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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102723; File No. SR-FINRA-2025-001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Exempt Certain Business Development Companies from FINRA Rules 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and 5131 (New Issue Allocations and Distributions)

March 25, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on March 20, 2025, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to exempt certain business development companies (“BDCs”) from FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and from paragraph (b) (Spinning) of FINRA Rule 5131 (New Issue Allocations and Distributions).

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

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

(a) through (b) No Change.

(c) General Exemptions

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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) through (9) No Change.

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

(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 the shares of which are registered under the Securities Act.*

(d) through (j) No Change.

5131. New Issue Allocations and Distributions

(a) No Change.

(b) Spinning

(1) No Change.

(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]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) through (f) No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV

below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Rule 5130 protects the integrity of the public offering process by ensuring that: (1) members make bona fide public offerings of securities at the offering price; (2) members do not withhold securities in a public offering for their own benefit or use such securities to reward persons who are in a position to direct future business to members; and (3) industry insiders, including members and their associated persons, do not take advantage of their insider position to purchase new issues for their own benefit at the expense of public customers.³

Paragraph (a) of Rule 5130 provides that, except as otherwise permitted under the rule, a member (or an associated person) may not sell a new issue to an account in which a restricted person⁴ has a beneficial interest;⁵ a member or an associated person may not purchase a new issue in any account in which such member or associated person has a beneficial interest; and a member may not continue to hold new issues acquired as an underwriter, selling group member, or otherwise. Paragraph (b) sets forth preconditions for sale. Before selling a new issue to any account, a member must in good faith have obtained within the 12 months before the sale, a representation from 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 Rule 5130.

³ The term “new issue” is defined as “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,” subject to a number of exceptions. See Rule 5130(i)(9). The term has the same meaning for purposes of Rule 5131.

⁴ The term “restricted person” is defined in Rule 5130(i)(10). It includes “members or other broker-dealers,” “broker-dealer personnel,” “finders and fiduciaries,” “portfolio managers,” and “persons owning a broker-dealer,” as those terms are defined in Rule 5130(i)(10)(A)–(E).

⁵ The term “beneficial interest” is defined in Rule 5130(i)(1) and has the same meaning for purposes of Rule 5131.

Rule 5131 addresses conflicts and abuses in the allocation and distribution of new issues. Paragraph (b) of Rule 5131 prohibits the practice of “spinning,” which is the allocation of new issues by a member firm to an account in which a covered person that is the member firm’s current, former or prospective investment banking client has a beneficial interest. The term “covered person” refers to 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.⁶

Rule 5130(c), and, by reference, Rule 5131(b)(2), currently provide several general exemptions which reflect the proposition that sales to and purchases by entities that have numerous beneficial owners are generally not the type of transactions that the Rule should prohibit.⁷ Of particular relevance to the proposed rule change, there is a general exemption for an investment company registered under the Investment Company Act of 1940 (“Investment Company Act”)⁸ and a general exemption for a publicly traded entity listed on a national securities exchange.⁹ Unless a general exemption applies to BDCs, they would be required to represent that they are eligible to purchase new issues, which may not be feasible due to their size and operational structure.

In general, there are three types of BDCs: traded, non-traded, or private.¹⁰ The proposed exemption described below would exempt non-traded BDCs, thus treating them more similarly

⁶ Rule 5131(b)(1).

⁷ See Notice to Members 03-79 (December 2003).

⁸ See Rule 5130(c)(1). There is also an exemption for an investment company organized under the laws of a foreign jurisdiction. See Rule 5130(c)(6). To qualify for this exemption, there are several provisions: “(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 for the specific purpose of permitting restricted persons to invest in new issues[.]”

⁹ See Rule 5130(c)(5). A BDC may also rely on the 10% de minimis exemption under Rule 5130(c)(4) or the 25% de minimis exemption under Rule 5131(b)(2) if they have collected restricted person and covered person information for their investors. However, due to their size and operational structure, FINRA believes that some BDCs may have difficulties determining whether restricted persons and covered persons meet the rules’ thresholds.

¹⁰ In this filing, “traded BDC” refers to a BDC with registered shares under the Securities Act of 1933 (“Securities Act”) that is publicly traded on a national securities exchange, “non-traded BDC” refers to a BDC with registered shares under the Securities Act that is not publicly traded, and “private BDC” refers to

to traded BDCs and to investment companies registered under the Investment Company Act, both of which are exempt under paragraphs (c)(5) and (c)(1) of Rule 5130, respectively. The proposed rule change would not apply to private BDCs.¹¹

BDCs

Congress created BDCs in 1980 as a special category of pooled investment vehicles designated to facilitate access to capital and financing for small and growing companies.¹² BDCs are domestic closed-end investment companies that elect to be regulated under the Investment Company Act.¹³

Section 54(a) allows a company to be regulated as a BDC if it meets the provisions of Sections 55 through 65 of the Investment Company Act and also files a registration statement (Form N-2) for a class of equity securities pursuant to Section 12 of the Exchange Act.¹⁴ Both traded and non-traded BDCs offer securities registered under the Securities Act by registering a class of securities on Form N-2. Traded BDCs list their securities on a national securities exchange while non-traded BDCs do not.

As discussed, traded BDCs can comply with an exemption in Rule 5130 for publicly traded entities, but non-traded and private BDCs cannot. This proposed rule change would create an exemption for non-traded BDCs.

a BDC that is offered as a private placement. For purposes of the proposed rule change, the term “BDC” refers generally to all types of BDCs.

¹¹ FINRA does not propose to extend the exemption to private BDCs at this time because they do not register their equity offerings with the SEC under the Securities Act and thus do not offer or sell their shares to the public. The other relevant exemptions from the new issue rules are for accounts that are available to the public (*i.e.*, investment companies registered under the Investment Company Act, publicly traded entities, and foreign investment companies listed on a foreign exchange for sale to the public or authorized for sale to the public by a foreign regulatory authority). *See supra* notes 8–9 and accompanying text.

¹² *See* Small Business Investment Incentive Act of 1980, Pub. L. No. 96-477, 94 Stat. 2275 (1980); *see also* Letter from Afshin Atabaki, FINRA, to Wallace W. Kunzman, Jr., Kunzman & Bollinger, Inc., dated December 1, 2014 (providing interpretive guidance regarding whether Direct Participation Programs Representatives are eligible to sell shares of a non-listed BDC that has elected to be taxed as a regulated investment company).

¹³ *See* Investment Company Act Section 2(a)(48), 15 U.S.C. 80a-2(a)(48).

¹⁴ *See* Investment Company Act Sections 54(a) and 64(a), 15 U.S.C. 80a-53(a) and 80a-63(a).

Only 30 percent of BDC assets can potentially be invested in new issues. This is because Section 55(a) of the Investment Company Act requires at least 70 percent of the assets held by BDCs (other than non-investment assets used to conduct the BDC's operations) to be:

- (1) privately issued securities purchased from issuers who are "eligible portfolio companies," discussed below;
- (2) securities of eligible portfolio companies that are controlled by the BDC and of which an affiliated person of the BDC is a director;
- (3) privately issued securities from affiliated non-investment company issuers subject to a bankruptcy, reorganization, insolvency or similar proceeding or otherwise unable to meet its obligations without assistance;
- (4) securities of eligible portfolio companies acquired in private transactions when no ready market for the securities exists, and the BDC owned at least 60 percent of the outstanding equity of the issuer immediately before the acquisition;
- (5) securities received in exchange or distributed with respect to any of the foregoing securities (including securities obtained pursuant to the exercise of options, warrants or rights relating to such securities);
- (6) Cash, cash items, government securities, and other high quality debt securities; and
- (7) office furniture and equipment, interests in real estate and leasehold improvements and facilities maintained to conduct the business operations of the BDC, deferred organization and operating expenses, and other noninvestment assets necessary and appropriate to its operations as a BDC.¹⁵

In satisfying the 70 percent test, BDCs must primarily invest in "eligible portfolio companies."¹⁶ That term is defined under Section 2(a)(46) of the Investment Company Act as an issuer that is organized under the laws of, and has its principal place of business in, any state or

¹⁵ 15 U.S.C. 80a-54(a)(1) – (7).

¹⁶ See 15 U.S.C. 80a-2(a)(46) (defining "eligible portfolio company").

states, is neither an investment company as defined in Section 3 of the Investment Company Act nor a company excluded from the definition of investment company under Section 3(c) of the Investment Company Act and satisfies one of four categories: (1) it does not have any class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Federal Reserve System; (2) it is controlled by a BDC, either alone or as part of a group acting together, and such BDC in fact exercises a controlling influence over the management or policies of such eligible portfolio company and, as a result of such control, has an affiliated person who is a director of such eligible portfolio company; (3) it has total assets of not more than \$4 million and capital and surplus of not less than \$2 million; or (4) it meets such other criteria as the Commission may establish by rule.¹⁷

Proposed Amendments to Rules 5130(c) and 5131(b)

FINRA proposes to adopt a categorical exemption for non-traded BDCs under Rule 5130(c)(12) and, by reference, under Rule 5131(b). The proposed exemption would apply to a business development company as that term is defined in Section 2(a)(48) of the Investment Company Act the shares of which are registered under the Securities Act. The proposed exemption would allow non-traded BDCs, and therefore investors in non-traded BDCs, to more easily obtain access to new issues in so much as they could be included in the allowable 30 percent of a non-traded BDC's portfolio. In addition, the proposed exemption would expand the pool of investors who can participate in initial public offerings ("IPOs") through their investment in a non-traded BDC.

As discussed, there is already an exemption for publicly traded entities¹⁸ and for investment companies registered under the Investment Company Act.¹⁹ Non-traded BDCs are

¹⁷ 15 U.S.C. 80a-2(a)(46).

¹⁸ See Rule 5130(c)(5).

¹⁹ See Rule 5130(c)(1).

subject to similar regulatory requirements under the Investment Company Act, they are required to register a class of their equity securities under Section 12 of Exchange Act, and they are required to file periodic reports under the Exchange Act. The proposed exemption would thus allow non-traded BDCs to more easily diversify their portfolios with new issues to the extent that such investments are consistent with all other applicable regulations.

In light of the regulatory similarities between non-traded BDCs, traded BDCs, and investment companies registered under the Investment Company Act, FINRA proposes to adopt a categorical exemption for non-traded BDCs under Rule 5130(c)(12) and, by reference, under Rule 5131(b). Specifically, as proposed, a BDC as that term is defined in Section 2(a)(48) of the Investment Company Act, the shares of which are registered under the Securities Act, would be exempt from the requirements of Rules 5130(a) and 5131(b).

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁰ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed exemption for non-traded BDCs would expand access to investment options and maintain the integrity of the public offering process without diminishing investor protection. The proposed rule change would allow non-traded BDCs to more easily invest in new issues and thus diversify their portfolios. This will benefit investors in non-traded BDCs and promote capital formation by giving more investors access to IPOs. By

²⁰ 15 U.S.C. 78o-3(b)(6).

expanding access to IPOs through a highly regulated entity, the proposed rule change maintains the integrity of the public offering process while facilitating vibrant capital markets.²¹

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, and identified the potentially material impacts of the proposal on the affected parties. FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

1. Regulatory Need

As discussed, Rule 5130 protects the integrity of the public offering process and Rule 5131 addresses conflicts and abuses in the allocation and distribution of new issues. Both rules have exemptions, which FINRA believes strike the appropriate balance by promoting capital formation while maintaining the protections that Rules 5130 and 5131 are designed to provide. Under the current rules, investment companies registered under the Investment Company Act and traded BDCs are exempt. FINRA believes it is appropriate to adopt a similar exemption for non-traded BDCs, which will promote capital formation while maintaining protections for investors.

2. Economic Baseline

The economic baseline for the proposed rule change is the current requirements and provisions to which non-traded BDCs are subject and the current market for IPOs. Using information on active BDCs provided by the SEC along with other regulatory filings, FINRA

²¹ See Regulatory Notice 23-09 (May 2023) (“FINRA promotes the capital raising process through appropriately tailored rules for its members that are designed to promote transparency and to establish important standards of conduct for the benefit of all market participants, including investors and issuers.”).

estimates that there were approximately 26 active non-traded BDCs in 2024.²² Section 55(a) of the Investment Company Act requires that at least 70 percent of a BDC's total assets must be invested in certain types of investments, such as privately issued securities, distressed debt, and government securities. Thus, under the current FINRA rules, a non-traded BDC can invest up to 30 percent of its assets in new issues provided it can demonstrate that it is eligible to purchase new issues. FINRA understands that non-traded BDCs currently face challenges in demonstrating eligibility to purchase new issues due financial, operational, and administrative constraints. As discussed above, non-traded BDCs do not currently qualify for a categorical exemption.

The market for IPOs is economically important. Between 2017 and 2021, annual IPO proceeds ranged from \$23 billion to \$119 billion, and the average first-day return on IPO shares ranged between 13% and 42%.²³

3. Economic Impacts

A. Anticipated Benefits

The proposed rule change would allow non-traded BDCs that invest in new issues under the 30 percent threshold permitted under the Investment Company Act, to incur less regulatory burden in demonstrating their eligibility to receive new issue allocations. Specifically, these non-traded BDCs would save the operational expense of having to demonstrate that they do not have any restricted or covered persons as beneficial owners, or that the beneficial interests of restricted persons is de minimis.²⁴ To the extent such non-traded BDCs would invest in new issues but for the expense of demonstrating eligibility, such non-traded BDCs and their investors

²² See the Business Development Company Report for 2024, available at <https://www.sec.gov/about/opensdatasetsshtmlbdc>. The estimate takes into account that active non-traded BDCs would also have filed a closed-end management investment company registration statement (Form N-2) and filed a recent Form 10-K, but do not offer or sell their shares to the public on a national securities exchange.

²³ See IPO Data, available at <https://site.warrington.ufl.edu/ritter/ipo-data/>.

²⁴ See FINRA Rule 5130(c)(4); 5131(b)(2).

would benefit from the proposed rule change. Specifically, non-traded BDCs would be able to diversify up to 30 percent of their portfolios into IPOs.

B. Anticipated Costs

There is some risk under the proposed rule change that an otherwise restricted or covered person may invest in a non-traded BDC for the purpose of investing in new issues. FINRA believes that this risk is mitigated by several factors.

As discussed, only 30 percent of BDC assets could potentially be invested in IPO shares because Section 55(a) of the Investment Company Act requires that BDCs must primarily invest in eligible portfolio companies. Due to this limitation, it is unlikely that restricted or covered persons would be able to influence the allocation of IPO shares to these non-traded BDCs or to benefit significantly from an IPO allocation since the restricted or covered persons would only receive a small fraction of the profits or losses. Additionally, FINRA understands that the costs of setting up and maintaining a non-traded BDC are high. This makes it unlikely that it would be profitable to establish a non-traded BDC for the purpose of permitting restricted or covered persons to invest in new issues.²⁵

C. Anticipated Competitive Effects

The proposal may increase competition for investors between and among non-traded BDCs, traded BDCs, and investment companies registered under the Investment Company Act. Relative to the baseline, the proposal may also increase interest in, and thus competition for, investing in non-traded BDCs because access to IPOs may enhance BDC returns and diversification. The proposal may therefore promote capital formation by giving more investors access to IPOs.

4. Alternatives Considered

No alternatives were considered for the proposed amendments to Rules 5130 and 5131.

²⁵ These expenses include the external management costs and costs associated with reporting requirements for public companies.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include file number SR-FINRA-2025-001 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-FINRA-2025-001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post

all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-FINRA-2025-001 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Sherry R. Haywood,

Assistant Secretary.

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