

(11) business combination transactions as defined in Securities Act Rule 165(f);

(12) offerings of registered investment companies;

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(13) standardized options, as defined in Securities Act Rule 238; and

(14) offerings filed with FINRA under Rules 2310, 5110, 5121 and 5122, or exempt from filing thereunder in accordance with Rule 5110(h)(1).

(c) Confidential Treatment

FINRA shall accord confidential treatment to all documents and information filed pursuant to this Rule and shall utilize such documents and information solely for the purpose of review to determine compliance with the provisions of applicable FINRA rules or for other regulatory purposes deemed appropriate by FINRA.

(d) Application for Exemption

Pursuant to the Rule 9600 Series, FINRA may exempt a member or associated person from the provisions of this Rule for good cause shown.

Amended by SR-FINRA-2020-038. eff Oct. 1, 2021.
Amended by SR-FINRA-2019-012. eff. Sept. 16, 2020.
Amended by SR-FINRA-2013-026 eff. June 20, 2013.
Adopted by SR-FINRA-2011-057 eff. Dec. 3, 2012.

Selected Notices: 12-40, 13-26, 17-17, 20-10 21-26.

‹ 5122. PRIVATE PLACEMENTS OF SECURITIES ISSUED BY MEMBERS UP 5130. RESTRICTIONS ON THE PURCHASE AND SALE OF INITIAL EQUITY PUBLIC OFFERINGS ›

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5130. Restrictions on the Purchase and Sale of Initial Equity Public Offerings

(a) General Prohibitions

(1) A member or a person associated with a member may not sell, or cause to be sold, a new issue to any account in which a restricted person has a beneficial interest, except as otherwise permitted herein.

(2) A member or a person associated with a member may not purchase a new issue in any account in which such member or person associated with a member has a beneficial interest, except as otherwise permitted herein.

(3) A member may not continue to hold new issues acquired by the member as an underwriter, selling group member or otherwise, except as otherwise permitted herein.

(4) Nothing in this paragraph (a) shall prohibit:

(A) sales or purchases from one member of the selling group to another member of the selling group that are incidental to the distribution of a new issue to a non-restricted person at the public offering price;

(B) sales or purchases by a broker-dealer of a new issue at the public offering price as part of an accommodation to a non-restricted person customer of the broker-dealer; or

(C) purchases by a broker-dealer (or owner of a broker-dealer), organized as an investment partnership, of a new issue at the public offering price, provided such purchases are credited to the capital accounts of its partners in accordance with paragraph (c)(4).

(b) Preconditions for Sale

Before selling a new issue to any account, a member must in good faith have obtained within the twelve months prior to such sale, a representation from:

(1) Beneficial Owners

the account holder(s), or a person authorized to represent the beneficial owners of the account, that the account is eligible to purchase new issues in compliance with this Rule; or

(2) Conduits

a bank, foreign bank, broker-dealer, or investment adviser or other conduit that all purchases of new issues are in compliance with this Rule.

A member may not rely upon any representation that it believes, or has reason to believe, is inaccurate. A member shall maintain a copy of all records and information relating to whether an account is eligible to purchase new issues in its files for at least three years following the member's last sale of a new issue to that account.

(c) General Exemptions

The general prohibitions in paragraph (a) of this Rule shall not apply to sales to and purchases by the following accounts or persons, whether directly or through accounts in which such persons have a beneficial interest:

(1) An investment company registered under the Investment Company Act;

(2) A common trust fund or similar fund as described in Section 3(a)(12)(A)(iii) of the Exchange Act, provided that:

(A) the fund has investments from 1,000 or more accounts; and

(B) the fund does not limit beneficial interests in the fund principally to trust accounts of restricted persons;

(3) An insurance company general, separate or investment account, provided that:

(A) the account is funded by premiums from 1,000 or more policyholders, or, if a general account, the insurance company has 1,000 or more policyholders; and

(B) the insurance company does not limit the policyholders whose premiums are used to fund the account principally to restricted persons, or, if a general account, the insurance company does not limit its policyholders principally to restricted persons;

(4) An account if the beneficial interests of restricted persons do not exceed in the aggregate 10% of such account;

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(5) A publicly traded entity (other than a broker-dealer or an affiliate of a broker-dealer where such broker-dealer is authorized to engage in the public offering of new issues either as a selling group member or underwriter) that:

(A) is listed on a national securities exchange; or

(B) is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange;

(6) An investment company organized under the laws of a foreign jurisdiction, provided that:

(A) the investment company is listed on a foreign exchange for sale to the public or authorized for sale to the public by a foreign regulatory authority;

(B) no person owning more than 5% of the shares of the investment company is a restricted person, the investment company has 100 or more direct investors, or the investment company has 1,000 or more indirect investors; and

(C) the investment company was not formed or maintained for the specific purpose of permitting restricted persons to invest in new issues;

(7) An Employee Retirement Income Security Act benefits plan that is qualified under Section 401(a) of the Internal Revenue Code, provided that such plan is not sponsored solely by a broker-dealer;

(8) An employee retirement benefits plan organized under and governed by the laws of the United States or of a foreign jurisdiction, provided that such plan or family of plans:

(A) has, in aggregate, at least 10,000 plan participants and beneficiaries and $10 billion in assets;

(B) is operated in a non-discriminatory manner insofar as a wide range of employees, regardless of income or position, are eligible to participate without further amendment or action by the plan sponsor;

(C) is administered by trustees or managers that have a fiduciary obligation to administer the funds in the best interests of the participants and beneficiaries; and

(D) is not sponsored solely by a broker-dealer;

(9) A state or municipal government benefits plan that is subject to state and/or municipal regulation;

(10) A tax exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code;

(11) A church plan under Section 414(e) of the Internal Revenue Code; or

(12) A business development company as that term is defined in Section 2(a)(48) of the Investment Company Act provided that the business development company was not formed or maintained for the specific purpose of permitting restricted persons to invest in new issues.

(d) Issuer-Directed Securities

The prohibitions on the purchase and sale of new issues in this Rule shall not apply to securities that:

(1) are specifically directed in writing by the issuer, an affiliate of the issuer, or a selling shareholder, to persons that are restricted under the Rule; provided, however, that securities directed by an issuer, an affiliate of the issuer, or a selling shareholder, may not be sold to or purchased by:

(A) a broker-dealer; or

(B) an account in which any restricted person specified in paragraphs (i)(10)(B) or (i)(10)(C) of this Rule has a beneficial interest, unless such person, or a member of his or her immediate family, is an employee or director of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent, or of a franchisee of any of the foregoing entities. Also, for purposes of this paragraph (d)(1) only, a parent/subsidiary relationship is established if the parent has the right to vote 50% or more of a class of voting security of the subsidiary, or has the power to sell or direct 50% or more of a class of voting security of the subsidiary;

(2) are specifically directed in writing by the issuer, an affiliate of the issuer, or a selling shareholder, and are part of an offering in which no broker-dealer:

(A) underwrites any portion of the offering;

(B) solicits or sells any new issue securities in the offering; and

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(C) has any involvement or influence, directly or indirectly, in the issuer's allocation decisions with respect to any of the new issue securities in the offering;

(3) are part of a program sponsored by the issuer or an affiliate of the issuer that meets the following criteria:

(A) the opportunity to purchase a new issue under the program is offered to at least 10,000 participants;

(B) every participant is offered an opportunity to purchase an equivalent number of shares, or will receive a specified number of shares under a predetermined formula applied uniformly across all participants;

(C) if not all participants receive shares under the program, the selection of the participants eligible to purchase shares is based upon a random or other non-discretionary allocation method; and

(D) the class of participants does not contain a disproportionate number of restricted persons as compared to the investing public generally; or

(4) are directed in writing to eligible purchasers who are otherwise restricted under the Rule as part of a conversion offering in accordance with the standards of the governmental agency or instrumentality having authority to regulate such conversion offering.

(e) Anti-Dilution Provisions

The prohibitions on the purchase and sale of new issues in this Rule shall not apply to an account in which a restricted person has a beneficial interest that meets the following conditions:

(1) the account has held an equity ownership interest in the issuer, or a company that has been acquired by the issuer in the past year, for a period of one year prior to the effective date of the offering;

(2) the sale of the new issue to the account shall not increase the account's percentage equity ownership in the issuer above the ownership level as of three months prior to the filing of the registration statement in connection with the offering;

(3) the sale of the new issue to the account shall not include any special terms; and

(4) the new issue purchased pursuant to this paragraph (e) shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

(f) Stand-by Purchasers

The prohibitions on the purchase and sale of new issues in this Rule shall not apply to the purchase and sale of securities pursuant to a stand-by agreement that meets the following conditions:

(1) the stand-by agreement is disclosed in the prospectus;

(2) the stand-by agreement is the subject of a formal written agreement;

(3) the managing underwriter(s) represents in writing that it was unable to find any other purchasers for the securities; and

(4) the securities sold pursuant to the stand-by agreement shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

(g) Under-Subscribed Offerings

Nothing in this Rule shall prohibit an underwriter, pursuant to an underwriting agreement, from placing a portion of a public offering in its investment account when it is unable to sell that portion to the public.

(h) Exemptive Relief

Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from this Rule to the extent that such exemption is consistent with the purposes of the Rule, the protection of investors and the public interest.

(i) Definitions

(1) "Beneficial interest" means any economic interest, such as the right to share in gains or losses. The receipt of a management or performance based fee for operating a collective investment account, or other fees for acting in a fiduciary capacity, shall not be considered a beneficial interest in the account.

(2) "Collective investment account" means any hedge fund, investment partnership, investment corporation or any other collective investment vehicle that is engaged primarily in the purchase and/or sale of securities. A "collective investment account" does not include a

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"family investment vehicle" or an "investment club."

(3) "Conversion offering" means any offering of securities made as part of a plan by which a savings and loan association, insurance company or other organization converts from a mutual to a stock form of ownership.

(4) "Family investment vehicle" means a legal entity that is beneficially owned solely by one or more of the following persons:

(A) immediate family members;

(B) family members, as defined under Rule 202(a)(11)(G)-1 of the Investment Advisers Act; or

(C) family clients, as defined under Rule 202(a)(11)(G)-1 of the Investment Advisers Act.

(5) "Immediate family member" means a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children, and any other individual to whom the person provides material support.

(6) "Investment club" means a group of friends, neighbors, business associates or others that pool their money to invest in stock or other securities and are collectively responsible for making investment decisions.

(7) "Limited business broker-dealer" means any broker-dealer whose authorization to engage in the securities business is limited solely to the purchase and sale of investment company/variable contracts securities and direct participation program securities.

(8) "Material support" means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Members of the immediate family living in the same household are deemed to be providing each other with material support.

(9) "New issue" means any initial public offering of an equity security as defined in Section 3(a)(11) of the Exchange Act, made pursuant to a registration statement or offering circular. New issue shall not include:

(A) offerings made pursuant to an exemption under Section 4(a)(1), 4(a)(2) or 4(a)(5) of the Securities Act, or Securities Act Rule 504 if the securities are "restricted securities" under Securities Act Rule 144(a)(3), or Rule 144A or Rule 505 or Rule 506 adopted thereunder, or offerings made under Regulation S of the Securities Act or otherwise made outside of the United States or its territories unless the securities offered and sold in the Regulation S offering or other offering made outside of the United States are also registered for sale in the United States under the Securities Act in connection with a concurrent initial public offering of an equity security in the United States;

(B) offerings of exempted securities as defined in Section 3(a)(12) of the Exchange Act, and rules promulgated thereunder;

(C) offerings of securities of a commodity pool operated by a commodity pool operator as defined under Section 1a(5) of the Commodity Exchange Act;

(D) rights offerings, exchange offers, or offerings made pursuant to a merger or acquisition;

(E) offerings of investment grade asset-backed securities;

(F) offerings of convertible securities;

(G) offerings of preferred securities;

(H) offerings of an investment company registered under the Investment Company Act;

(I) offerings of securities (in ordinary share form or ADRs registered on Form F-6) that have a pre-existing market outside of the United States; and

(J) offerings of a special purpose acquisition company subject to Securities and Exchange Commission rules and regulations, a business development company as defined in Section 2(a)(48) of the Investment Company Act, a direct participation program as defined in Rule 2310(a) or a real estate investment trust as defined in Section 856 of the Internal Revenue Code.

(10) "Restricted person" means:

(A) Members or other broker-dealers

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(B) Broker-Dealer Personnel

(i) Any officer, director, general partner, associated person or employee of a member or any other broker-dealer (other than a limited business broker-dealer);

(ii) Any agent of a member or any other broker-dealer (other than a limited business broker-dealer) that is engaged in the investment banking or securities business; or

(iii) An immediate family member of a person specified in subparagraph (B)(i) or (ii) if the person specified in subparagraph (B)(i) or (ii):

a. materially supports, or receives material support from, the immediate family member;

b. is employed by or associated with the member, or an affiliate of the member, selling the new issue to the immediate family member; or

c. has an ability to control the allocation of the new issue.

(C) Finders and Fiduciaries

(i) With respect to the security being offered, a finder or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants and financial consultants; and

(ii) An immediate family member of a person specified in subparagraph (C)(i) if the person specified in subparagraph (C)(i) materially supports, or receives material support from, the immediate family member.

(D) Portfolio Managers

(i) Any person who has authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment advisor or collective investment account.

(ii) An immediate family member of a person specified in subparagraph (D)(i) that materially supports, or receives material support from, such person.

(E) Persons Owning a Broker-Dealer

(i) Any person listed, or required to be listed, in Schedule A of a Form BD (other than with respect to a limited business broker-dealer), except persons identified by an ownership code of less than 10%;

(ii) Any person listed, or required to be listed, in Schedule B of a Form BD (other than with respect to a limited business broker-dealer), except persons whose listing on Schedule B relates to an ownership interest in a person listed on Schedule A identified by an ownership code of less than 10%;

(iii) Any person that directly or indirectly owns 10% or more of a public reporting company listed, or required to be listed, in Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or other than with respect to a limited business broker-dealer);

(iv) Any person that directly or indirectly owns 25% or more of a public reporting company listed, or required to be listed, in Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or other than with respect to a limited business broker-dealer);

(v) An immediate family member of a person specified in subparagraphs (E)(i) through (iv) unless the person owning the broker-dealer:

a. does not materially support, or receive material support from, the immediate family member;

b. is not an owner of the member, or an affiliate of the member, selling the new issue to the immediate family member; and

c. has no ability to control the allocation of the new issue.

(vi) Subparagraphs (E)(i) through (iv) shall not apply to a sovereign entity.

(11) "Sovereign entity" means a sovereign nation or a pool of capital or an investment fund or other vehicle owned or controlled by a sovereign nation and created for the purpose of making investments on behalf or for the benefit of the sovereign nation.

(12) "Sovereign nation" means a sovereign nation or its political subdivisions, agencies or instrumentalities.

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(j) Information Required to be Filed

The book-running managing underwriter of a new issue shall be required to file the following information in the time and manner specified by FINRA with respect to new issues:

(1) the initial list of distribution participants and their underwriting commitment and retention amounts on or before the offering date; and

(2) the final list of distribution participants and their underwriting commitment and retention amounts no later than three business days after the offering date.

• • • Supplementary Material: ----------

.01 Application to Foreign Non-Member Broker-Dealers Participating in an Underwriting Syndicate. The prohibitions on the purchase and sale of new issues in this Rule shall not apply to a foreign non-member broker-dealer that is participating in an underwriting syndicate for the sale of a new issue (which underwriting syndicate may include a member affiliate of the non-member broker-dealer) and allocating new issue securities to a non-U.S. person, provided that such allocation decision is not made at the direction or request of a member or an associated person of a member.

Amended by SR-FINRA-2025-001 eff Jul. 23, 2025.
Amended by SR-FINRA-2019-022 eff. Jan. 1, 2020.
Amended by SR-FINRA-2009-046 eff. Aug. 17, 2009.
Amended by SR-FINRA-2009-005 eff. Feb. 17, 2009.
Amended by SR-FINRA-2008-025 eff. Dec. 15, 2008.
Amended by SR-NASD-2006-074 eff. Sept. 5, 2007.
Amended by SR-NASD-2006-068 eff. July 1, 2006.
Amended by SR-NASD-2004-165 eff. Nov. 2, 2005.
Amended by SR-NASD-99-60 eff. March 23, 2004.

Selected Notices: 03-79, 05-65, 07-34, 08-57, 19-37, 25-08.

‹ 5123. PRIVATE PLACEMENTS OF SECURITIES UP 5131. NEW ISSUE ALLOCATIONS AND DISTRIBUTIONS ›

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5131. New Issue Allocations and Distributions

(a) Quid Pro Quo Allocations

No member or person associated with a member may offer or threaten to withhold shares it allocates of a new issue as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member.

(b) Spinning

(1) No member or person associated with a member may allocate shares of a new issue to any account in which an executive officer or director of a public company or a covered non-public company, or a person materially supported by such executive officer or director, has a beneficial interest:

(A) if the company is currently an investment banking services client of the member or the member has received compensation from the company for investment banking services in the past 12 months;

(B) if the person responsible for making the allocation decision knows or has reason to know that the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months; or

(C) on the express or implied condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.

(2) The prohibitions in this paragraph shall not apply to allocations of shares of a new issue to any account described in Rule 5130(c)(1) through (3) and (5) through (12), or to any other account in which the beneficial interests of executive officers and directors of the company and persons materially supported by such executive officers and directors in the aggregate do not exceed 25% of such account.

(c) Policies Concerning Flipping

(1) No member or person associated with a member may directly or indirectly recoup, or attempt to recoup, any portion of a commission or credit paid or awarded to an associated person for selling shares of a new issue that are subsequently flipped by a customer, unless the managing underwriter has assessed a penalty bid on the entire syndicate.

(2) In addition to any obligation to maintain records relating to penalty bids under SEA Rule 17a-2(c)(1), a member shall promptly record and maintain information regarding any penalties or disincentives assessed on its associated persons in connection with a penalty bid.

(d) New Issue Pricing and Trading Practices

In a new issue:

(1) Reports of Indications of Interest and Final Allocations. The book-running lead manager must provide to the issuer's pricing committee (or, if the issuer has no pricing committee, its board of directors):

(A) a regular report of indications of interest, including the names of interested institutional investors and the number of shares indicated by each, as reflected in the book-running lead manager's book of potential institutional orders, and a report of aggregate demand from retail investors;

(B) after the settlement date of the new issue, a report of the final allocation of shares to institutional investors as reflected in the books and records of the book-running lead manager including the names of purchasers and the number of shares purchased by each, and aggregate sales to retail investors;

(2) Lock-Up Agreements. Any lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer entered into in connection with a new issue shall provide that:

(A) Any lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer shall provide that such restrictions will apply to their issuer-directed shares; and

(B) At least two business days before the release or waiver of any lock-up or other restriction on the transfer of the issuer's shares, the book-running lead manager will notify the issuer of the impending release or waiver and announce the impending release or waiver through a major news service, except where the release or waiver is effected solely to permit a transfer of securities that is not for consideration or that is to an immediate family member as defined in Rule 5130(i)(5) and where the transferee has agreed in writing to be bound by the same lock-up agreement terms in place for the transferor;

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(3) Agreement Among Underwriters. The agreement between the book-running lead manager and other syndicate members must require, to the extent not inconsistent with SEC Regulation M, that any shares trading at a premium to the public offering price that are returned by a purchaser to a syndicate member after secondary market trading commences:

(A) be used to offset the existing syndicate short position, or

(B) if no syndicate short position exists, the member must either:

(i) offer returned shares at the public offering price to unfilled customers' orders pursuant to a random allocation methodology, or

(ii) sell returned shares on the secondary market and donate profits from the sale to an unaffiliated charitable organization with the condition that the donation be treated as an anonymous donation to avoid any reputational benefit to the member.

(4) Market Orders. No member may accept a market order for the purchase of shares of a new issue in the secondary market prior to the commencement of trading of such shares in the secondary market.

(e) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below.

(1) A "public company" is any company that is registered under Section 12 of the Exchange Act or files periodic reports pursuant to Section 15(d) thereof.

(2) "Beneficial interest" shall have the same meaning as in FINRA Rule 5130(i)(1).

(3) "Covered non-public company" means any non-public company, except for an unaffiliated charitable organization, satisfying the following criteria: (i) income of at least $1 million in the last fiscal year or in two of the last three fiscal years and shareholders' equity of at least $15 million; (ii) shareholders' equity of at least $30 million and a two-year operating history; or (iii) total assets and total revenue of at least $75 million in the latest fiscal year or in two of the last three fiscal years.

(4) "Flipped" means the initial sale of new issue shares purchased in an offering within 30 days following the offering date of such offering.

(5) "Investment banking services" include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger, acquisition or other corporate reorganization; providing venture capital, equity lines of credit, private investment, public equity transactions (PIPEs) or similar investments or otherwise acting in furtherance of a private offering of the issuer; or serving as placement agent for the issuer.

(6) "Material support" means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support.

(7) "New issue" shall have the same meaning as in Rule 5130(i)(9).

(8) "Penalty bid" means an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.

(9) "Unaffiliated charitable organization" is a tax-exempt entity organized under Section 501(c)(3) of the Internal Revenue Code that is not affiliated with the member and for which no executive officer or director of the member, or person materially supported by such executive officer or director, is an individual listed or required to be listed on Part VII of Internal Revenue Service Form 990 (i.e., officers, directors, trustees, key employees, highest compensated employees and certain independent contractors).

(f) Exemptive Relief

Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a person unconditionally or on specified terms from any or all of the provisions of this Rule that it deems appropriate consistent with the protection of investors and the public interest.

• • • Supplementary Material: ----------

.01 Issuer Directed Allocations. The prohibitions of paragraph (b) above shall not apply to allocations of securities that are directed in writing by the issuer, an affiliate of the issuer, or a selling shareholder, so long as the member has no involvement or influence, directly or indirectly, in the allocation decisions of the issuer, an affiliate, or a selling shareholder with respect to such issuer-directed securities.

.02 Written Representations.

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(a) Annual Representation. For the purposes of Rule 5131(b), a member may rely upon a written representation obtained within the prior 12 months from the beneficial owner(s) of the account, or a person authorized to represent the beneficial owner(s) of the account, as to whether such beneficial owner(s) is an executive officer or director or person materially supported by an executive officer or director and if so, the company(ies) on whose behalf such executive officer or director serves.

(b) Indirect Beneficial Owners. For the purposes of Rule 5131(b), a member may rely upon a written representation obtained within the prior 12 months from a person authorized to represent an account that does not look through to the beneficial owners of any unaffiliated private fund invested in the account, except for beneficial owners that are control persons of the investment adviser to such private fund, that such unaffiliated private fund:

(1) is managed by an investment adviser;

(2) has assets greater than $50 million;

(3) owns less than 25% of the account and is not a fund in which a single investor has a beneficial interest of 25% or more; and

(4) was not formed for the specific purpose of investing in the account.

An unaffiliated private fund is a "private fund," as defined in Section 202(a)(29) of the Investment Advisers Act, whose investment adviser does not have a control person in common with the investment adviser to the account. A control person of an investment adviser is a person with direct or indirect "control" over the investment adviser, as that term is defined in Form ADV.

(c) A member may not rely upon any representation that it believes, or has reason to believe, is inaccurate. A member shall maintain a copy of all records and information relating to whether an account is eligible to receive an allocation of the new issue under Rule 5131(b) in its files for at least three years following the member's allocation to that account.

.03 Lock-up Announcements. For the purposes of this Rule, the requirement that the book-running lead manager announce the impending release or waiver of a lock-up or other restriction on the transfer of the issuer's shares shall be deemed satisfied where such announcement is made by the book-running lead manager, another member or the issuer, so long as such announcement otherwise complies with the requirements of paragraph (d)(2) of this Rule. In addition, the disclosure of a release or waiver in a publicly filed registration statement in connection with a secondary offering satisfies the requirement for an announcement through a major news service.

.04 Anti-Dilution Provisions. The prohibitions of paragraph (b) above shall not apply to an account in which an executive officer or director of a public company or a covered non-public company, or a person materially supported by such executive officer or director, has a beneficial interest that meets the following conditions:

(a) the account has held an equity ownership interest in the issuer, or a company that has been acquired by the issuer in the past year, for a period of one year prior to the effective date of the offering;

(b) the allocation of the new issue to the account shall not increase the account's percentage equity ownership in the issuer above the ownership level as of three months prior to the filing of the registration statement in connection with the offering;

(c) the allocation of the new issue to the account shall not include any special terms; and

(d) the new issue allocated pursuant to this Supplementary Material .04 shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

.05 Application to Foreign Non-Member Broker-Dealers Participating in an Underwriting Syndicate. The prohibitions of paragraph (b) above shall not apply to a foreign non-member broker-dealer that is participating in an underwriting syndicate for the sale of a new issue (which underwriting syndicate may include a member affiliate of the non-member broker-dealer) and allocating new issue securities to a non-U.S. person, provided that such allocation decision is not made at the direction or request of a member or an associated person of a member.

Amended by SR-FINRA-2025-001 eff. Jul. 23, 2025.
Amended by SR-FINRA-2019-022 eff. Jan. 1, 2020.
Amended by SR-FINRA-2014-009 eff. Feb. 14, 2014.
Amended by SR-FINRA-2013-037 eff. Feb. 3, 2014.
Amended by SR-FINRA-2011-017 eff. Sept. 26, 2011.
Adopted by SR-NASD-2003-140 eff. May 27, 2011.

Selected Notices: 10-60, 11-29, 13-43, 19-37, 25-08.

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5141. Sale of Securities in a Fixed Price Offering

(a) No member or person associated with a member that participates in a selling syndicate or selling group or that acts as the single underwriter in connection with a fixed price offering shall offer or grant, directly or indirectly, to any person or account that is not a member of the selling syndicate or selling group or that is a person or account other than the single underwriter any securities in the offering at a price below the stated public offering price ("reduced price"). Subject to the requirements of Rule 5130, a member of a selling syndicate or selling group, or a member that acts as the single underwriter, is permitted to sell securities in the offering to an affiliated person, provided such member does not sell the securities to the affiliated person at a reduced price under this Rule. The requirements of this Rule shall apply until the termination of the offering or until a member, having made a bona fide public offering of the securities, is unable to continue selling such securities at the stated public offering price. For purposes of this Rule, securities in a fixed price offering shall be presumed salable if the securities immediately trade in the secondary market at a price or prices which are above the stated public offering price.

(b) Nothing in this Rule shall prohibit the purchase and sale of securities in a fixed price offering between members of the selling syndicate or selling group.

• • • Supplementary Material: ----------

.01 Reduced Price. For the purposes of this Rule, "reduced price" includes, without limitation, any offer or grant of any selling concession, discount or other allowance, credit, rebate, reduction of any fee (including any advisory or service fee), any sale of products or services at prices below reasonable commercially available rates for similar products and services (except for research subject to Rule 5141.02), or any purchase of or arrangement to purchase securities from the person or account at more than their fair market price in exchange for securities in the offering. For purposes of this Supplementary Material, "fair market price" refers generally to a price or range of prices at which a buyer and a seller, each unrelated to the other, would purchase the securities in the ordinary course of business in transactions that are of similar size and similar characteristics and are independent of any other transaction.

.02 Research. Nothing in this Rule shall prevent a member or person associated with a member that participates in a selling syndicate or selling group, or a member that acts as the single underwriter, from selling securities in the offering to a person or account to which it has provided or will provide research, provided the person or account pays the stated public offering price for the securities and the research is provided pursuant to the requirements of Section 28(e) of the Exchange Act. Investment management or investment discretionary services are not research for purposes of this Supplementary Material. Any product or service provided by a member or person associated with a member that does not qualify as research under this Supplementary Material must not confer a reduced price as set forth in Rule 5141.01.

.03 Affiliated Persons. Transactions between a member of a selling syndicate or selling group, or between a member that acts as the single underwriter, and an affiliated person that are part of the normal and ordinary course of business and are unrelated to the sale or purchase of securities in a fixed price offering shall not be deemed to confer a reduced price under this Rule.

.04 Fixed Price Offering. The term "fixed price offering" means the offering of securities at a stated public offering price or prices, all or part of which securities are publicly offered in the United States or any territory thereof, whether or not registered under the Securities Act, except that the term does not include offerings of "exempted securities" or "municipal securities" as those terms are defined in Sections 3(a)(12) and 3(a)(29), respectively, of the Exchange Act or offerings of redeemable securities of investment companies registered pursuant to the Investment Company Act which are offered at prices determined by the net asset value of the securities.

.05 Asset-Based Fees. A member that is an investment adviser may exempt securities that are purchased as part of a fixed price offering from the calculation of annual or periodic asset-based fees that such member charges to a customer, provided such exemption is part of the member's normal and ordinary course of business with the customer and is not in connection with an offering.

Adopted by SR-FINRA-2010-029 eff. Feb. 8, 2011.

Selected Notice: 10-47

‹ 5140. INTEGRITY OF FIXED PRICE OFFERINGS UP 5150. FAIRNESS OPINIONS ›

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5150. Fairness Opinions

(a) Disclosures

If at the time a fairness opinion is issued to the board of directors of a company the member issuing the fairness opinion knows or has reason to know that the fairness opinion will be provided or described to the company's public shareholders, the member must disclose in the fairness opinion:

(1) if the member has acted as a financial advisor to any party to the transaction that is the subject of the fairness opinion, and, if applicable, that it will receive compensation that is contingent upon the successful completion of the transaction, for rendering the fairness opinion and/or serving as an advisor;

(2) if the member will receive any other significant payment or compensation contingent upon the successful completion of the transaction;

(3) any material relationships that existed during the past two years or that are mutually understood to be contemplated in which any compensation was received or is intended to be received as a result of the relationship between the member and any party to the transaction that is the subject of the fairness opinion;

(4) if any information that formed a substantial basis for the fairness opinion that was supplied to the member by the company requesting the opinion concerning the companies that are parties to the transaction has been independently verified by the member, and if so, a description of the information or categories of information that were verified;

(5) whether or not the fairness opinion was approved or issued by a fairness committee; and

(6) whether or not the fairness opinion expresses an opinion about the fairness of the amount or nature of the compensation to any of the company's officers, directors or employees, or class of such persons, relative to the compensation to the public shareholders of the company.

(b) Procedures

Any member issuing a fairness opinion must have written procedures for approval of a fairness opinion by the member, including:

(1) the types of transactions and the circumstances in which the member will use a fairness committee to approve or issue a fairness opinion, and in those transactions in which it uses a fairness committee:

(A) the process for selecting personnel to be on the fairness committee;

(B) the necessary qualifications of persons serving on the fairness committee;

(C) the process to promote a balanced review by the fairness committee, which shall include the review and approval by persons who do not serve on the deal team to the transaction; and

(2) the process to determine whether the valuation analyses used in the fairness opinion are appropriate.

Amended by SR-FINRA-2008-028 eff. Dec. 15, 2008.
Adopted by SR-NASD-2005-080 eff. Dec. 8, 2007.

Selected Notices: 07-54, 08-57.

‹ 5141. SALE OF SECURITIES IN A FIXED PRICE OFFERING UP 5160. DISCLOSURE OF PRICE AND CONCESSIONS IN SELLING AGREEMENTS ›

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5160. Disclosure of Price and Concessions in Selling Agreements

Selling syndicate agreements or selling group agreements shall set forth the price at which the securities are to be sold to the public or the formula by which such price can be ascertained, and shall state clearly to whom and under what circumstances concessions, if any, may be allowed.

Amended by SR-FINRA-2009-086 eff. April 19, 2010.

Selected Notice: 10-10.

‹ 5150. FAIRNESS OPINIONS UP 5190. NOTIFICATION REQUIREMENTS FOR OFFERING PARTICIPANTS ›

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5190. Notification Requirements for Offering Participants

(a) General

This Rule 5190 sets forth the notice requirements applicable to all members participating in offerings of securities for purposes of monitoring compliance with the provisions of SEC Regulation M. In addition to the requirements under this Rule 5190, members also must comply with all applicable rules governing the withdrawal of quotations in accordance with SEC Regulation M.

(b) Definitions

For purposes of this Rule, the following terms shall have the meanings as set forth in Rules 100 and 101 of SEC Regulation M: "actively traded," "affiliated purchaser," "covered security," "distribution," "distribution participant," "offering price," "penalty bid," "restricted period," "selling security holder," and "syndicate covering transaction."

(c) Notice Relating to Distributions of Securities Subject to a Restricted Period Under SEC Regulation M

(1) A member acting as a manager (or in a similar capacity) of a distribution of any security that is a covered security subject to a restricted period under Rule 101 of SEC Regulation M shall provide written notice to FINRA, in such form as specified by FINRA, of the following:

(A) the member's determination as to whether a one-day or five-day restricted period applies under Rule 101 of SEC Regulation M and the basis for such determination, including the contemplated date and time of the commencement of the restricted period, the security name and symbol, and identification of the distribution participants and affiliated purchasers, no later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances;

(B) the pricing of the distribution, including the security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, the restricted period, and identification of the distribution participants and affiliated purchasers, no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances; and

(C) the cancellation or postponement of any distribution for which prior notification of commencement of the restricted period has been submitted under paragraph (c)(1)(A) above, immediately upon the cancellation or postponement of such distribution.

If no member is acting as a manager (or in a similar capacity) of such distribution, then each member that is a distribution participant or affiliated purchaser shall provide the notice required under this paragraph (c)(1), unless another member has assumed responsibility in writing for compliance therewith.

(2) Any member that is an issuer or selling security holder in a distribution of any security that is a covered security subject to a restricted period under Rule 102 of SEC Regulation M shall comply with the notice requirements of paragraph (c)(1), unless another member has assumed responsibility in writing for compliance therewith.

(d) Notice Relating to Distributions of "Actively Traded" Securities Under SEC Regulation M

A member acting as a manager (or in a similar capacity) of a distribution of any security that is considered an "actively traded" security under Rule 101 of SEC Regulation M shall provide written notice to FINRA, in such form as specified by FINRA, of the following:

(1) the member's determination that no restricted period applies under Rule 101 of SEC Regulation M and the basis for such determination; and

(2) the pricing of the distribution, including the security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, and identification of the distribution participants and affiliated purchasers.

Such notice shall be provided no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.

If no member is acting as a manager (or in a similar capacity) of such distribution, then each member that is a distribution participant or an affiliated purchaser shall provide the notice required under this paragraph (d), unless another member has assumed responsibility in writing for compliance therewith.

(e) Notice of Penalty Bids and Syndicate Covering Transactions in OTC Equity Securities

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A member imposing a penalty bid or engaging in a syndicate covering transaction in connection with an offering of an OTC Equity Security, as defined in Rule 6420, pursuant to Rule 104 of SEC Regulation M shall, unless another member has assumed responsibility in writing for compliance with this paragraph (e), provide written notice to FINRA, in such form as specified by FINRA, of the following:

(1) the member's intention to conduct such activity, prior to imposing the penalty bid or engaging in the first syndicate covering transaction, including identification of the security and its symbol and the date such activity will occur; and

(2) confirmation that the member has imposed a penalty bid or engaged in a syndicate covering transaction, within one business day of completion of such activity, including identification of the security and its symbol, the total number of shares and the date(s) of such activity.

Amended by SR-FINRA-2010-037 eff. Sept. 22, 2010.
Amended by SR-FINRA-2008-057 eff. Dec. 15, 2008.
Adopted by SR-FINRA-2008-039 eff. Dec. 15, 2008.

Selected Notice: 08-74.

‹ 5160. DISCLOSURE OF PRICE AND CONCESSIONS IN SELLING AGREEMENTS UP 5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES ›

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Sep 22, 2010 onwards

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5210. Publication of Transactions and Quotations

No member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security.

• • • Supplementary Material: ----------

.01 Manipulative and Deceptive Quotations. It shall be deemed inconsistent with Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices) and 5210 (Publication of Transactions and Quotations) for a member to publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale.

Similarly, it shall be deemed inconsistent with Rules 2010, 2020 and 5210 for a member, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.

For the purposes of this Rule, the term "quotation" shall include any bid or offer or any formula, such as "bid wanted" or "offer wanted," designed to induce any person to make or submit any bid or offer.

.02 Self-Trades. Transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in the beneficial ownership of the security, ("self- trades") generally are bona fide transactions for purposes of Rule 5210; however, members must have policies and procedures in place that are reasonably designed to review their trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. Transactions resulting from orders that originate from unrelated algorithms or separate and distinct trading strategies within the same firm would generally be considered bona fide self-trades. Algorithms or trading strategies within the most discrete unit of an effective system of internal controls at a member firm are presumed to be related. This Supplementary Material does not change members' existing obligations under Rules 2010 and 3110.

.03 Disruptive Quoting and Trading Activity Prohibited

(a) No member shall engage in or facilitate disruptive quoting and trading activity as described in paragraph (b), including acting in concert with other persons to effect such activity.

(b) Disruptive quoting and trading activity shall include a frequent pattern in which the following facts are present:

(1) Disruptive Quoting and Trading Activity Type 1:

(A) a party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and

(B) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and

(C) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the "Contra-Side Orders") that are subsequently executed; and

(D) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

(2) Disruptive Quoting and Trading Activity Type 2:

(A) a party narrows the spread for a security by placing an order inside the national best bid and national best offer ("NBBO"); and

(B) the party then executes an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in subparagraph (A).

(c) For purposes of this Supplementary Material .03, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Supplementary Material. Further, disruptive quoting and trading activity includes a pattern or practice in which all of the quoting and trading activity is conducted on a single venue as well as a pattern or practice in which some portion of the quoting and trading activity is conducted on a one venue and the other portions of the quoting and trading activity are conducted on one or more other venues.

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Amended by SR-FINRA-2017-004 eff. April 3, 2017.
Amended by SR-FINRA-2016-043 eff. Dec. 15, 2016.
Amended by SR-FINRA-2014-045 eff. Dec. 1, 2014.
Amended by SR-FINRA-2013-036 eff. Aug. 25, 2014.
Amended by SR-FINRA-2009-055 eff. Feb. 15, 2010.

Selected Notices: 09-72, 14-28, 17-22.

‹ 5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES UP 5220. OFFERS AT STATED PRICES ›

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Apr 03, 2017 onwards

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5220. Offers at Stated Prices

No member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

• • • Supplementary Material: ----------

.01 Firmness of Quotations. Members and persons associated with members in the over-the-counter market make trading decisions and set prices for customers upon the basis of telephone and electronic quotations, including quotations displayed in an inter-dealer quotation system. In some instances a dealer's quotations, purportedly firm, are, in fact, so qualified upon further inquiry as to constitute "backing away" by the quoting dealer. Further, dealers who publish quotations in inter-dealer quotation systems have been found to be unwilling to make firm bids or offers upon inquiry in such a way as to pose a question as to the validity of the quotations originally published. Such "backing away" from quotations disrupts the normal operation of the over-the-counter market.

Members, of course, change inter-dealer quotations constantly in the course of trading, but under normal circumstances where the member is making a "firm trading market" in any security, it is expected at least to buy or sell a normal unit of trading in the quoted stock at its then prevailing quotations unless clearly designated as not firm or firm for less than a normal unit of trading when supplied by the member. However, if at the time an order for the purchase or sale of the quoted security is presented, the member is in the process of effecting a transaction in such quoted security, and immediately after the completion of such transaction, communicates a revised quotation size, such member shall not be obligated to purchase or sell the quoted security in an amount greater than such revised quotation size.

In order to ensure the integrity of quotations, every member has an obligation to correctly identify the nature of its quotations when they are supplied to others. In addition, each member furnishing quotations must ensure that it is adequately staffed to respond to inquiries during the normal business hours of such member.

It shall be deemed inconsistent with Rules 2010 (Standards of Commercial Honor and Principles of Trade) and 5220 (Offers at Stated Prices) if a member fails to fulfill its obligations as outlined above.

For the purposes of this Rule, (1) the term "inter-dealer quotation system" is as defined in Rule 6420 and (2) a “normal unit of trading” for an NMS stock shall mean the “round lot” assigned to such NMS stock pursuant to Rule 600(b) of SEC Regulation NMS.

Amended by SR-FINRA-2025-015 eff. Dec. 3, 2025.
Amended by SR-FINRA-2012-027 eff. July 9, 2012.
Amended by SR-FINRA-2009-055 eff. Feb. 15, 2010.
Amended by the NASD Board on May 4, 1965.

Selected Notice: 09-72.

‹ 5210. PUBLICATION OF TRANSACTIONS AND QUOTATIONS UP 5230. PAYMENTS INVOLVING PUBLICATIONS THAT INFLUENCE THE MARKET PRICE OF A SECURITY ›

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Dec 03, 2025 onwards

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5230. Payments Involving Publications that Influence the Market Price of a Security

(a) Except as provided in paragraph (b), no member shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any electronic or other public media, including any investment service or similar publication, Web site, newspaper, magazine or other periodical, radio, or television program of any matter that has, or is intended to have, an effect upon the market price of any security.

(b) The prohibitions in paragraph (a) shall not apply to compensation paid to a person in connection with the publication or circulation of:

(1) a communication that is clearly distinguishable as paid advertising;

(2) a communication that discloses the receipt of compensation and the amount thereof in accordance with Section 17(b) of the Securities Act; or

(3) a research report, as that term is defined in Rule 2241.

Amended by SR-FINRA-2015-050 eff. Dec. 24, 2015.
Amended by SR-FINRA-2009-048 eff. Dec. 14, 2009.

Selected Notice: 09-60.

‹ 5220. OFFERS AT STATED PRICES UP 5240. ANTI-INTIMIDATION/COORDINATION ›

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Dec 24, 2015 onwards

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5240. Anti-Intimidation/Coordination

(a) No member or person associated with a member shall:

(1) coordinate the prices (including quotations), trades or trade reports of such member with any other member or person associated with a member, or any other person;

(2) direct or request another member to alter a price (including a quotation); or

(3) engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member, a person associated with a member, or any other person.

This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or quotation, whether displayed on any facility operated by FINRA or otherwise, or refusals to trade or other conduct that retaliates against or discourages the competitive activities of another market maker or market participant.

(b) Provided that the conduct in subparagraphs (1) through (7) below is otherwise in compliance with all applicable law, nothing in this Rule respecting coordination of quotes, trades or trade reports shall be deemed to limit, constrain or otherwise inhibit the freedom of a member or person associated with a member to:

(1) set unilaterally its own bid or ask in any security, the prices at which it is willing to buy or sell any security, and the quantity of shares of any security that it is willing to buy or sell;

(2) set unilaterally its own dealer spread, quote increment or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any security;

(3) communicate its own bid or ask, or the prices at or the quantity of shares in which it is willing to buy or sell any security to any person, for the purpose of exploring the possibility of a purchase or sale of that security, and to negotiate for or agree to such purchase or sale;

(4) communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any security, to any person for the purpose of retaining such person as an agent or subagent for the member or for a customer of the member (or for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;

(5) engage in any underwriting (or any syndicate for the underwriting) of securities to the extent permitted by the federal securities laws;

(6) take any unilateral action or make any unilateral decision regarding the market makers with which it will trade and the terms on which it will trade unless such action is prohibited by paragraph (a) of this Rule; and

(7) deliver an order to another member for handling.

Amended by SR-FINRA-2008-061 eff. June 15, 2009.
Amended by SR-NASD-2002-97 eff. July 29, 2002.
Adopted by SR-NASD-97-37 eff. July 17, 1997.

Selected Notice: 09-20.

‹ 5230. PAYMENTS INVOLVING PUBLICATIONS THAT INFLUENCE THE MARKET PRICE OF A SECURITY

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5250. PAYMENTS FOR MARKET MAKING ›

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5250. Payments for Market Making

(a) No member or person associated with a member shall accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith.

(b) The provisions of paragraph (a) shall not preclude a member from accepting:

(1) payment for bona fide services, including, but not limited to, investment banking services (including underwriting compensation and fees);

(2) reimbursement of any payment for registration imposed by the SEC or state regulatory authorities and for listing of an issue of securities imposed by a self-regulatory organization; and

(3) any payment expressly provided for under the rules of a national securities exchange that are effective after being filed with, or filed with and approved by, the SEC pursuant to the requirements of the Exchange Act.

(c) For purposes of this Rule, the following terms shall have the stated meanings:

(1) "affiliate" shall have the same definition as used in Rule 5121;

(2) "promoter" means any person who founded or organized the business or enterprise of an issuer, is a director or employee of an issuer, acts or has acted as a consultant, advisor, accountant or attorney to an issuer, is the beneficial owner of any of an issuer's securities that are considered "restricted securities" under Securities Act Rule 144, or is the beneficial owner of five percent (5%) or more of the public float of any class of an issuer's securities, and any other person with a similar interest in promoting the entry of quotations or market making in an issuer's securities; and

(3) "quotation" shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a member in receiving bids or offers from others for a security, or an indication by a member that it wishes to advertise its general interest in buying or selling a particular security.

Amended by SR-FINRA-2013-020 eff. May 15, 2013.
Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
Amended by SR-FINRA-2009-036 eff. Dec. 14, 2009.
Amended by SR-NASD-97-85 eff. Dec. 1, 1997.
Adopted by SR-NASD-97-29, eff. July 3, 1997.

Selected Notices: 75-16, 92-50, 96-83, 97-46, 09-60.

‹ 5240. ANTI-INTIMIDATION/COORDINATION UP 5260. PROHIBITION ON TRANSACTIONS, PUBLICATION OF QUOTATIONS, OR PUBLICATION OF INDICATIONS OF INTEREST DURING TRADING HALTS ›

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May 15, 2013 onwards

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5260. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

(a) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect, except as permitted under the Regulation NMS Plan to Address Extraordinary Market Volatility. If FINRA closes trading in a security pursuant to its authority under Rule 6120(a)(3), members would not be prohibited from trading through other markets for which trading is not halted.

(b) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest, in:

(1) a future for a single security when the underlying security has a regulatory trading halt that is currently in effect; and

(2) a future on a narrow-based securities index when one or more underlying securities that constitute 50% or more of the market capitalization of the index has a regulatory trading halt that is currently in effect.

Cross Reference–

Rule 6120, Trading Halts

Amended by SR-FINRA-2013-016 eff. April 8, 2013.
Amended by SR-FINRA-2009-044 eff. Dec. 14, 2009.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2001-47 eff. March 31, 2003.
Amended by SR-NASD-2002-97 eff. July 29, 2002.
Amended by SR-NASD-2000-33 eff. August 13, 2001.
Adopted by SR-NASD-87-13 eff. May 5, 1988.

Selected Notices: 86-13, 88-46, 89-2, 98-26, 01-47, 02-82, 09-60, 13-12.

‹ 5250. PAYMENTS FOR MARKET MAKING UP 5270. FRONT RUNNING OF BLOCK TRANSACTIONS ›

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5270. Front Running of Block Transactions

(a) No member or person associated with a member shall cause to be executed an order to buy or sell a security or a related financial instrument when such member or person associated with a member causing such order to be executed has material, non-public market information concerning an imminent block transaction in that security, a related financial instrument or a security underlying the related financial instrument prior to the time information concerning the block transaction has been made publicly available or has otherwise become stale or obsolete.

(b) This Rule applies to orders caused to be executed for any account in which such member or person associated with the member has an interest, any account with respect to which such member or person associated with a member exercises investment discretion, or for accounts of customers or affiliates of the member when the customer or affiliate has been provided such material, non-public market information by the member or any person associated with the member.

(c) For purposes of this Rule, the term "related financial instrument" shall mean any option, derivative, security-based swap, or other financial instrument overlying a security, the value of which is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the functional economic equivalent of a position in such security.

• • • Supplementary Material: ----------

.01 Knowledge of Block Transactions. The violative practices in Rule 5270 may include transactions that are executed based upon knowledge of less than all of the terms of the block transaction, so long as there is knowledge that all of the material terms of the transaction have been or will be agreed upon imminently.

.02 Publicly Available Information. Information as to a block transaction shall be considered to be publicly available when it has been disseminated via a last sale reporting system or high speed communications line of one of those systems, a similar system of a national securities exchange under Section 6 of the Exchange Act, an alternative trading system under SEC Regulation ATS, or by a third-party news wire service. The requirement that information concerning the block transaction be made publicly available will not be satisfied until the entire block transaction has been completed and publicly reported.

.03 Examples of Block Transactions. In the context of equity securities, a transaction involving 10,000 shares or more of a security, an underlying security, or a related financial instrument overlying such number of shares, is generally deemed to be a block transaction, although a transaction of fewer than 10,000 shares could be considered a block transaction. A block transaction that has been agreed upon does not lose its identity as such by arranging for partial executions of the full transaction in portions which themselves are not of block size if the execution of the full transaction may have a material impact on the market.

.04 Permitted Transactions.

(a) Rule 5270 does not preclude transactions that the member can demonstrate are unrelated to the material, non-public market information received in connection with the customer order. These types of transactions may include:

(1) transactions where the member has information barriers established to prevent internal disclosure of such information;

(2) transactions in the same security related to a prior customer order in that security;

(3) transactions to correct bona fide errors; or

(4) transactions to offset odd-lot orders.

(b) Rule 5270 does not preclude transactions undertaken for the purpose of fulfilling, or facilitating the execution of, the customer block order. However, when engaging in trading activity that could affect the market for the security that is the subject of the customer block order, the member must minimize any potential disadvantage or harm in the execution of the customer's order, must not place the member's financial interests ahead of those of its customer, and must obtain the customer's consent to such trading activity. A member may obtain its customers' consent through affirmative written consent or through the use of a negative consent letter. The negative consent letter must clearly disclose to the customer the terms and conditions for handling the customer's orders; if the customer does not object, then the member may reasonably conclude that the customer has consented and the member may rely on such letter for all or a portion of the customer's orders. In addition, a member may provide clear and comprehensive oral disclosure to and obtain consent from the customer on an order-by-order basis, provided that the member documents who provided such consent and such consent evidences the customer's understanding of the terms and conditions for handling the customer's order.

(c) The prohibitions in Rule 5270 shall not apply if the member's trading activity is undertaken in compliance with the marketplace rules of a national securities exchange and at least one leg of the trading activity is executed on that exchange.

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.05 Front Running of Non-Block Transactions. Although the prohibitions in Rule 5270 are limited to imminent block transactions, the front running of other types of orders that place the financial interests of the member or persons associated with a member ahead of those of its customer or the misuse of knowledge of an imminent customer order may violate other FINRA rules, including Rule 2010 and Rule 5320, or provisions of the federal securities laws.

Amended by SR-FINRA-2012-025 and SR-FINRA-2013-021 eff. Sept. 3, 2013.
Amended by SR-NASD-2002-40 eff. Oct. 15, 2002.
Adopted by SR-NASD-87-45 eff. Dec. 30, 1987.

Selected Notices: 96-66, 12-52.

‹ 5260. PROHIBITION ON TRANSACTIONS, PUBLICATION OF QUOTATIONS, OR PUBLICATION OF INDICATIONS OF INTEREST DURING TRADING HALTS

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5280. TRADING AHEAD OF RESEARCH REPORTS ›

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5280. Trading Ahead of Research Reports

(a) No member shall establish, increase, decrease or liquidate an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security.

(b) A member must establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the member or any other person.

Amended by SR-FINRA-2008-054 eff. Apr. 20, 2009.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006
Amended by SR-NASD-98-86 eff. Nov. 19, 1998.
Adopted by SR-NASD-95-28 eff. Aug. 15, 1995.

Selected Notices: 95-75, 09-11.

‹ 5270. FRONT RUNNING OF BLOCK TRANSACTIONS UP 5290. ORDER ENTRY AND EXECUTION PRACTICES ›

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5290. Order Entry and Execution Practices

No member or associated person shall engage in conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions. For purposes of this Rule, "monetary or in-kind amount" shall be defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

Amended by SR-FINRA-2009-067 eff. Feb. 15, 2010.
Adopted by SR-NASD-2005-144 eff. May 25, 2006.

Selected Notices: 06-19, 09-72.

‹ 5280. TRADING AHEAD OF RESEARCH REPORTS UP 5300. HANDLING OF CUSTOMER ORDERS ›

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5310. Best Execution and Interpositioning

(a)(1) In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a member has used "reasonable diligence" are:

(A) the character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communications);

(B) the size and type of transaction;

(C) the number of markets checked;

(D) accessibility of the quotation; and

(E) the terms and conditions of the order which result in the transaction, as communicated to the member and persons associated with the member.

(2) In any transaction for or with a customer or a customer of another broker-dealer, no member or person associated with a member shall interject a third party between the member and the best market for the subject security in a manner inconsistent with paragraph (a)(1) of this Rule.

(b) When a member cannot execute directly with a market but must employ a broker's broker or some other means in order to ensure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the member.

(c) Failure to maintain or adequately staff an over-the-counter order room or other department assigned to execute customers' orders cannot be considered justification for executing away from the best available market; nor can channeling orders through a third party as described above as reciprocation for service or business operate to relieve a member of its obligations under this Rule.

(d) A member through which an order is channeled and that knowingly is a party to an arrangement whereby the initiating member has not fulfilled its obligations under this Rule, will also be deemed to have violated this Rule.

(e) The obligations described in paragraphs (a) through (d) above exist not only where the member acts as agent for the account of its customer but also where transactions are executed as principal. Such obligations are distinct from the reasonableness of commission rates, markups or markdowns, which are governed by Rule 2121 and its Supplementary Material.

• • • Supplementary Material: ----------

.01 Execution of Marketable Customer Orders. A member must make every effort to execute a marketable customer order that it receives fully and promptly.

.02 Definition of "Market." For the purposes of Rule 5310 and the accompanying Supplementary Material, the term “market” or “markets” is to be construed broadly, and it encompasses a variety of different venues, including, but not limited to, market centers that are trading a particular security. This expansive interpretation is meant to both inform broker-dealers as to the breadth of the scope of venues that must be considered in the furtherance of their best execution obligations and to promote fair competition among broker-dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge, by not mandating that certain trading venues have less relevance than others in the course of determining a firm's best execution obligations.

.03 Best Execution and Debt Securities. Rule 5310(a)(1)(D) provides that one of the factors used to determine if a member has used reasonable diligence in exercising best execution is the "accessibility of the quotation." In the context of the debt market, this means that, when quotations are available, FINRA will consider the accessibility of such quotations when examining whether a member has used reasonable diligence. For purposes of debt securities, the term “quotation” refers to either dollar (or other currency) pricing or yield pricing. Accessibility is only one of the non-exhaustive reasonable diligence factors set out in Rule 5310(a)(1). In the absence of accessibility, members are not relieved from taking reasonable steps and employing their market expertise in achieving the best execution of customer orders.

.04 Best Execution and Executing Brokers. A member's duty to provide best execution in any transaction “for or with a customer of another broker-dealer” does not apply in instances when another broker-dealer is simply executing a customer order against the member's quote. The duty to provide best execution to customer orders received from other broker-dealers arises only when an order is routed from the broker-dealer to the member for the purpose of order handling and execution. This clarification is intended to draw a distinction between those situations in

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which the member is acting solely as the buyer or seller in connection with orders presented by a broker-dealer against the member's quote, as opposed to those circumstances in which the member is accepting order flow from another broker-dealer for the purpose of facilitating the handling and execution of such orders.

.05 Use of a Broker's Broker. Paragraph (b) of the Rule provides that when a member cannot execute directly with a market but must employ a broker's broker or some other means in order to ensure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the member. Examples of acceptable circumstances are where a customer's order is "crossed" with another firm that has a corresponding order on the other side, or where the identity of the firm, if known, would likely cause undue price movements adversely affecting the cost or proceeds to the customer.

.06 Orders Involving Securities with Limited Quotations or Pricing Information. Although the best execution requirements in Rule 5310 apply to orders in all securities, markets for securities differ dramatically. One of the areas in which a member must be especially diligent in ensuring that it has met its best execution obligations is with respect to customer orders involving securities for which there is limited pricing information or quotations available. Each member must have written policies and procedures in place that address how the member will determine the best inter-dealer market for such a security in the absence of pricing information or multiple quotations and must document its compliance with those policies and procedures. For example, a member should analyze pricing information based on other data, such as previous trades in the security, to determine whether the resultant price to the customer is as favorable as possible under prevailing market conditions. In these instances, a member should generally seek out other sources of pricing information or potential liquidity, which may include obtaining quotations from other sources (e.g., other firms that the member previously has traded with in the security).

07. Orders Involving Foreign Securities. The obligation in Rule 5310(a) that a member use "reasonable diligence" in exercising best execution applies to customer orders in both domestic and foreign securities. However, Rule 5310(a) also recognizes that the markets for different securities can vary dramatically, and the standard of "reasonable diligence" must be assessed by examining specific factors, including "the character of the market for the security" and the "accessibility of the quotation." Accordingly, the determination as to whether a member has satisfied its best execution obligations necessarily involves a "facts and circumstances" analysis.

The handling of customer orders in foreign securities that do not trade in the U.S. can differ substantially from the handling of orders in U.S.-traded securities. In particular, the character of the particular foreign market and the accessibility of quotations in certain foreign markets may vary significantly. Some foreign jurisdictions, for example, may not have similar best execution requirements as those imposed by Rule 5310, or may not have comparable access and pre-trade or post-trade transparency standards.

Even though a security does not trade in the U.S., members still have an obligation to seek best execution for customer orders involving any foreign security. Consequently, a member that handles customer orders involving foreign securities that do not trade in the U.S. must have specific written policies and procedures in place regarding its handling of customer orders for these securities that are reasonably designed to obtain the most favorable terms available for the customer, taking into account differences that may exist between U.S. markets and foreign markets. While best execution obligations take into account differing market structures, best execution obligations also must evolve as changes occur in the market that may give rise to improved executions, including opportunities to trade at more advantageous prices. As such, members also must regularly review these policies and procedures to assess the quality of executions received and update or revise the policies and procedures as necessary.

.08 Customer Instructions Regarding Order Handling. If a member receives an unsolicited instruction from a customer to route that customer's order to a particular market for execution, the member is not required to make a best execution determination beyond the customer's specific instruction. Members are, however, still required to process that customer's order promptly and in accordance with the terms of the order. Where a customer has directed that an order be routed to another specific broker-dealer that is also a FINRA member, the receiving broker-dealer to which the order was directed would be required to meet the requirements of Rule 5310 with respect to its handling of the order.

.09 Regular and Rigorous Review of Execution Quality.

(a) No member can transfer to another person its obligation to provide best execution to its customers' orders. A member that routes customer orders to other broker-dealers for execution on an automated, non-discretionary basis, as well as a member that internalizes customer order flow, must have procedures in place to ensure the member periodically conducts regular and rigorous reviews of the quality of the executions of its customers' orders if it does not conduct an order-by-order review. The review must be conducted on a security-by-security, type-of-order basis (e.g., limit order, market order, and market on open order). At a minimum, a member must conduct such reviews on a quarterly basis; however, members should consider, based on the firm's business, whether more frequent reviews are needed.

(b) In conducting its regular and rigorous review, a member must determine whether any material differences in execution quality exist among the markets trading the security and, if so, modify the member's routing arrangements or justify why it is not modifying its routing arrangements. To assure that order flow is directed to markets providing the most beneficial terms for their customers' orders, the member must compare, among other things, the quality of the executions the member is obtaining via current order routing and execution arrangements (including the internalization of order flow) to the quality of the executions that the member could obtain from competing markets. In reviewing and comparing the execution quality of its current order routing and execution arrangements to the execution quality of other markets, a member should consider the following factors:

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(1) price improvement opportunities (i.e., the difference between the execution price and the best quotes prevailing at the time the order is received by the market);

(2) differences in price disimprovement (i.e., situations in which a customer receives a worse price at execution than the best quotes prevailing at the time the order is received by the market);

(3) the likelihood of execution of limit orders;

(4) the speed of execution;

(5) the size of execution;

(6) transaction costs;

(7) customer needs and expectations; and

(8) the existence of internalization or payment for order flow arrangements.

(c) A member that routes its order flow to another member that has agreed to handle that order flow as agent for the customer (e.g., a clearing firm or other executing broker-dealer) can rely on that member's regular and rigorous review as long as the statistical results and rationale of the review are fully disclosed to the member and the member periodically reviews how the review is conducted, as well as the results of the review.

Amended by SR-FINRA-2014-023 eff. May 9, 2014.
Amended by SR-FINRA-2011-052 eff. May 31, 2012.
Amended by SR-FINRA-2009-054 eff. May 9, 2011.
Amended by SR-FINRA-2010-003 eff. June 28, 2010.
Amended by SR-FINRA-2009-078 eff. Dec. 14, 2009.
Amended by SR-FINRA-2007-024 eff. Sep. 8, 2009.
Amended by SR-NASD-2004-130 eff. Sep. 28, 2007.
Amended by SR-NASD-2004-026 eff. Nov. 8, 2006.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2000-20 eff. Nov. 24, 2000.
Amended by SR-NASD-98-57 eff. March 26, 1999.
Amended by SR-NASD-97-42 eff. Oct. 22, 1997.
Amended by SR-NASD-87-55 eff. May 2, 1988.
Interpretation adopted eff. May 1, 1968.

Selected Notices: 97-88, 99-16, 00-78, 06-58, 07-40, 09-58, 10-26, 10-42, 12-13, 15-46, 18-29.

‹ 5300. HANDLING OF CUSTOMER ORDERS UP 5320. PROHIBITION AGAINST TRADING AHEAD OF CUSTOMER ORDERS ›

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May 09, 2014 onwards

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5320. Prohibition Against Trading Ahead of Customer Orders

(a) Except as provided herein, a member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

(b) A member must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule and Rule 5310. A member also must ensure that this methodology is consistently applied.

• • • Supplementary Material: ----------

.01 Large Orders and Institutional Account Exceptions. With respect to orders for customer accounts that meet the definition of an "institutional account" as defined in Rule 4512(c), or for orders of 10,000 shares or more (unless such orders are less than $100,000 in value), a member is permitted to trade a security on the same side of the market for its own account at a price that would satisfy such customer order, provided that the member has provided clear and comprehensive written disclosure to such customer at account opening and annually thereafter that:

(a) discloses that the member may trade proprietarily at prices that would satisfy the customer order, and

(b) provides the customer with a meaningful opportunity to opt in to the Rule 5320 protections with respect to all or any portion of its order.

If the customer does not opt in to the Rule 5320 protections with respect to all or any portion of its order, the member may reasonably conclude that such customer has consented to the member trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.

In lieu of providing written disclosure to customers at account opening and annually thereafter, a member may provide clear and comprehensive oral disclosure to and obtain consent from the customer on an order-by-order basis, provided that the member documents who provided such consent and such consent evidences the customer's understanding of the terms and conditions of the order.

.02 No-Knowledge Exception

(a) With respect to NMS stocks, as defined in Rule 600 of SEC Regulation NMS, if a member implements and utilizes an effective system of internal controls, such as appropriate information barriers, that operate to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, those other trading units trading in a proprietary capacity may continue to trade at prices that would satisfy the customer orders held by the separate trading unit. A member that structures its order handling practices in NMS stocks to permit its market-making desk to trade at prices that would satisfy customer orders held by a separate trading unit must disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which customer orders are handled by the member and the circumstances under which the member may trade proprietarily at its market-making desk at prices that would satisfy the customer order.

(b) With respect to OTC equity securities, as defined in Rule 6420, if a member implements and utilizes an effective system of internal controls, such as appropriate information barriers, that operate to prevent a non-market-making trading unit from obtaining knowledge of customer orders held by a separate trading unit, the non-market-making trading unit trading in a proprietary capacity may continue to trade at prices that would satisfy the customer orders held by the separate trading unit.

(c) If a member implements and utilizes appropriate information barriers in reliance on this exception, the member must uniquely identify such information barriers as prescribed in Rule 6830(a)(1).

.03 Riskless Principal Exception. The obligations under this Rule shall not apply to a member's proprietary trade if such proprietary trade is for the purposes of facilitating the execution, on a riskless principal basis, of an order from a customer (whether its own customer or the customer of another broker-dealer) (the "facilitated order"), provided that the member:

(a) submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to FINRA (or another self-regulatory organization if not required under FINRA rules); and

(b) has written policies and procedures to ensure that riskless principal transactions for which the member is relying upon this exception comply with applicable FINRA rules. At a minimum these policies and procedures must require that the customer order was received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent or other fee and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

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Members must have supervisory systems in place that produce records that enable the member and FINRA to reconstruct accurately, readily, and in a time-sequenced manner all facilitated orders for which the member relies on this exception.

.04 ISO Exception. A member shall be exempt from the obligation to execute a customer order in a manner consistent with this Rule with regard to trading for its own account that is the result of an intermarket sweep order routed in compliance with Rule 600(b) of SEC Regulation NMS ("ISO") where the customer order is received after the member routed the ISO. Where a member routes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO, the member also shall be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer's order.

.05 Odd Lot and Bona Fide Error Transaction Exceptions. The obligations under this Rule shall not apply to a member's proprietary trade that is (1) to offset a customer order that is in an amount less than a normal unit of trading; or (2) to correct a bona fide error. Members are required to demonstrate and document the basis upon which a transaction meets the bona fide error exception. For purposes of this Rule, a "normal unit of trading" for an NMS stock shall mean the "round lot" assigned to such NMS stock pursuant to Rule 600(b) of SEC Regulation NMS.

.06 Minimum Price Improvement Standards. The minimum amount of price improvement necessary for a member to execute an order on a proprietary basis when holding an unexecuted limit order in that same security, and not be required to execute the held limit order is as follows:

(a) For customer limit orders priced greater than or equal to $1.00, the minimum amount of price improvement required is $0.01 for NMS stocks and the lesser of $0.01 or one-half (1/2) of the current inside spread for OTC equity securities;

(b) For customer limit orders priced greater than or equal to $0.01 and less than $1.00, the minimum amount of price improvement required is the lesser of $0.01 or one-half (1/2) of the current inside spread;

(c) For customer limit orders priced less than $0.01 but greater than or equal to $0.001, the minimum amount of price improvement required is the lesser of $0.001 or one-half (1/2) of the current inside spread;

(d) For customer limit orders priced less than $0.001 but greater than or equal to $0.0001, the minimum amount of price improvement required is the lesser of $0.0001 or one-half (1/2) of the current inside spread;

(e) For customer limit orders priced less than $0.0001 but greater than or equal to $0.00001, the minimum amount of price improvement required is the lesser of $0.00001 or one-half (1/2) of the current inside spread;

(f) For customer limit orders priced less than $0.00001, the minimum amount of price improvement required is the lesser of $0.000001 or one-half (1/2) of the current inside spread; and

(g) For customer limit orders priced outside the best inside market, the minimum amount of price improvement required must either meet the requirements set forth above or the member must trade at a price at or inside the best inside market for the security.

For purposes of determining the minimum price improvement standards for customer limit orders in OTC equity securities priced below $1.00 where there is no published current inside spread, members may calculate a current inside spread by contacting and obtaining priced quotations from at least two unaffiliated dealers and using the highest bid and lowest offer obtained in calculating the current inside spread. Where there is only a one-sided quote in an OTC equity security priced below $1.00, members may calculate the current inside spread by contacting and obtaining priced quotations from at least two unaffiliated dealers and using the best price obtained on the other side of the quote. Members must document the name of each dealer contacted and the quotations received for purposes of determining the current inside spread.

In addition, if the minimum price improvement standards above would trigger the protection of a pending customer limit order, any better-priced customer limit order(s) must also be protected under this Rule, even if those better-priced limit orders would not be directly triggered under the minimum price improvement standards above.

.07 Order Handling Procedures. A member must make every effort to execute a marketable customer order that it receives fully and promptly. A member that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the member on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the member and that is consistent with the terms of the orders. In the event that a member is holding multiple orders on both sides of the market that have not been executed, the member must make every effort to cross or otherwise execute such orders in a manner that is reasonable and consistent with the objectives of this Rule and with the terms of the orders. A member can satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

.08 Trading Outside Normal Market Hours. Members generally may limit the life of a customer order to the period of normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. However, if the customer and member agree to the processing of the customer's order outside normal market hours, the protections of this Rule shall apply to that customer's order(s) at all times the customer order is executable by the member.

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Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2009-090 eff. Sept. 12, 2011.
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Amended by SR-FINRA-2008-064 eff. Feb. 11, 2009.
Amended by SR-FINRA-2007-023 eff. Nov. 16, 2007; amended by SR-FINRA-2007-038 eff. Dec. 21, 2007; amended by SR-NASD-2007-041 Nov. 11, 2008.
Amended by SR-FINRA-2007-039 eff. May 6, 2008.
Amended by SR-NASD-2007-039 eff. July 26, 2007.
Amended by SR-NASD-2005-146 eff. July 26, 2007.
Amended by SR-NASD-2006-134 eff. Dec. 8, 2006.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2006-069 eff. July 1, 2006.
Amended by SR-NASD-2006-035 eff. April 14, 2006.
Amended by SR-NASD-2005-139 eff. Jan. 9, 2006.
Amended by SR-NASD-2004-045 eff. Jan. 9, 2006.
Amended by SR-NASD-2004-089 eff. Jan. 2, 2006.
Amended by SR-NASD-2005-085 eff. July 1, 2005.
Amended by SR-NASD-2003-14 eff. January 31, 2003.
Amended by SR-NASD-2002-66 eff. Dec. 13, 2002.
Amended by SR-NASD-2001-27 eff. April 6, 2001.
Amended by SR-NASD-2001-09 eff. March 2, 2001.
Amended by SR-NASD-99-57 eff. Oct. 25, 1999.
Amended by SR-NASD-99-44 eff. Sept. 10, 1999.
Amended by SR-NASD-94-62 eff. June 21, 1995.
Adopted by SR-NASD-93-58 eff. July 7, 1994.

Selected Notices: 89-39, 90-37, 95-43, 95-67, 05-64, 05-69, 07-19, 08-31, 08-49, 09-14, 11-24, 21-21.

‹ 5310. BEST EXECUTION AND INTERPOSITIONING UP 5330. ADJUSTMENT OF ORDERS ›

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5330. Adjustment of Orders

(a) A member holding an open order from a customer or another broker-dealer shall, prior to executing or permitting the order to be executed, reduce, increase, or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment, or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution, or ex-interest, except where a cash dividend or distribution is less than one cent ($0.01), as follows:

(1) Cash Dividends: Unless marked "Do Not Reduce," open order prices shall be first reduced by the dollar amount of the dividend, and the resulting price will then be rounded down to the next lower minimum quotation variation.

(2) Stock Dividends and Stock Splits: Open order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the next higher minimum quotation variation. The resulting amount shall then be subtracted from the price of the order. Unless marked "Do Not Increase," the size of the order shall be increased by first (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing the result by the denominator of the ratio of the dividend or split, then (C) rounding the result to the next lowest share.

(3) Dividends Payable in Either Cash or Securities at the Option of the Stockholder: Open order prices shall be reduced by the dollar value of the cash or securities, whichever is greater. The dollar value of the cash shall be determined using the formula in subparagraph (1) above, while the dollar value of the securities shall be determined using the formula in subparagraph (2) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph (2) above.

(4) Combined Cash and Stock Dividends/Split: In the case of a combined cash dividend and stock split/dividend, the cash dividend portion shall be calculated first as per subparagraph (1) above, and the stock portion thereafter pursuant to subparagraph (2) above.

(5) Indeterminate Value: If the value of the distribution cannot be determined, the member shall not adjust, execute, or permit an open order to be executed without reconfirming the order with the customer.

(b) When a pending order involves a security that is the subject of a reverse split, the order (buy or sell) shall be cancelled.

(c) When a pending order involves a security that is the subject of a stock split but is not otherwise required to be adjusted under this Rule, a member shall promptly notify the customer of the stock split.

(d) The term "open order" means an order to buy or an open stop order to sell, including but not limited to "good 'til cancelled," "limit" or "stop limit" orders which remain in effect for a definite or indefinite period until executed, cancelled or expired.

(e) The provisions of paragraph (a) of this Rule shall not apply to:

(1) orders governed by the rules of a registered national securities exchange;

(2) open stop orders to buy;

(3) open sell orders; or

(4) orders for the purchase or sale of securities where the issuer of the securities has not reported a dividend, payment, or distribution pursuant to SEA Rule 10b-17.

Amended by SR-FINRA-2009-084 eff. April 19, 2010.
Amended by SR-NASD-01-10 eff. March 12, 2001.
Amended by SR-NASD-00-46 eff. Aug. 28, 2000.
Amended by SR-NASD-97-48 eff. July 30, 1997.
Amended by SR-NASD-95-27 eff. Aug. 22, 1995.
Amended by SR-NASD-94-71 eff. Feb. 7, 1995.
Amended by SR-NASD-94-46 eff. Sept. 15, 1994.
Adopted by SR-NASD-93-52 eff. May 16, 1994; eff. date amended to Sept. 15, 1994 by SR-NASD-94-22.

Selected Notices: 93-61, 94-9, 94-28, 94-63, 10-10.

‹ 5320. PROHIBITION AGAINST TRADING AHEAD OF CUSTOMER ORDERS UP 5340. PRE-TIME STAMPING ›

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5340. Pre-Time Stamping

Pre-time stamping of order tickets in connection with block positioning is contrary to Rule 4511.

Adopted by SR-FINRA-2010-052 eff. Dec. 5, 2011.

Selected Notice: 11-19.

‹ 5330. ADJUSTMENT OF ORDERS UP 5350. STOP ORDERS ›

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5350. Stop Orders

(a) A member may, but is not obligated to, accept a stop order or stop limit order in a security. A "stop order" is an order to buy (or sell) that becomes a market order to buy (or sell) when a transaction occurs at or above (below) the stop price. A "stop limit order" is an order to buy (or sell) that becomes a limit order to buy (or sell) at the limit price when a transaction occurs at or above (below) the stop price.

(b) This Rule shall not apply to a "not held" stop or stop limit order.

• • • Supplementary Material: ----------

.01 A member may, but is not obligated to, accept an order type that activates as a market or limit order using an event other than a transaction at the stop price as the trigger (e.g., using a quotation at the stop price). In such cases, the order cannot be labeled a "stop order" or a "stop limit order" and must be clearly distinguishable from a "stop order" or a "stop limit order." In addition, the member must disclose to the customer, in paper or electronic form, prior to the time the customer places the order, a description of the order type including the triggering event. A member that permits customers to engage in securities transactions online also must post the required disclosures on the member's website in a clear and conspicuous manner.

.02 To the extent a member routes a customer stop or stop limit order to another broker-dealer or exchange for handling or execution, the member must take reasonable steps to ensure that the order is handled or executed by the other broker-dealer or exchange in accordance with Rule 5350(a). Similarly, a member that routes to another broker-dealer or exchange other order types using an alternative trigger in accordance with Supplementary Material .01 above must take reasonable steps to ensure that the order is handled or executed by the other broker-dealer or exchange in accordance with the terms of the order as communicated to the customer placing the order.

Adopted by SR-FINRA-2012-026 and amended by SR-FINRA-2013-004 eff. March 4, 2013.

Selected Notice: 12-50.

‹ 5340. PRE-TIME STAMPING UP 6000. QUOTATION, ORDER, AND TRANSACTION REPORTING FACILITIES ›