

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 "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**

**(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.

**(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-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.

◀ 5123. PRIVATE PLACEMENTS OF SECURITIES

UP

5131. NEW ISSUE ALLOCATIONS AND DISTRIBUTIONS ▶

**VERSIONS**

Jan 01, 2020 onwards

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> 5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

# 5131. New Issue Allocations and Distributions

The Rule

Notices

## (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 (11), 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;

(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.**

(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-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.

◀ 5130. RESTRICTIONS ON THE PURCHASE AND SALE OF INITIAL EQUITY PUBLIC OFFERINGS

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5140. INTEGRITY OF FIXED PRICE OFFERINGS ▶

## VERSIONS

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## 5141. Sale of Securities in a Fixed Price Offering

The Rule

Notices

(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



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## 5150. Fairness Opinions

The Rule

Notices

### (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.

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## 5160. Disclosure of Price and Concessions in Selling Agreements

The Rule

Notices

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.

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[5190. NOTIFICATION REQUIREMENTS FOR OFFERING PARTICIPANTS →](#)

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> 5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

# 5190. Notification Requirements for Offering Participants

The Rule

Notices

## (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**

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

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## 5210. Publication of Transactions and Quotations

The Rule

Notices

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.

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.

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[5220. OFFERS AT STATED PRICES →](#)

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## 5220. Offers at Stated Prices

The Rule

Notices

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, the term "inter-dealer quotation system" is as defined in Rule 6420.

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](#)

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[5230. PAYMENTS INVOLVING PUBLICATIONS THAT INFLUENCE THE MARKET PRICE OF A SECURITY](#) ▶

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Jul 09, 2012 onwards

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[5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES](#)

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

The Rule

Notices

(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.

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