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March 17, 2025

Submitted via email to: pubcom@finra.org

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1700 K Street, N.W.
Washington, D.C. 20006

Re: Regulatory Notice 24-17: Request for Comment on Proposed Changes to FINRA Corporate Financing Rules

Ladies and Gentlemen:

This letter is submitted on behalf of the Federal Regulation of Securities Committee (the "Committee") of the Business Law Section (the "Section") of the American Bar Association (the "ABA") in response to the request for comments by the Financial Industry Regulatory Authority, Inc. ("FINRA") pursuant to FINRA Regulatory Notice 24-17 (the "Notice"), as more fully set forth below.

This letter was prepared by members of the Committee's Subcommittee on FINRA Corporate Financing Rules. The views expressed in this letter represent the views of the Committee only and have not been reviewed or approved by the House of Delegates or Board of Governors of the ABA and should not be construed as representing the position of the ABA. In addition, this letter does not necessarily reflect the views of all members of the Section, the Committee, the drafting committee or their respective firms or clients.

I. Description of the Notice

The Committee commends the significant steps already taken by FINRA to promote and reduce unnecessary burdens on capital formation. The Notice requests comment on proposed amendments to FINRA Rules 5110, 5121 and 5123 to make substantive, organizational and terminology changes to such rules. The proposed amendments respond to feedback FINRA received with respect to Regulatory Notice 23-09.

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The Committee supports FINRA's efforts to continue to modernize its rules, simplify compliance and codify additional exceptions from underwriting compensation. The Committee also welcomes the opportunity to suggest further improvements that would be consistent with FINRA's goals set forth in the Notice and in Regulatory Notice 23-09, as discussed below.

II. Comments

A. Rule 5110

1. Rule 5110(c)(1) – Limitation on Securities Received upon Exercise or Conversion of Another Security

In Rules 5110(c)(2)(A) and (c)(3)(B), FINRA proposes to replace references to a "security with a bona fide public market" with a "security traded on a U.S. registered national securities exchange or a designated offshore securities market as defined under Securities Act Rule 902(b)." However, in Rule 5110(c)(1)(A) FINRA proposes to delete the words "or to a security with a bona fide public market" without substituting the alternative of a security traded on a U.S. exchange or designated offshore market, as follows:

> A participating member may not receive a security (including securities in a unit), a warrant for a security, or a security convertible into another security as underwriting compensation in connection with a public offering unless:
>
> (A) the security received or the security underlying the warrant or convertible security received is identical to the security offered to the public [or to a security with a bona fide public market]…

Thus, the new valuation methods in paragraphs (c)(2)(A) and (c)(3)(B) for securities traded on U.S. exchanges and offshore markets will be without effect since paragraph (c)(1)(A) would not allow FINRA members to receive securities as underwriting compensation that are different than those offered to the public.[1]

We believe allowing underwriters to receive securities that are either identical to the security offered to the public *or* capable of valuation because they are traded on a U.S. national exchange or designated offshore market is consistent with and necessary

[1] Rule 5110(c)(1)(B) is not proposed to be amended and, therefore, would continue to allow the staff to determine that a security being received as underwriting compensation that is different than the security offered to the public is permitted if it "can be accurately valued." However, this alternative valuation method has no meaning since there is no proposal to include standards for when such other securities "can be accurately valued."

to the implementation of the changes made elsewhere in Rule 5110(c) and would provide certainty to issuers and the investing public. The limitation in Rule 5110(c)(1)(A) is designed to prevent underwriters from negotiating compensation for themselves in the form of securities with rights and other terms not available to other investors. That concern is not present when the securities received by underwriters are traded on U.S. national exchanges or designated offshore securities markets,[2] because the securities can be acquired at market prices by any investor.

In addition, we believe the foregoing concern is also not present when the securities received by underwriters are traded on over-the-counter markets where the securities can be acquired at market prices by any investor. Those of us who have had a FINRA underwriting practice for many years remember a time when FINRA staff, acting pursuant to authority to determine the existence of a bona fide independent market, concluded in appropriate cases that the last sale price of a security traded in the over-the-counter ("OTC") market could be used on the basis that the market price was independently determined. Therefore, we believe that Rule 5110(c) should also permit valuation of any security traded on any of the OTC markets of the OTC Markets Group, Inc. (the "OTC Markets") that is eligible for proprietary quotation by an OTC Market Maker, as defined in FINRA Rule 6420.[3] Due to the standards for inclusion in these OTC Markets, as well as FINRA's oversight, we believe that the independently

[2] Clause (b)(1) of Securities Act Rule 902 lists specific markets that qualify as designated offshore securities markets, while clause (b)(2) permits the SEC to so designate additional foreign securities markets. Such designations are generally made through the SEC no action letter process. For SEC no action letters in this area, see https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action#regs, under heading "Regulation S - Offers and sales made outside the United States". A single, publicly available list of all designated offshore securities markets, if FINRA were to maintain one, would offer the benefits of uniformity and efficiency to the process of identifying qualifying offshore markets for the purpose of establishing valuation.

[3] OTC Market Makers must comply with Exchange Act Rule 15c2-11, which governs the publication of quotations for securities in the OTC market for the purpose of preventing fraud and manipulation by requiring broker/dealers to review current and publicly available information about an issuer before quoting its securities. FINRA is responsible for review and approval of Rule 15c2-11 compliance prior to a broker/dealer first entering a quotation in an OTC security and, for this purpose, enforces requirements to ensure such compliance in FINRA Rule 6432.

determined market prices in such markets make further criteria such as the trading price and volume unnecessary.[4]

For these reasons, we recommend that Rules 5110(c)(2) and (c)(3) be revised as discussed below and that Rule 5110(c)(1)(B) be revised as follows:

> (B) the security can be accurately valued**~~, as required by paragraph (g)(1) of this Rule~~ pursuant to any method in this paragraph (c), without limitation on FINRA's authority to accept other valuation methods as accurate.**

2. Rule 5110(c)(2) – Valuation of Non-Convertible Securities

FINRA proposes the following amendment to Rule 5110(c)(2)(A):

> (A) the difference between:
>
> (i) either the closing market price [per]of the security traded on a U.S. registered national securities exchange or a designated offshore securities market as defined under Securities Act Rule 902(b) on the date of acquisition, or[, if no bona fide public market exists for the security,] the public offering price per security; and
>
> (ii) the per security cost…

The provision as currently written contains a mechanism for determining which of two prices should be used: the public offering price is used *unless* a bona fide public market price exists. The provision as proposed to be amended does not say which price should be chosen or if the underwriters are free to choose which of the prices they prefer. As a practical matter, an offering of securities that are also traded on an exchange or offshore market will generally be at a price below the market price, as an incentive to purchasers in the offering. Since FINRA has described one of the purposes of this rule

[4] To qualify for the OTCQX market, among other things, companies must meet high financial standards, follow best practice corporate governance, maintain compliance with U.S. securities laws, meet the infrequently-traded and disclosure standards of SEC Rule 15c2-11, be current in their disclosure, and have a professional third-party sponsor (broker/dealer) introduction. Penny stocks, shell companies and companies in bankruptcy cannot qualify for the OTCQX. To qualify for the OTCQB market, among other things, companies must maintain a corporate profile, publish an annual certification, maintain compliance with U.S. securities laws, be current in filing obligations and not be in bankruptcy. See also, the OTCQX and OTCQB Disclosure Guidelines at https://www.otcmarkets.com/files/OTCQX-OTCQBGuidelines.pdf. Effective July 1, 2025, the OTCID Basic Market will replace the Pink Current Market. Companies traded on the OTCID Basic Market will provide ongoing financial disclosure and a management certification. Companies will also be required to verify their profile for U.S. investors, brokers and regulators. See also, OTCID Rules, effective July 1, 2025, at https://www.otcmarkets.com/files/OTCIDRules.pdf and https://www.otcmarkets.com/files/15c211_Market_Chart_EffectiveJul2025.pdf for a comparison chart of OTC markets and an explanation of "proprietary quote eligible".

change to be to make the valuation method "more predictable" and because of the reasons stated above, we suggest that the proposed provision be revised to track the current decision tree, as shown in bold below:

> (i) ~~either~~ the closing market price **on the date of acquisition** [per]of the security traded on **(a)** a U.S. registered national securities exchange**, (b)** ~~or~~ a designated offshore securities market as defined under Securities Act Rule 902(b)**, or (c) any market of the OTC Markets Group, Inc. where the security is eligible for proprietary quotation by an OTC Market Maker, as defined in Rule 6420** ~~on the date of acquisition,~~ or**, if no qualifying market price exists for the security,**[, if no bona fide public market exists for the security,] the public offering price per security; and

3. Rule 5110(c)(3) – Valuation of Convertible Securities

For the reasons stated above with respect to Rule 5110(c)(2), we suggest that Rule 5110(c)(3)(B) be revised to read as follows, with proposed changes shown in bold:

> (B) minus the resultant of the exercise or conversion price per warrant less ~~either~~:
>
> (i) the closing market price **on the date of acquisition** [per]of the convertible security, or the common stock or other security underlying the convertible security traded on **(a)** a U.S. registered national securities exchange**, (b)** ~~or~~ a designated offshore securities market as defined under Securities Act Rule 902(b)**, or (c) any market of the OTC Markets Group, Inc. where the security is eligible for proprietary quotation by an OTC Market Maker, as defined in Rule 6420** ~~on the date of acquisition~~[, where a bona fide public market exists for the security]; or
>
> (ii) **if no qualifying market price exists for the security,** the public offering price per security…

4. Rule 5110(c)(5) and .07 Supplementary Material – Valuation of Securities Acquired in Connection with Fair Price Non-Convertible, Non-Exchangeable Debt or Preferred Securities and Derivative Instruments

We support FINRA's proposal to treat non-convertible preferred securities like non-convertible debt securities for purposes of the Rule 5110 safe harbor providing that such securities acquired in a transaction related to a public offering at a fair price are considered underwriting compensation but will have no compensation value. However,

sometimes issuers must conduct conversions of outstanding securities, such as non-convertible preferred stock, as part of recapitalizations or other reorganizations in preparation for an initial public offering ("IPO") and to meet stock exchange listing standards. The participating FINRA members have no control over such transactions.

If the original acquisition of preferred securities meets the safe harbor, such a conversion of preferred securities in preparation for an IPO should not prohibit reliance on the safe harbor. Therefore, we suggest that FINRA clarify that reliance on this safe harbor is not prohibited where the otherwise non-convertible preferred securities nevertheless convert into the class of securities to be sold to the public as part of a recapitalization or other reorganization in preparation for an IPO.

5. Rule 5110(g)(5) – Tail Fee

FINRA proposes to impose conditions on terms in underwriting agreements providing for the receipt of tail fees similar to the conditions in Rule 5110(g)(5) applicable to termination fees and rights of first refusal. In keeping with the intention of FINRA to provide greater certainty concerning the meaning and requirements of the provisions of Rule 5110, we recommend that FINRA define the term "tail fee," and differentiate it from a "termination fee." One way to do that would be to add a definition of "tail fee" to paragraph (j) of the rule, based on the language in Notice 24-17, under the heading "Operational Changes," providing in substance as follows:

> (j) Definitions
>
> (*) Tail Fee
>
> The term "tail fee" means a fee in an agreement between a member firm and an issuer or seller of securities in a public offering subject to this Rule providing compensation to the member firm in the event of a subsequent financing from investors introduced by a member, following the termination of the agreement. A tail fee is different from a termination fee, although they are both paid following termination of the agreement, in that the termination fee is payable upon the occurrence of a subsequent financing, without regard to whether the investors in the subsequent financing were introduced by the member firm.

In the case of a tail fee, the value of the member's services may consist entirely or primarily of investor introductions. Therefore, we believe that the condition in paragraph (g)(5)(B)(iii) should be revised to incorporate that fact. We suggest the addition of the language shown here with bold underlining:

> (iii) the amount of any termination fee or tail fee must be reasonable in relation to the underwriting services contemplated in the agreement **(which, in the case of**

a tail fee, may consist wholly or in part of introductions to investors who invest in later financings) and any fees arising from underwriting services provided under a right of first refusal must be customary for those types of services; and…

6. Supplementary Material .01(b)(23) – Items Not Considered Underwriting Compensation – Debt-for-Equity Exchanges

We support FINRA's proposal to permit an affiliate of a member participating in a public offering to receive securities not considered underwriting compensation as a lender in a debt-for-equity exchange. However, we suggest that FINRA clarify that reliance on this exception is not prohibited where the affiliated member offers, but is unable to sell, all of the equity securities acquired by the lender in an offering following the debt exchange. Accordingly, we suggest adding the following clarifying language at the end of the exception:

Notwithstanding the foregoing, the affiliated member is not prohibited from placing a portion of the equity securities acquired by the lender in its investment account if it is unable to sell that portion in the offering as required by clause (B).

7. Rule 5110 Supplementary Material .05 – Seed Capital Investments

We also support FINRA's proposal in Rule 5110 supplementary material .05 to provide an exception from underwriting compensation for seed capital investments made by affiliates of underwriters. The proposed exception sets out conditions and would create a principles-based approach for excluding seed capital investments from underwriting compensation. Because the principles-based approach will inherently result in some discretion as to whether or not the exception applies in a particular offering, which could result in inconsistent outcomes, we suggest that FINRA provide more guidance as to application of the exception.

Accordingly, we suggest that the exception specifically address the following:

- the timing of investment (i.e., that the investment may occur prior to, or concurrently with, the public offering);
- that seed capital investments need not be of the same class of securities as those offered to the public so long as the securities are priced at NAV; and
- that seed capital investments could be made through an acquisition in a public offering or private placement.

Ms. Jennifer Piorko Mitchell
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B. Rule 5121

1. Rule 5121(a)(1)(A)(ii)b. – Exception from Qualified Independent Underwriter ("QIU") Requirement for Investment Grade Rated Securities

With respect to the exception from the QIU requirement in Rule 5121(a)(1)(A)(ii)b., FINRA proposes to require that "as of the required filing date," the securities offered are investment grade rated . . . ." The "required filing date" in Rule 5110(j)(19) means the dates referenced in Rule 5110(a)(3) and, for offerings exempt from filing under Rule 5110(h), "the date the public offering would have been required to be filed with FINRA but for the exemption." Rule 5110(a)(3) requires a FINRA filing no later than three business days after documents are filed with or submitted to the SEC. With respect to shelf registration statements that would have been required to be filed but for an exemption under Rule 5110(h), such required filing date would occur before pricing the first takedown from the shelf in which a FINRA member participates.

Therefore, we believe that the "required filing date" is the incorrect compliance date for this requirement. Participating FINRA members will not be able to comply with this proposed timing requirement because the final investment grade ratings are not confirmed as of the required filing date for a public offering, but between pricing and closing. The rating process is driven by the issuer with the issuer presenting to the rating agencies and receiving an "expected" rating for the issue ahead of any investment grade debt offering. Expected ratings are then conveyed by the rating agencies during the course of an applicable offering and are incorporated into the governing documents and are generally included in pricing term sheets. The final confirmation of the investment grade ratings is generally provided by rating agencies on a date between the pricing and closing dates of an offering. We are not aware of investment grade debt offerings where the anticipated investment grade ratings were subsequently downgraded to less than investment grade ratings between pricing and closing the offering. Nevertheless, if this were to happen, we anticipate that the offering would be delayed to update disclosure and the terms of the offering and such delay would enable the engagement and participation of a QIU, if required. For these reasons, we recommend that subparagraph (a)(1)(A)(ii)b. remain as is and not be amended to reference "as of the required filing date". Alternatively, if FINRA believes an amendment to this provision is necessary, we believe that the closing date of the offering would be a more appropriate timing and would recommend that that subparagraph (a)(1)(A)(ii)b. be revised as follows in bold:

> ~~**as of the required filing date**~~ **as of the closing date of the offering**, the securities offered ~~are~~ **will be** investment grade rated or ~~are~~ **will be** securities in the same series that have equal rights and obligations as investment grade rated securities; or[.]

2. Rule 5121(a)(1)(A)(ii)c. – Exception from QIU Requirement for Certain Securities

In Rule 5121, FINRA proposes eliminating the definition of "bona fide public market" and, in subparagraph (a)(1)(A)(ii)c., replacing that exception from the QIU requirement with an exception where:

> as of the required filing date, the securities are offered by an issuer that has (i) been reporting under the Exchange Act for at least one year, (ii) is current in its reporting requirements, and (iii) its common equity securities have an aggregate market value of at least $300 million.

We believe that replacing "as of the required filing date" with "as of the date of commencement of sales" (i.e., the pricing date) in the foregoing is consistent with amendments proposed elsewhere in Rule 5121 and with FINRA's goal of clarifying and making explicit the provision's requirements and addresses the timing concerns caused by relying on the definition of required filing date. An issuer that may not meet the forgoing conditions at the time of the initial confidential submission in connection with a non-shelf follow-on offering, may meet such conditions by the time the offering prices. In addition, we believe that the appropriate time to apply the conditions of this provision to a shelf takedown is as of the date of commencement of sales (i.e., the pricing date).

In addition, this exception is relied on not only when securities are offered *by* an issuer, but also when securities are offered for resale *by* a selling security holder. Therefore, we suggest that the relevant proposed language in the first line above be modified to read "the issuer of the securities offered has . . ."

With respect to the length of time required to be a reporting company under the Exchange Act, we believe that a period shorter than the proposed one year is sufficient. We propose that an issuer be required to have been reporting under the Exchange Act for at least 180 days instead of one year. Reporting under the Exchange Act for at least 180 days will ensure that sufficient public information about the issuer is available as a result of multiple SEC filings.

We are also concerned that replacing "public float value" with "aggregate market value" may cause confusion regarding the calculation because the term could be read to include privately placed securities with a private trading market. It is clear from the request for comment section on page 13 of the Notice that FINRA intends the calculation to be based on the more widely-used term "market capitalization," which is

the term that FINRA also explains in detail on its website location for educating investors.[5] Accordingly, we recommend that FINRA incorporate in this provision the term "market capitalization," which is the term used by the U.S. markets and financial reporting sites when displaying the total number of outstanding securities of a traded issue multiplied by the security's current market price, with updates during the day to reflect the current market price. If this calculation is not published, it can nonetheless be easily calculated at any time based on the total shares outstanding and the current market price.

Finally, FINRA has proposed increasing the required value of common equity securities to at least $300 million in this provision because it believes this will ensure such companies are followed to a meaningful degree by investors and the analyst community, which should result in an increase in public information about those companies. Micro-cap companies have a market value of less than $250 million, while small-cap companies have a market cap between $250 million and $2 billion.[6] We do not believe there is an appreciable difference in the amount of publicly available information due to analyst coverage and institutional ownership for micro-cap and small-cap companies with market capitalizations between $150 million and $300 million. In addition, today there are more avenues of independent public information about companies across market capitalization values through increased public coverage of companies by the financial press.

Accordingly, we propose that a global market capitalization of $150 million be reflected in this provision. Alternatively, if FINRA disagrees with this threshold, we propose that a global market capitalization of $250 million be reflected in this provision because this is the market capitalization dividing line between micro-cap and small-cap companies. For the reasons stated above, we suggest that Rule 5121(a)(1)(A)(ii)c. be revised to read as follows in bold:

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[5] See FINRA explanation of the calculation of "market capitalization" at https://www.finra.org/investors/insights/market-cap

[6] As explained by FINRA in https://www.finra.org/investors/insights/market-cap:

- mega-cap companies have a market value of $200 billion or more;
- large-cap companies have a market value between $10 billion and $200 billion;
- mid-cap companies have a market value between $2 billion and $10 billion;
- small-cap companies have a market value between $250 million and $2 billion; and
- micro-cap companies have a market value of less than $250 million.

> ~~as of the required filing date~~ **as of the date of commencement of sales of an offering with a conflict of interest**, the **issuer or the guarantor[7] of the** securities ~~are~~ offered ~~by an issuer that~~ has (i) been reporting under the Exchange Act for at least ~~one year~~ 180 days, (ii) is current in its reporting requirements, and (iii) its common equity securities have **a global market capitalization** ~~an aggregate market value~~ of at least ~~$300~~ **150** million.

3. FINRA Rules 5121(a)(2)(B) and (a)(3)(B) – QIU Written Agreement and Confirmation

If a QIU is required, proposed amendments in Rule 5121(a)(2)(B) provide, among other things, that a conflicted FINRA member must (i) engage or ensure a QIU is engaged before the commencement of sales, (ii) retain the QIU confirmation required by Rule 5121(a)(3)(B) and (iii) ensure there is a written agreement detailing the QIU services to be provided and any QIU compensation. Currently, QIU engagement, indemnity and any QIU compensation are generally reflected in the underwriting agreement, entered into on the date of commencement of sales (i.e., the pricing date), between the issuer and the underwriters. We suggest that Rules 5121(a)(2)(B) and (a)(3)(B) be clarified to allow the underwriting agreement entered into on the date of commencement of sales to be (i) the written agreement that includes the required provisions and satisfies Rule 5121(a)(2)(B) and (ii) the document that reflects the confirmation required by Rule 5121(a)(3)(B).

4. FINRA Rule 5121 Supplementary Material .01(a) – "Primarily Responsible for Managing the Public Offering"

Proposed Supplementary Material .01 to Rule 5121 notes:

> If two or more members that are primarily responsible for managing the public offering share responsibilities with regard to due diligence, each must be free of conflicts of interest, otherwise one of the conditions in paragraph (a)(1)(A)(i), (a)(1)(A)(ii)b. or (a)(1)(A)(ii)c. must be met in order for the conflicted member(s) to participate in the offering.

Interpretive questions are likely to continually arise with respect to the meaning of "share responsibilities with regard to due diligence" in the foregoing statement in connection with different offering fact patterns. All underwriters have due diligence

[7] Guarantors should be included in this provision in order to capture co-registrants such as finance subsidiaries issuing debt securities that are guaranteed by a public parent co-registrant.

obligations under the securities laws and participate at some level in due diligence. However, one and, sometimes two underwriters may actively manage the due diligence process, while the others are more likely to be passive participants in the process. For example, a passive bookrunning underwriter is generally labeled a "bookrunner" and often included in the list of underwriters on the top line on the cover of a prospectus regardless of the fact that it is not managing the due diligence process for the offering. For clarification purposes, we suggest that proposed supplementary material .01 be revised as follows in bold:

> If two or more members ~~**that**~~ are primarily responsible for managing **the due diligence responsibilities for** the public offering ~~**share responsibilities with regard to due diligence**~~, each must be free of conflicts of interest, otherwise one of the conditions in paragraph (a)(1)(A)(i), (a)(1)(A)(ii)b. or (a)(1)(A)(ii)c. must be met in order for the conflicted member(s) to participate in the offering.

5. FINRA Rule 5121 Supplementary Material .02 – Services and Compensation of a QIU

Proposed Supplementary Material .02 to Rule 5121 notes:

> A qualified independent underwriter is expected to participate in the preparation of the registration statement and perform due diligence if engaged prior to the initial filing of the registration statement. While a qualified independent underwriter that is retained after the registration statement has been filed cannot participate in the "preparation" of the registration statement as originally filed, it can conduct due diligence and require the issuer to amend the registration statement disclosures if necessary.

It is unclear whether "initial filing" in the foregoing provision references the initial confidential submission or initial public filing of the registration statement. Whether or not a conflict of interest exists and, therefore, whether or not a QIU is required in connection with a public offering is often not known until after the initial confidential submission of a registration statement. At this early stage of the offering process, due diligence is ongoing, the use of offering proceeds may still be under consideration by the issuer and the full underwriting syndicate may be unknown. Therefore, we suggest that the foregoing provision be clarified to reference the "initial public filing" rather than the "initial filing," as set forth below in bold:

> A qualified independent underwriter is expected to participate in the preparation of the registration statement and perform due diligence if engaged prior to the

initial **public** filing of the registration statement. While a qualified independent underwriter that is retained after the registration statement has been **publicly** filed cannot participate in the "preparation" of the registration statement as originally ~~**filed**~~ **submitted**, it can conduct due diligence and require the issuer to amend the registration statement disclosures if necessary.

6. FINRA Rule 5121 Supplementary Material .03 – Economic Interest in Offering Proceeds

We support FINRA's proposal in Rule 5121 Supplementary Material .03 clarifying that economic interests in offering proceeds for purposes of Rule 5121 do not include proceeds held on behalf of a FINRA member's customer. Because proceeds held on behalf of a customer may not always be held in "brokerage accounts," we suggest replacing this term with "customer accounts," which is a term used elsewhere in certain FINRA rules. Accordingly, we suggest the following changes in bold:

> This type of conflict of interest only applies if the participating member and its related affiliates and associated persons have an economic interest in the proceeds and does not include proceeds held in ~~**brokerage**~~ **customer** accounts on behalf of a member's customer.

C. Request for Reconsideration of Certain Prior Committee Comments

In its prior comment letter, dated August 7, 2023, the Committee requested that FINRA clarify:

- the "issuer" carve-out from the definition of "participating member" in Rule 5110(j)(12) and (15); and

- the exceptions to underwriting compensation for securities acquired as a result of a conversion, stock split, pro-rata rights or similar offering of securities that would not otherwise be deemed to be underwriting compensation under Rule 5110.

We respectfully request FINRA's reconsideration of those comments for the reasons set forth the Committee's prior comment letter.

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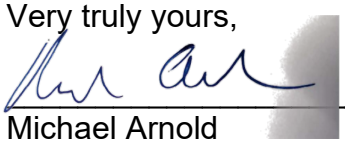
Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.

The Committee greatly appreciates the opportunity to provide its comments with respect the Notice and thanks the FINRA staff for its efforts to further increase efficiency and reduce unnecessary burdens on capital formation. Members of the Drafting Committee are available to meet and discuss these matters with the FINRA staff and to respond to any questions.

Very truly yours,



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