



SECURITIES INDUSTRY PRACTICE

ALERT

PROPOSED FINRA RULE IMPACTS PRIVATE PLACEMENTS

The Financial Industry Regulatory Authority (FINRA) recently proposed an amendment to Rule 5122 that would require various disclosures in any private placement in which a FINRA member firm participates—not just those in which it is the issuer—including preparation of offering documents, distribution of offering and advice to the issuer.

The proposed rule would stipulate that in most private placements in which a broker-dealer was involved, various requirements would be mandatory, particularly disclosure of such items as use of proceeds, expenses and compensation to the broker-dealer. However, this would be notwithstanding the Securities and Exchange Commission rules and state laws (including various registration exemptions) that mandate fewer requirements.

Under the proposed rule, at least 85 percent of all proceeds from these private placements must be used for the business purposes disclosed in the offering document. In addition, all offering

documents submitted to FINRA must allow FINRA staff to conduct ex post reviews in assessing compliance and identifying problematic terms and conditions.

A comment period for the proposed rule is ongoing at FINRA. Before the proposed rule becomes effective, the SEC will have to publish it and allow an opportunity for comment. Interested parties may wish to comment on the proposed rule either with FINRA now and/or with the SEC after it publishes the rule.

Remember: If a private placement involves the services of a broker-dealer, the proposed rule change would effectively become a further regulatory requirement and would be expected—in at least some instances—to act as an extra layer of regulation regarding disclosures and use of proceeds, over and above the otherwise applicable federal and state laws and rules.

Issuers of private placements must be on alert for these requirements should they seek the assistance of any broker-dealers in their offerings.

At Fox Rothschild, we remain ready to assist you in assessing the impact of the SEC's proposed rule on your business. If you have any questions regarding the information in this alert, please contact:

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