therefore does not place distributors at a competitive disadvantage because self-consolidation is not a realistic market alternative.

Section 6(b)(8) of the Exchange Act requires that exchange rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Cboe One Summary, Cboe One Premium, and the applicable underlying equities feeds are separate products serving different market needs. Just as the Commission has permitted exchanges to offer different fees for depth-of-book data versus top-of-book data, the Exchange should have discretion to price its consolidated summary product differently from its component feeds.

Finally, the proposed Data Vendor Program is pro-competitive. By reducing the cost of consolidated and top-of-book data products for qualifying Data Vendors, the Exchange enables broader distribution of comprehensive market information to downstream distributors and, ultimately, to retail and institutional investors. Wider access to market data promotes informed investment decisions, enhances market efficiency, and supports the Exchange Act's goals of investor protection and fair and efficient markets. The Exchange does not view external distributors as competitors for its real-time feed offerings; rather, distributors serve as essential conduits that expand delivery of Cboe real-time market data to end users who do not have the technical capability or commercial need to connect directly to Cboe's individual market data feeds. This is particularly important for the retail community, as retail investors typically access market data through vendors rather than purchasing it directly from exchanges. By offering the proposed Data Vendor Program, the Exchange enables distributors to deliver competitively priced, comprehensive market data to a broader audience, thereby enhancing—not burdening—competition in the market data landscape.

For the foregoing reasons, the Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [27] and paragraph (f) of Rule 19b–4 [28] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2026–060 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–CboeBZX–2026–060. 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 the filing will be available for inspection and copying at the principal office of the Exchange. 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–CboeBZX–2026–060 and should be submitted on or before August 19, 2026.

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2026–15253 Filed 7–28–26; 8:45 am]

**BILLING CODE 8011–01–P**

[29] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105987; File No. SR–FINRA–2026–002]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rules 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) and 5123 (Private Placements of Securities)

July 24, 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 change (hereinafter, the ''proposed rule change'' unless otherwise specified) would, among other things, amend provisions of Rule 5110 to: (1) change the valuation method for securities acquisitions that are considered to be underwriting compensation; (2) add certain securities acquisitions to the existing exclusions from underwriting compensation; (3) treat non-convertible preferred securities the same as non-convertible debt securities; and (4) make other modifications for clarity and to improve the operation of the rule. The proposed amendments to Rule 5123 would expand the available exemptions for sales to accredited investors to include offerings sold to investors meeting the accredited investor categories for certain family offices and for certain entities with assets under management in excess of $5,000,000, consistent with the Commission's

[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'').

addition of those categories to 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] On April 28, 2026, the Commission published an order instituting proceedings (''OIP'') to determine whether to approve or disapprove the proposed rule change.[7] The Commission did not receive comment letters in response to the OIP. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

### *A. Background*

FINRA states that the ability of small and large businesses to raise capital is critical to job creation and economic growth, and that, among other things, Rule 5110 has played an important role in the capital raising process and continues to be important to promoting investor protection and market integrity through effective and efficient regulation that facilitates capital markets.[8] In general, 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 the underwriting terms and arrangements.[9] Among other things, the rule contains provisions relating to how underwriting compensation is valued,[10] and provides examples of payments that are not deemed to be underwriting compensation.[11] FINRA's Corporate Financing Department 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.[12]

FINRA states that Rule 5123 plays a critical role in providing information that assists FINRA in the identification of potential trends and rule violations in the private placement market, which is an important source of capital for American businesses, including small and midsize companies.[13] 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.[14] Rule 5123 contains an exemption from filing for offerings sold to certain types of ''accredited investors'' under Rule 501 of the Securities Act of 1933 (''Securities Act'').[15]

### *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 that are considered to be underwriting compensation; (2) add certain securities acquisitions to the existing exclusions from underwriting compensation; (3) treat non-convertible preferred securities the same as non-convertible debt securities; and (4) make other modifications for clarity and to improve the operation of the rule. The proposed amendments to Rule 5123 would expand the available exemptions for sales to accredited investors under paragraph (b)(1)(J) to include offerings sold to investors meeting the accredited investor categories for certain family offices with assets under management in excess of $5,000,000 and certain entities owning investments in excess of $5,000,000, consistent with the Commission's addition of those categories to the accredited investor definition.[16]

FINRA stated that the current approach to the valuation of securities that are considered underwriting compensation under Rule 5110 can be complex, creating unnecessary burdens for members and uncertainty regarding whether they are permitted to acquire certain securities or instead would be required to receive a different form of compensation; the proposed rule change would simplify this approach.[17] In addition, FINRA stated that certain transactions under Rule 5110 currently require participating members to request exemptions from FINRA if they do not want to negotiate the receipt of a different form of compensation, which can increase the amount of time and cost for issuers to access capital markets.[18] FINRA stated that the proposed rule change would reduce exemptive requests by replacing existing requirements with more practical and transparent alternatives,[19] as well as align the rule with FINRA's current practices relating to underwriting compensation.[20] Finally, FINRA stated that the proposed rule change would also expand the exemptions available in Rule 5123 and better align FINRA rules with Commission rules relating to the treatment of institutional accredited investors.[21] This order addresses each proposed rule change in turn.

1. Rule 5110 Proposed Amendments

a. Valuation Method for Securities Acquisitions That Are Considered Underwriting Compensation

FINRA stated that when participating members[22] acquire securities that are deemed underwriting compensation,

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[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] *See* Exchange Act Release No. 34–105296 (Apr. 23, 2026), 91 FR 22902 (Apr. 28, 2026) (File No. SR–FINRA–2026–002).

[8] *See* Notice at 4122.

[9] *See* FINRA Rule 5110. FINRA stated 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.

[10] *See* Rule 5110(c).

[11] *See* Rule 5110.01(b).

[12] *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).

[13] *See* Notice at 4122.

[14] *See* Rule 5123.

[15] *See* Rule 5123(b)(1)(J) (exempting offerings sold by the member or person associated with the member to, among others, accredited investors described in Securities Act Rule 501(a)(1), (2), (3), or (7)).

[16] *See* Accredited Investor Definition, Securities Exchange Act Release 89669 (Aug. 26, 2020), 85 FR 64234 (Oct. 9, 2020) (''SEC Accredited Investor Definition Release''). The SEC Accredited Investor Definition Release promulgated additional categories of accredited investors, including two additional types of institutional entities under Rule 501(a)(9) and (a)(12). Additionally, the amendments also included natural persons holding professional certifications and designations or other credentials, knowledgeable employees of private funds, and certain family clients. FINRA is not proposing to reflect these other amendments in the proposed rule change.

[17] *See* Notice at 4125.

[18] *See id.*

[19] *See id.*

[20] *See id.* at 4124.

[21] *See id.* at 4125.

[22] 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).

FINRA rules require members to base the value of those securities on either the public offering price per security or the market price per security on the date of acquisition if a ''bona fide public market'' exists for that security.[23] The proposed rule change would amend Rule 5110(c)(2) and (3) by replacing the ''bona fide public market'' valuation method with a valuation method based on the closing market price 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 the acquisition.[24]

FINRA stated that members have experienced challenges determining whether a security had a ''bona fide public market'' on the acquisition date, based on the definition of that phrase under FINRA rules.[25] According to FINRA, when a security does not have a public offering price, and does not have a ''bona fide public market,'' it cannot be valued under the rule and is therefore considered indeterminate compensation, which is prohibited.[26] In those cases, FINRA stated that participating members must either negotiate a different form of compensation or request an exemption from FINRA.[27] According to FINRA, the proposed rule change would replace the ''bona fide public market'' valuation method with a more predictable valuation method, as the new method would be based on readily available market data (the closing market price of the security traded on a U.S. registered national securities exchange or a ''designated offshore securities market'') instead of requiring a calculation that included average daily trading volume and public float.[28] FINRA also stated that, by continuing to ensure that securities are valued fairly, the proposed rule change will maintain important protections for issuers and investors participating in offerings.[29]

b. Exclusions From Underwriting Compensation for Certain Securities Acquisitions

Currently, Rule 5110 provides for certain exclusions from underwriting compensation.[30] The proposed rule change would expand the exclusions to include: (1) debt-for-equity exchanges; [31] (2) capital investments for direct participation programs (''DPPs'') [32] and unlisted real estate investment trusts (''REITs''); [33] and (3) non-convertible preferred securities.[34]

FINRA stated that the proposed rule change would facilitate capital formation by providing consistent and predictable regulatory treatment of common financing strategies employed by issuers,[35] and would also benefit issuers through the capital investments made in exchange for non-convertible preferred securities from affiliates of members that participate in public offerings.[36]

Under current Rule 5110, transactions involving capital investments made by affiliates of underwriters in DPPs and unlisted REITs, as well as securities acquired by affiliates of underwriters in connection with debt-for-equity exchange transactions, are deemed underwriting compensation.[37] FINRA stated that these transactions currently require participating members to request an exemption from the provisions of Rule 5110.[38] According to FINRA, the proposed changes would reduce compliance costs for participating members by reducing the time and expense incurred by members seeking such exemptions, and may also create new financing opportunities for members.[39] FINRA also stated that participating members that acquire non-convertible preferred securities in connection with a public offering at a fair price will benefit from being provided additional flexibility and clarity regarding the regulatory requirements of these types of debt securities under Rule 5110.[40]

In addition, FINRA stated that these proposed exclusions are narrowly tailored and based on exemptive relief previously provided by FINRA, which has worked well in the past for both issuers and investors.[41] According to FINRA, the proposed rule change also would not decrease FINRA's ability to oversee underwriting terms and arrangements.[42] Finally, FINRA stated that the proposed rule change would reduce the administrative and operational burdens for members and FINRA, promote regulatory efficiency, and enhance market functioning while maintaining issuer and investor protection.[43]

Each proposed amendment is discussed below.

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.[44] A debt-for-equity exchange is comprised 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.[45] The exchange shares are subsequently or concurrently registered and offered by underwriters in a public offering, and the offering proceeds are used, in whole or in part, as repayment of the loan.[46] When the lender is an affiliate of an underwriter, the lender 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.[47] FINRA stated that debt-for-equity exchanges currently require participating members to request an exemption from the provisions of Rule 5110.[48]

The proposed rule change would add new Rule 5110.01(b)(23) to provide an exclusion from underwriting compensation for securities acquired by participating members in connection with debt-for-equity exchange transactions if the following conditions are met: [49]

- the debt-for-equity exchange is structured to provide economic and tax benefits to the issuer and not the lender or affiliated member; [50]

[23] *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).

[24] *See* Notice at 4122–23.

[25] *See id.* at 4123; *see also supra* note 23.

[26] *See* Notice at 4123; *see also* Rule 5110(g)(1) (stating that ''[t]he following terms and arrangements are prohibited: (1) receipt of any underwriting compensation, including in the form of securities, for which a value cannot be determined'').

[27] *See* Notice at 4126.

[28] *See id.* at 4123.

[29] *See id.* at 4124–25.

[30] *See generally* Rule 5110.

[31] *See* proposed Rule 5110.01(b)(23).

[32] *See* Rule 2310(a)(4); *see also* proposed Rule 5110.01(b)(24).

[33] *See* Rule 2231(d)(4); *see also* proposed Rule 5110.01(b)(24).

[34] See proposed Rule 5110(a)(4), 5110(c)(5), 5110(e), and 5110.06.

[35] *See* Notice at 4124.

[36] *See id.*

[37] *See id.* at 4126.

[38] *See id.* at 4124 n.26, 4125.

[39] *See id.* at 4126.

[40] *See id.*

[41] *See id.* at 4125.

[42] *See id.*

[43] *See id.*

[44] *See* Rule 5110.01.

[45] *See* Notice at 4123.

[46] *See id.*

[47] *See id.*

[48] *See id.* at 4124 n.26, 4125.

[49] FINRA stated that the proposed rule change is consistent with past exemptions that have been granted for certain transactions. *See id.* at 4123.

[50] *See* proposed Rule 5110.01(23)(A).

• the affiliated member subsequently offered all of the equity securities the lender acquired in a firm commitment offering following the debt exchange; [51]

• 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; [52] and

• the affiliated member negotiated customary compensation for the subsequent equity offering.[53]

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.[54] FINRA stated that these types of capital investments currently require participating members to request an exemption from the provisions of Rule 5110.[55] The proposed rule change would add new Rule 5110.01(b)(24) to provide an exclusion from underwriting compensation for securities acquired before or during the distribution of an offering by a participating member in the issuer or an affiliated entity in connection with DPPs and unlisted REITs, if the following conditions are met:

• the acquisition of securities is disclosed in the prospectus; [56]

• the securities offered to the public and the securities acquired in the capitalization transaction are valued and priced on a net asset value (''NAV'') basis; [57]

• the offering for which the participating member is engaged is an offering subject the requirements of Rule 2310 (Direct Participation Programs); [58] and

• the securities acquired are restricted for a period of 180 days following the commencement of sales.[59]

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 price [60] are considered underwriting compensation but have no compensation value.[61] However, at present, Rule 5110 does not offer parallel treatment of non-convertible preferred securities.[62] 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 stated 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.[63]

c. Additional Modifications to Rule 5110

The proposed rule change would make other modifications to Rule 5110 that FINRA believes would improve the operation of the rule. First, 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.[64] FINRA stated 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.[65] 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.[66] The proposed rule change would amend Rule 5110(g)(5)(B) to clarify that the same requirements that apply to termination fees would also apply to tail fees.[67] If these requirements are not met, tail fees would constitute unreasonable arrangements under Rule 5110.[68]

Second, the proposed rule change would also amend Rule 5110 to make non-substantive, technical changes.[69]

2. Rule 5123 Proposed Amendments

The proposed rule change would expand the filing exemption under Rule 5123 for sales to accredited investors to include offerings sold to investors meeting two additional accredited investor categories, consistent with the Commission's addition of those categories to the accredited investor definition. As stated above, in August 2020, the Commission adopted amendments to the definition of ''accredited investor'' under Rule 501.[70] 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; [71] 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.[72]

The proposed rule change would amend Rule 5123(b)(1) to include these same two categories of entities to the filing exemption under Rule 5123.[73]

FINRA stated that adding the two categories discussed to the existing exemption would establish consistency

[51] *See* proposed Rule 5110.01(23)(B). FINRA stated 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* Notice at 4123 n.14.

[52] *See* proposed Rule 5110.01(23)(C).

[53] *See* proposed Rule 5110.01(23)(D).

[54] *See* Rule 5110.01. FINRA stated 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.

[55] *See* Notice at 4124 n.26, 4125.

[56] *See* proposed Rule 5110.01(24)(A).

[57] *See* proposed Rule 5110.01(24)(B). Capitalization transactions occurring before the issuer has material assets would be deemed to occur at or above NAV. *See* Notice at 4123 n.16.

[58] *See* proposed Rule 5110.01(24)(C).

[59] *See* proposed Rule 5110.01(24)(D).

[60] *See* Rule 5110.06(b).

[61] *See* Rules 5110(c)(5) and 5110.06. As noted above, per Rule 5110, compensation that cannot be valued is generally prohibited. *See* Rule 5110(g)(1); *see also supra* note 26. However, FINRA stated that, under the exclusion for non-convertible or non-exchangeable debt securities and derivative instruments, treating these transactions as 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 received at a fair price, 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.

[62] *See id.*

[63] *See* Notice at 4123–24; *see also supra* note 60.

[64] *See* Rule 5110(g)(5)(B).

[65] *See* Notice at 4124.

[66] *See id.*

[67] *See id.* at 4124 n.19; *see also* proposed Rule 5110(g)(5)(B).

[68] *See* Notice at 4124.

[69] 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. *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. 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.'' *See* proposed Rule 5110(j)(8)(A).

[70] *See* SEC Accredited Investor Definition Release, *supra* note 16.

[71] *See* 17 CFR 230.501(a)(9).

[72] *See* 17 CFR 230.501(a)(12).

[73] *See* Notice at 4124.

with the purpose of Rule 5123, and would not diminish investor protection.[74] FINRA stated that it believes that these two categories of investors possess a level of sophistication and expertise that is similar to the institutional accredited investors currently exempted under Rule 5123, and that these categories of investors generally do not need the additional protections and oversight provided through the filing requirements.[75] FINRA stated that the two categories covered by the proposed rule change have a similar financial threshold to qualified purchasers, currently covered in another exemption from Rule 5123's filing requirements.[76]

## III. Discussion and Commission Findings

After careful review of the proposed rule change and comment letters received, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[77] As discussed in more detail below, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules 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.[78]

### *A. Rule 5110 Proposed Amendments*

#### 1. Valuation Method for Securities Acquisitions Considered Underwriting Compensation

As noted above, FINRA stated that when participating members acquire securities in a public offering that are deemed underwriting compensation, the value of those securities must currently be 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. The proposed rule change would amend Rule 5110(c)(2) and (3) by replacing the ''bona fide public market'' valuation method with a valuation method based on the closing market price of a security traded on a U.S. registered national securities exchange or a ''designated offshore securities market'' on the date of acquisition.[79]

Commenters supported the proposed rule change.[80] The proposed rule change is reasonably designed to update and simplify the valuation method for underwriting compensation in a manner that promotes capital formation while maintaining protections for issuers and investors. As discussed above, FINRA stated that requiring the use of the ''bona fide public market'' valuation method under the current rule is not always workable and can be overly complex.[81] When participating members cannot use the public offering price, and also cannot determine whether there is a ''bona fide public market,'' FINRA stated that participating members must either negotiate a different form of compensation or request an exemption from FINRA, which can be time consuming and expensive.[82] Replacing the current system of valuation with a valuation method based on readily available market data allows for more predictability and certainty to participating members. In addition, the proposed method of calculation will maintain protections for issuers and investors participating in offerings by continuing to ensure that these securities are valued in a fair manner.[83] For these reasons, the proposed rule change is reasonably 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.

#### 2. Exclusions From Underwriting Compensation for Certain Securities Acquisitions

Currently, Rule 5110 provides for certain exclusions from underwriting compensation.[84] 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. FINRA's proposed amendments cover: (1) debt-for-equity exchanges; (2) capital investments for DPPs and unlisted REITs; and (3) non-convertible preferred securities. Commenters supported the proposed rule change.[85] Each proposed amendment is discussed below.

a. Debt-for-Equity Exchanges

First, as noted above, Rule 5110 currently does not provide an exclusion from underwriting compensation for securities acquired by affiliates of underwriters in connection with debt-for-equity exchange transactions.[86] The proposed rule change would add new Rule 5110.01(b)(23) to provide an exclusion from underwriting compensation for securities acquired by affiliated members of underwriters in connection with debt-for-equity exchange transactions if certain conditions are met. FINRA stated that these conditions codify those factors and factual circumstances it has consistently considered when granting exemptions to the current rule.[87] FINRA also stated that the exclusion from underwriting compensation has worked well for both issuers and investors under the current exemptive relief process.[88]

The proposed rule change is reasonably designed to codify an exclusion from underwriting compensation that FINRA believes has worked well for both issuers and investors based on FINRA's experience with the current exemptive relief process.[89] By codifying the factors and factual circumstances that FINRA believes are appropriate, and has used, to grant exemptions to securities acquisitions in connection with debt-for-equity exchange transactions from being deemed underwriting compensation, the proposed rule change will promote clarity and efficiency by eliminating the need for the exemptive request process when certain conditions are met. For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and

[74] *See id.*

[75] *See id.*

[76] *See id.; see also* Rule 5123(b)(1)(B). ''Qualified purchasers'' are defined under the Investment Company Act to include natural persons or certain companies that own not less than $5,000,000 in investments. *See id.; see also* Investment Company Act Section 2(a)(51).

[77] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[78] 15 U.S.C. 78*o*–3(b)(6).

[79] *See* Notice at 4122–23.

[80] *See generally* letter from Anya Coverman, President and CEO, Institute for Portfolio Alternatives (Feb. 20, 2026); letter from Joseph P. Corcoran, Managing Director & Associate General Counsel, Securities Industry and Financial Markets Association (Feb. 20, 2026).

[81] *See supra* note 17 and accompanying text.

[82] *See* Notice at 4126.

[83] *See id.* at 4124–25.

[84] *See generally* Rule 5110.

[85] *See supra* note 80 and accompanying text.

[86] *See supra* note 44 and accompanying text.

[87] *See* Notice at 4125 n.27 (The proposed rule ''codifies the factors and factual circumstances FINRA has consistently considered when granting these exemptions.''). However, members can still request exemptive relief if they do not meet the conditions in the proposed rule change. *See id.* at 4123 n.15 (''Member firms intending to participate in transactions that do not align with the terms of this Supplementary Material may, as with any transaction subject to Rule 5110, request exemptive relief pursuant to FINRA Rule 5110(i) and the Rule 9600 Series.'').

[88] *See id.* at 4125.

[89] *See id.*

equitable principles of trade, and, in general, to protect investors and the public interest.

b. Capital Investments for DPPs and REITs

Second, as noted above, Rule 5110 currently does not provide an exclusion from underwriting compensation for securities acquisitions in connection with a capital investment concurrently with or in anticipation of a public offering.[90] The proposed rule change would add new Rule 5110.01(b)(24) to provide an exclusion from underwriting compensation for securities acquired before or during the distribution of an offering by a participating member in the issuer or an affiliated entity in connection with DPPs and unlisted REITs as defined in Rule 2231(d), if certain conditions are met.[91]

Similar to the proposed rule change for debt-for-equity exchanges, FINRA stated that proposed Rule 5110.01(b)(24) would codify the factors and factual circumstances FINRA has consistently considered to grant exemptions related to DPPs and unlisted REITs.[92] FINRA also stated that the exclusion from underwriting compensation has worked well for both issuers and investors under the current exemptive relief process.[93]

The proposed rule change is reasonably designed to codify an exclusion from underwriting compensation that FINRA believes has worked well for both issuers and investors based on FINRA's experience with the current exemptive relief process.[94] By codifying the factors and factual circumstances that FINRA believes are appropriate, and has used, to grant exemptions regarding DPPs and unlisted REITs, the proposed rule change will promote clarity and efficiency by making clear the factors and factual circumstances FINRA considers appropriate for excluding underwriting compensation for certain securities associated with DPPs and unlisted REITs, and by doing so eliminate the need for the exemptive request process in certain circumstances. For these reasons, the proposed rule change is reasonably 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.

c. Non-Convertible Preferred Securities

Third, as noted above, Rule 5110 currently provides that non-convertible or non-exchangeable debt securities and derivative instruments—but not non-convertible preferred securities—acquired by any participating member in a transaction related to a public offering at a fair price are considered underwriting compensation but have no compensation value.[95] The proposed rule change would treat non-convertible preferred securities in the same manner as non-convertible or non-exchangeable debt securities and derivative instruments so long as they are acquired at a fair price. This outcome reflects FINRA's current treatment of these securities as equivalent for purposes of Rule 5110.[96]

The proposed parallel treatment of non-convertible preferred securities with non-convertible or non-exchangeable debt securities and derivative instruments is reasonable in light of their shared characteristics and FINRA's current treatment of them as equivalent for purposes of Rule 5110. In particular, as discussed above, 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.[97] In addition, FINRA will maintain the ability to oversee underwriting terms and arrangements because participating members would continue to be required to file documents and information in connection with certain public offerings.[98] For these reasons, the proposed rule change is reasonably 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.

3. Additional Modifications to Rule 5110

As noted above, the proposed rule change would make other modifications to Rule 5110 that FINRA believes would improve the operation of the rule. Specifically, the proposed rule change will add tail fees to the types of termination fees that are allowed as underwriting compensation, if specific requirements are met.[99] Commenters supported the proposed rule change.[100]

The proposed rule change to add tail fees to the types of termination fees that are permitted as underwriting compensation is reasonably designed to provide a limited expansion of the types of termination fees allowed as underwriting compensation under Rule 5110. Specifically, like other termination fees, tail fees provide compensation in the event of subsequent financing from investors introduced by a member following the termination of an agreement. In addition, tail fees, like other termination fees, will be prohibited unless certain conditions are met, such as the elimination of any obligation to pay tail fees if an issuer exercises its right to terminate for cause; that the amount of any tail fee must be reasonable in relation to the underwriting services contemplated in the agreement; and that the issuer shall not be responsible for paying the tail fee unless the transaction is consummated within two years of the date the engagement is terminated by the issuer.[101] For these reasons, the proposed rule change is reasonably 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.

*B. Rule 5123 Proposed Amendments*

As noted above, the proposed rule change would expand the filing exemption under Rule 5123 for sales to accredited investors to include offerings sold to investors meeting two additional accredited investor categories, consistent with the Commission's addition of those categories to the accredited investor definition.[102] Specifically, the proposed rule change would amend Rule 5123(b)(1) to include two types of categories of ''accredited investor'': certain entities not formed for the specific purpose of acquiring the securities offered, owning investments in excess of $5,000,000; [103] and certain ''family offices'' with assets under management in excess of $5,000,000.[104] Commenters supported the proposed rule change.[105]

The proposed rule change to add these two categories of investors to the filing exemption under Rule 5123 is reasonably designed to expand the exemption—consistent with the SEC's amended ''accredited investor'' definition—without materially impacting investor protection.

[90] *See supra* note 54 and accompanying text.

[91] *See* proposed Rule 5110.01(b)(24).

[92] *See* Notice at 4125 n.27.

[93] *See id.* at 4125.

[94] *See id.*

[95] *See supra* notes 61–62 and accompanying text.

[96] *See* Notice at 4123–24.

[97] *See supra* note 63 and accompanying text.

[98] *See supra* note 42 and accompanying text; *see also* Notice at 4122.

[99] *See supra* note 66–67 and accompanying text.

[100] *See supra* note 80 and accompanying text.

[101] *See* proposed Rule 5110(g)(5).

[102] *See also supra* note 73 and accompanying text.

[103] *See supra* note 71 and accompanying text.

[104] *See supra* note 72 and accompanying text.

[105] *See supra* note 80 and accompanying text.

Specifically, the proposed rule change would include two categories of investors that FINRA believes possess a level of sophistication and expertise similar to the institutional accredited investors currently exempted under Rule 5123, and who FINRA has determined generally do not need the additional protections and oversight provided through the filing requirements.[106] For these reasons, the proposed rule change is reasonably 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.

## IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.[107]

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,[108] that the proposed rule change (SR–FINRA–2026–022) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[109]

**Sherry R. Haywood,**

*Assistant Secretary.*

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[106] *See supra* note 75 and accompanying text.

[107] 15 U.S.C. 78*o*–3(b)(6).

[108] 15 U.S.C. 78s(b)(2).

[109] 17 CFR 200.30–3(a)(12).

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105991; File No. SR–FINRA–2026–009]**

# Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend the FINRA Rule 6700 Series (Trade Reporting and Compliance Engine) (TRACE) To Expand the Scope of the Non-Member Affiliate—Principal Transaction Indicator to Also Include Member Affiliates

July 24, 2026.

## I. Introduction

On April 22, 2026, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''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 the FINRA Rule 6700 Series to expand the scope of the non-member affiliate—principal transaction indicator to also include member affiliates. The proposed rule change was published for comment in the **Federal Register** on May 6, 2026.[3] On June 10, 2026, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] This order approves the proposed rule change.

## II. Summary of the Proposed Rule Change

As FINRA states in the Notice, in 2015 FINRA adopted rules related to the reporting of TRACE-Eligible Securities,[6] which established the non-member affiliate—principal transaction indicator and required members to identify in TRACE reports transactions between the member and its non-member affiliate, where the member also engaged in a same-day, same-price transaction in the same security with another contra-party.[7] As explained by FINRA, this non-member affiliate—principal transaction indicator allows FINRA to suppress from dissemination inter-affiliate transactions that do not provide pricing information different from the disseminated transaction between the member and the other contra-party, thereby improving transparency and addressing concerns regarding potential investor confusion as to the level of trading activity in TRACE-Eligible Securities.[8]

As described in more detail in the Notice, FINRA proposes to expand the use of the non-member affiliate—principal transaction indicator to also include transactions between member affiliates trading as principal where the transaction with the member affiliate occurs within the same trading day, at the same price, and in the same TRACE-Eligible Security as a transaction executed by one of the members with another contra-party.[9] To reflect this expanded use, the indicator would also be re-designated as the Affiliate—Principal Transaction indicator.[10]

To effectuate this change, FINRA proposes to modify several existing rules in its rulebook, including FINRA Rule 6710 (Definitions), FINRA Rule 6730 (Transaction Reporting), and FINRA Rule 6750 (Dissemination of Transaction Information).

FINRA proposes to modify the definition of ''Non-member Affiliate'' in FINRA Rule 6710(ee) by re-titling it ''Affiliate'' and removing language limiting the definition to a ''non-member'' entity. As proposed, FINRA Rule 6710(ee) will define ''Affiliate'' to mean an entity that controls, is controlled by or is under common control with a member. The rule would continue to state that for the purposes of this definition, ''control,'' along with any derivative thereof, means legal, beneficial, or equitable ownership, directly or indirectly, of 25 percent or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 105352 (May 1, 2026), 91 FR 24625 (''Notice''). Comments received on the proposed rule change are *available at: https://www.sec.gov/rules-regulations/public-comments/sr-finra-2026-009.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 105648, 91 FR 36019 (June 15, 2026).

[6] ''TRACE-Eligible Security'' means a debt security that is United States (U.S.) dollar-denominated and is: (1) issued by a U.S. or foreign private issuer, and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n); (3) a U.S. Treasury Security as defined in paragraph (p); or (4) a Foreign Sovereign Debt Security as defined in paragraph (kk). ''TRACE-Eligible Security'' does not include a debt security that is a Money Market Instrument as defined in paragraph (o). *See* Notice, *supra* note 3, at 24625 n.3.

[7] *See* Securities Exchange Act Release No. 74482 (Mar. 11, 2015), 80 FR 13940 (Mar. 17, 2015).

[8] *See* Notice, *supra* note 3, at 24625.

[9] *See* Notice, *supra* note 3, at 24626.

[10] *See id. See also* proposed FINRA Rule 24628. FINRA provides examples in the Notice to illustrate the expanded scope of the Affiliate—Principal Transaction indicator. *See* Notice, *supra* note 3, at 24626–28.