



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105296; File No. SR-FINRA-2026-002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend FINRA Rules 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) and 5123 (Private Placements of Securities)

April 23, 2026.

I. Introduction

On January 22, 2026, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend FINRA Rules 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) and 5123 (Private Placements of Securities).³ Specifically, the proposed rule changes would, among other things, amend provisions of Rule 5110 to: (1) change the valuation method for securities acquisitions considered underwriting compensation; (2) add new exclusions from underwriting compensation for certain securities acquisitions; (3) amend the rule to treat non-convertible preferred securities the same as non-convertible debt securities; and (4) make other minor modifications for clarity and to improve the operation of the rule. The proposed amendments to Rule 5123 would expand available exemptions under the rule to include offerings sold to investors meeting the categories of accredited investor for certain family offices and certain entities with assets under management in excess of \$5,000,000,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 34-104695 (Jan. 27, 2026), 91 FR 4121 (Jan. 30, 2026) (File No. SR-FINRA-2026-002) (“Notice”).

consistent with the Commission’s treatment of those categories in the accredited investor definition.

The proposed rule change was published for public comment in the Federal Register on January 30, 2026.⁴ The public comment period closed on February 20, 2026. The Commission received comment letters in response to the Notice.⁵ On March 12, 2026, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to April 30, 2026.⁶

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act⁷ to institute proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

FINRA Rule 5110 requires any broker-dealer that is a member of FINRA (“member”) that participates in a public offering to file documents and information with FINRA about underwriting terms and arrangements.⁸ Among other things, the rule contains provisions relating to how underwriting compensation is valued,⁹ as well as providing examples of payments that are not deemed to be underwriting compensation.¹⁰ FINRA’s Corporate Financing Department

⁴ See id.

⁵ The comment letters are available at <https://www.sec.gov/rules-regulations/public-comments/sr-finra-2026-002>.

⁶ See letter from Joseph Savage, Vice President and Associate General Counsel, Office of General Counsel, FINRA (Mar. 12, 2026), <https://www.finra.org/sites/default/files/2026-03/SR-FINRA-2026-002-Extension-1.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See FINRA Rule 5110. FINRA states that the following are examples of public offerings that are routinely filed: (1) initial public offerings (“IPOs”); (2) follow-on offerings; (3) shelf offerings; (4) rights offerings; (5) offerings by direct participation programs as defined in FINRA Rule 2310(a)(4) (Direct Participation Programs); (6) exchange offers; (7) offerings pursuant to SEC Regulation A; and (8) offerings by closed-end funds. See Notice at 4122 n.3.

⁹ See Rule 5110(c).

¹⁰ See Rule 5110.01(b).

reviews this information prior to the commencement of the offering to determine whether the underwriting compensation and other terms and arrangements meet the requirements of applicable FINRA rules.¹¹

In general, Rule 5123 requires members to file with FINRA any private placement memorandum, term sheet or other offering document, and any retail communication that promotes or recommends a private placement, including any material amended versions thereof, used in connection with a private placement of securities within 15 calendar days of the date of first sale, unless the member can rely on an applicable exemption from the rule.¹² Rule 5123 contains an exemption from filing for offerings sold to certain types of sophisticated institutional investors that qualify as “accredited investors” under Rule 501 of the Securities Act of 1933 (“Securities Act”).¹³

B. The Proposed Rule Change

FINRA’s proposed rule change would, among other things, amend provisions of Rule 5110 to: (1) change the valuation method for securities acquisitions considered underwriting compensation; (2) add new exclusions from underwriting compensation for certain securities acquisitions; (3) amend the rule to treat non-convertible preferred securities the same as non-convertible debt securities; and (4) make other minor modifications for clarity and to improve the operation of the rule. The proposed amendments to Rule 5123 would expand the available exemptions under the rule to include offerings sold to investors meeting the categories of accredited investor for certain family offices and certain entities with assets under management in excess of \$5,000,000, consistent with the Commission’s treatment of those categories in the accredited investor definition.¹⁴

¹¹ See Notice at 4122. A member may proceed with a public offering only if FINRA has provided an opinion that it has no objection to the proposed underwriting terms and arrangements. See Rule 5110(a)(1)(C)(ii).

¹² See Rule 5123.

¹³ See Rule 5123(b).

¹⁴ In 2020, the SEC amended the definition of accredited investor to include two additional types of institutional entities. See Accredited Investor Definition, Securities Exchange Act Release 89669 (Aug. 26,

1. Rule 5110 Proposed Amendments

a. Valuation Method for Securities Acquisitions Considered Underwriting Compensation

FINRA stated that, when participating members¹⁵ acquire securities that are deemed underwriting compensation, the value of the securities is currently based on either the public offering price per security or the price paid per security on the date of acquisition if a “bona fide public market” exists for the security.¹⁶ The proposed rule change would amend Rule 5110(c)(2) and (3) by replacing “bona fide public market” with a valuation method based on the closing market price of a security traded on a registered national securities exchange or a “designated offshore securities market”¹⁷ on the date of acquisition.¹⁸

b. Exclusions from Underwriting Compensation for Certain Securities Acquisitions

Currently, Rule 5110 provides for certain exclusions from underwriting compensation.¹⁹ The proposed rule change would expand the categories of exclusions from underwriting compensation for certain types of investments by participating members in anticipation of, or concurrently with, a public offering. These proposed amendments cover: (1) debt-for-equity exchanges; (2) capital investments for direct participation programs (“DPPs”)²⁰ and unlisted real estate investment trusts (“REITs”);²¹ and (3) non-convertible preferred securities. Each proposed amendment is discussed below.

2020), 85 FR 64234 (Oct. 9, 2020), including new categories of accredited investor under Rule 501(a)(9) and (a)(12).

¹⁵ 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. See Rule 5110(j)(15).

¹⁶ See Rule 5110(c). The definition of “bona fide public market” requires that the securities be traded on a national securities exchange and relies on SEC Regulation M’s definitions of average daily trading volume and public float. See Rule 5121(f)(3).

¹⁷ See Securities Act Rule 902(b).

¹⁸ See Notice at 4122-23.

¹⁹ See generally Rule 5110.

²⁰ See Rule 2310(a)(4).

²¹ See Rule 2231(d)(4).

i. Debt-for-Equity Exchanges

Currently, Rule 5110 does not provide an exclusion from underwriting compensation for securities acquired by affiliates of underwriters in connection with debt-for-equity exchange transactions.²² A debt-for-equity exchange is composed of a series of transactions in which a lender acquires equity securities of the issuer, often referred to as exchange shares, in return for a cash loan.²³ The exchange shares are subsequently or concurrently registered and offered by underwriters in a public offering. The offering proceeds are used, in whole or part, as repayment of the loan. When the lender is an affiliate of an underwriter, it falls within the definition of participating member, and the equity securities acquired by the affiliated lender for making the loan fall within the definition of underwriting compensation.²⁴

The proposed rule change would add new Supplementary Material .01(b)(23) to provide relief from such exchanges being deemed underwriting compensation if the equity acquired is part of a transaction that provides economic and tax benefits to the issuer and meets the following conditions:

- the affiliated member subsequently offered all of the equity securities the lender acquired in a firm commitment offering following the debt exchange;²⁵
- the parties determined the terms of the debt exchange and the subsequent equity issued through arms' length negotiations based on the market price of the equity;²⁶ and
- the affiliated member negotiated customary compensation for the subsequent equity offering.

²² See Rule 5110.01.

²³ See Notice at 4123.

²⁴ See *id.*

²⁵ See *id.* FINRA states that typically, lenders and affiliated members coordinate to satisfy this condition. However, even if they do not coordinate, the affiliated member can satisfy the condition with the subsequent offering. See *id.*

²⁶ See *id.* According to FINRA, past exemptions that have been granted consistent with the conditions of this proposed Supplementary Material involved operating companies with equity listed on a national securities exchange with a market price and did not involve an IPO or a spinoff. See *id.*

ii. Capital Investments for DPPs and REITs

Currently, Rule 5110 does not provide an exclusion from underwriting compensation for capital investments in exchange for an equity stake made by affiliates of underwriters concurrently with or in advance of a public offering.²⁷ The proposed rule change would add new Supplementary Material .01(b)(24) to provide relief from such transactions by setting out the conditions for excluding capital investments from being deemed underwriting compensation. Supplementary Material .01(b)(24) would work as a self-operating exclusion and would not limit when the transactions could occur. The conditions for Supplementary Material .01(b)(24) apply to securities acquired before or during the distribution of an offering by a participating member in the issuer or an affiliated entity and would require that:

- the capital investments are disclosed in the prospectus;
- the offering and the securities acquired in the capitalization transaction are valued and priced based on net asset value (“NAV”);²⁸
- the offering is subject to the requirements of Rule 2310 (Direct Participation Programs); and
- the securities acquired are restricted for a period of 180 days following the commencement of sales.

iii. Non-Convertible Preferred Securities

Currently, Rule 5110 provides that non-convertible or non-exchangeable debt securities and derivative instruments acquired by any participating member in a transaction related to a public offering at a fair price²⁹ are considered underwriting compensation but have no compensation value.³⁰ However, at present, Rule 5110 does not have specific provisions related

²⁷ See Rule 5110.01. FINRA states that such investments are common in DPP and REIT offerings to provide the initial or subsequent equity capital or financing needed by an issuer. See Notice at 4123.

²⁸ Capitalization transactions occurring before the issuer has material assets would be deemed to occur at or above NAV. See Notice at 4123.

²⁹ See Rule 5110.06(b).

³⁰ See Rules 5110(c)(5) and 5110.06. FINRA states that, as a general rule, compensation that cannot be valued is prohibited. See Rule 5110(g)(1). Under this exclusion, treating these transactions as

to the valuation of non-convertible preferred securities.³¹ Because both non-convertible debt and non-convertible preferred securities cannot be converted to common stock and provide predetermined payments to holders, resulting in fixed sources of income, FINRA states that it views them as equivalent for purposes of the Rule 5110 exclusion and, accordingly, the proposed rule change would treat them in a comparable manner as long as non-convertible preferred securities are acquired at a fair price.³²

c. Additional Minor Modifications to Rule 5110

The proposed rule change would make other minor modifications to Rule 5110 that FINRA believes would improve the operation of the rule. For example, Rule 5110 permits termination fees or the receipt of compensation in the form of rights of first refusal in connection with a public offering that is terminated when specific requirements are met that protect the issuer (i.e., they are not deemed to be prohibited unreasonable terms or arrangements).³³ FINRA states that, increasingly, members negotiate payments often described as “tail fees” in engagement letters that are similar to the terms and requirements for termination fees or rights of first refusal.³⁴ Because tail fees provide compensation in the event of a subsequent financing from investors introduced by a member following the termination of an agreement, FINRA believes these payments are comparable to termination fees for purposes of Rule 5110.³⁵ The proposed rule change would amend Rule 5110(g)(5)(B) to clarify that the same requirements

compensation without value permits the participating member to receive the securities (as long as they are received at a fair price) while still allowing FINRA the ability to review the transactions to determine whether they were, indeed, received at a fair price. If they were not, the value of underwriting compensation that is attributed to these securities is the difference between their fair price and their actual price. See Notice at 4123 n.18.

³¹ See id.

³² See Notice at 4123-24.

³³ See Rule 5110(g)(5)(B).

³⁴ See Notice at 4124.

³⁵ See id.

would apply to tail fees.³⁶ If these requirements are not met, tail fees would constitute unreasonable arrangements under Rule 5110.

The proposed rule change would also amend Rule 5110 to make non-substantive, technical changes. The proposed rule change would add language to various cross-references throughout the rule in order to clarify that the cross-references are related to the same rule.³⁷ In addition, the proposed rule change would also change the wording of the definition of “immediate family” to replace “the spouse or child” with “the spouse or children”.³⁸

2. Rule 5123 Proposed Amendments

The proposed rule change would add two types of entities to the filing exemption under Rule 5123, consistent with the Commission’s 2020 amendments to the accredited investor definition. As stated above, in August 2020, the Commission adopted amendments to the definition of “accredited investor” under Rule 501.³⁹ These changes included adding to the definition of accredited investor:

- any entity, of a type not listed in paragraphs (a)(1), (2), (3), (7), or (8) of Rule 501, not formed for the specific purpose of acquiring the securities offered, owning investments in excess of \$5,000,000;⁴⁰ and
- any “family office” with assets under management in excess of \$5,000,000, that is not formed for the specific purpose of acquiring the securities offered and its prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment.⁴¹

³⁶ See *id.* at 4124 n.19; see also Rule 5110(g)(5)(B).

³⁷ See, e.g., proposed Rule 5110(g); 5110(j)(11); 5110 (j)(19); 5110(j)(21); 5110.01(a)(13); 5110.03; 5110.04; and 5110.07.

³⁸ See proposed Rule 5110(j)(8)(A).

³⁹ See SEC Accredited Investor Definition Release, *supra* note 14.

⁴⁰ See 17 CFR 230.501(a)(9).

⁴¹ See 17 CFR 230.501(a)(12).

The proposed rule change would amend Rule 5123(b)(1) to include these same two types of entities to the filing exemption under Rule 5123.

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2026-002 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change should be approved or disapproved.⁴² Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration.⁴³ The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁴⁴

⁴² 15 U.S.C. 78s(b)(2)(B).

⁴³ Id.

⁴⁴ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by **[INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by **[INSERT DATE 35 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FINRA-2026-002 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-2026-002. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of such filing 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-2026-002 and should be submitted on or before **[INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL***

REGISTER]. If comments are received, any rebuttal comments should be submitted on or before **[INSERT DATE 35 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Sherry R. Haywood,

Assistant Secretary.

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⁴⁵ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).