

Corporate & Financial Weekly Digest

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FINRA Proposes Rules Affecting Broker-Dealers Participating in Private Placements

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The Securities and Exchange Commission is requesting comments on a proposal to expand Financial Industry Regulatory Authority Rule 5122 to apply to all private placements in which a member firm participates, not just those in which the member firm (or its control entity) is the issuer. Current FINRA Rule 5122 generally requires that a member firm or associated person engaging in a private placement of unregistered securities in which it (or a control entity of such member) is the issuer: (1) disclose in the offering documents the intended use of offering proceeds, offering expenses and the amount of selling compensation to be paid to the broker-dealer and its associated persons; (2) submit the offering documents to the FINRA Corporate Financing Department prior to or at the time such documents are provided to a prospective investor; and (3) comply with the requirement that at least 85% of the offering proceeds raised may not be used to pay for offering costs, discounts, commissions or any other cash or non-cash sales incentives, and that such proceeds must be used for the business purposes disclosed in the offering documents. FINRA also is proposing to retain all of the current exemptions in the rule except for the existing exemption for offerings in which a member firm acts primarily in a wholesaling capacity. The proposed rule change makes several other changes affecting broker-dealers participating in private placements. Comments to the SEC must be received by March 14.

Click [here](#) to read FINRA Regulatory Notice 11-04.

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