



10401 North Meridian Street  
Suite 202  
Indianapolis, IN 46290

317.663.4180 *main*  
317.815.0871 *fax*  
866.353.8422 *toll free*

[www.adisa.org](http://www.adisa.org)

March 18, 2025

*VIA E-MAIL (pubcom@finra.org)*

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
Financial Industry Regulatory Authority, Inc.  
1700 K Street, NW  
Washington, DC 20006

Re: Regulatory Notice 24-17: Capital Formation

Dear Ms. Mitchell:

On behalf of the Alternative & Direct Investment Securities Association (“ADISA”)<sup>1</sup>, we are submitting this comment letter regarding the Regulatory Notice 24-17: Capital Formation (the “Notice”) to the FINRA Corporate Financing Rules (the “CF Rules”). ADISA appreciates the opportunity to provide comments on behalf of its members.

ADISA believes that many of the proposed changes to the CF Rules will be beneficial to its members; however, ADISA has the following specific comments on the Notice.

**Safe Harbors: Exclusions From Underwriting Compensation.**

- 1. ADISA recommends that, in addition to those investments made concurrently with or in advance of the public offering, additional contributions of seed capital should not be considered underwriting compensation and should be included in the safe harbor exclusion, subject to the same conditions set forth in the proposed revision.**

ADISA commends FINRA for excluding from underwriting compensation seed capital investments made by affiliates of underwriters concurrently with or in advance of a public offering. FINRA has proposed this exclusion on the condition that:

---

<sup>1</sup> ADISA (Alternative & Direct Investment Securities Association), is the nation’s largest trade association for the non-traded alternative investment space (i.e., retail vs. institutional). Through its 5,000 financial industry members (over 1,000 firms), ADISA reaches over 220,000 finance professionals, with sponsor members raising in excess of \$200 billion annually, serving more than 1 million investors. ADISA is a non-profit organization (501(c)(6)), registered to lobby, and also has a related 501(c)(3) charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

- the seed capital investments are disclosed in the prospectus;
- the offering and the acquisitions are valued and priced based on net asset value;
- 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.

These seed capital investments are typically required by state securities regulators pursuant to the North American Securities Administrators Association's Statement of Policy Regarding Real Estate Investment Trusts ("NASAA REIT Guidelines") in an amount equal to the lesser of 10% of the total net assets upon completion of the offering or \$200,000, which amount is required to remain invested in the issuer but may be transferred to other affiliates.<sup>2</sup>

The explicit exclusion of these investments from underwriting compensation is welcome; however, ADISA urges FINRA to also include capital contributions after sales have commenced. While the exclusion from underwriting compensation is only for those investments made concurrently with or in advance of the public offering, the sponsor or an affiliate may determine to make additional contributions of capital following the effectiveness of the offering and after sales have commenced either because of an investment opportunity that exceeds currently available investment proceeds or for other business considerations, such as breaking escrow or requirements from selling group members in order to add the program to its platform. It does not appear that these additional investments would be included under the safe harbor provisions because they were not made concurrently with or in advance of the public offering.

**2. ADISA recommends that the safe harbor restrictions fully align with the NASAA REIT Guidelines.**

The proposed restrictions on the sale of the securities acquired pursuant to the safe harbor provisions are different than those contained in the NASAA REIT Guidelines because the proposed restrictions do not provide that those securities may be transferred to an affiliate of the sponsor which is allowable pursuant to Section II.A.2. of the NASAA REIT Guidelines. ADISA believes that there should be consistency between the FINRA safe harbor and the NASAA REIT Guidelines regarding the ability to transfer those securities to affiliates. In order to effectuate that consistency, ADISA proposes that the following language be added to the end of .05(d):

*“; provided, however, the securities acquired and excluded may be transferred to other affiliated entities, which transfer would not be deemed to constitute an economic disposition of the securities during the 180 day period.”*

**3. ADISA recommends that for the purpose of calculating the lockup restriction period, FINRA use the definitive date of effectiveness of the offering as a measurement rather than commencement of sales.**

---

<sup>2</sup> NASAA REIT Guidelines, Section II.A.



ADISA believes that “commencement of sales” is not a date certain and can be difficult to pinpoint for purposes of measuring the lockup restriction period whereas the date of effectiveness is readily available to the public. Many of ADISA member’s offerings are “best efforts” and there can be a significant time lag between the date of effectiveness and the date of first sale (or the breaking of escrow). If the lockup restrictions do not begin until the commencement of sales, is that the date selling agreements are entered into, the date that the first subscription agreement is received, the date that escrow is broken, or some other date? The date of effectiveness is a date certain that is publicly available on the SEC’s website and would provide clarity to all participants in the offering rather than a date that will be more difficult to determine and harder yet to notify the holders of the securities subject to such restrictions.

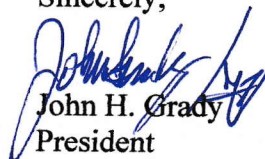
**Proposed Amendments to Rule 5123**

1. **ADISA urges FINRA to include additional categories of accredited investors to the exemptions for filing private offerings as the definition of accredited investor continues to evolve.**

ADISA agrees with and appreciates FINRA adding the two additional categories of accredited investor contained in Rule 501(a)(9) and (12) pursuant to Regulation D to the exemption for filing private placement offering documents and retail communications pursuant to FINRA Rule 5123. ADISA believes that FINRA should continue to review and consider adding further categories of investors pursuant to which the exemption for filing would apply as the definition of accredited investor continues to evolve pursuant to future SEC rulemaking or legislation.

ADISA appreciates the opportunity to provide input. We would be happy to discuss our concerns further and to continue to assist FINRA in creating appropriate protections for investors.

Sincerely,



John H. Grady  
President

Drafting Committee:

Deborah S. Froling  
Catherine Bowman