

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78220; File No. SR-FINRA-2015-054)

July 1, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 2 to Proposed Rule Change to Adopt FINRA Capital Acquisition Broker Rules

I. Introduction

On December 4, 2015, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) proposed rule change SR-FINRA-2015-054, pursuant to which FINRA proposed to adopt a rule set that would apply exclusively to firms that meet the definition of “capital acquisition broker” (“CAB”) and that elect to be governed under this rule set (collectively, the “CAB Rules”).

The Commission published the proposed rule change for public comment in the Federal Register on December 23, 2015.¹ The Commission received 17 comments in response to the proposed rule change.² On March 23, 2016, the Commission published in the Federal Register

¹ Securities Exchange Act Release No. 76675 (December 17, 2015), 80 FR 79969 (December 23, 2015) (Notice of Filing File No. SR-FINRA-2015-054).

² Letters from Roger W. Mehle, Chairman and CEO, Archates Capital Advisors LLC, dated December 29, 2015; Daniel H. Kolber, President/CEO, Intellivest Securities, Inc., dated December 30, 2015; Arne Rovell, Coronado Investments, LLC, dated January 6, 2016; Donna DiMaria, Chairman of the Board of Directors, and Lisa Roth, Board of Directors, Third Party Marketers Association, dated January 12, 2016; Frank P. L. Minard, Managing Partner, XT Capital Partners, LLC, dated January 12, 2016; Timothy Cahill, President, Compass Securities Corporation, dated January 13, 2016; Mark Fairbanks, President, Foreside Distributors, dated January 13, 2016; Dan Glusker, Perkins Fund Marketing, LLC, dated January 13, 2016; Steven Jafarzadeh, CAIA, Managing Director, CCO Partner, Stonehaven, dated January 13, 2016; Richard A. Murphy, Manager, North Bridge Capital LLC, dated January 13, 2016; Ron Oldenkamp, President, Genesis Marketing Group, dated January 13, 2016; Michael S. Quinn, Member and CCO, Q Advisors LLC, dated January 13, 2016; Lisa Roth, President, Monahan & Roth, LLC, dated January 13, 2016; Howard Spindel, Senior Managing Director, and Cassandra E. Joseph, Managing Director, Integrated Management Solutions USA LLC, dated January 13, 2016; Sajan K. Thomas, President, and Stephen J. Myott, Chief

an order to solicit comments on the proposed rule change and to institute proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”)³ to determine whether to approve or disapprove the proposed rule change.⁴ The Commission received one comment in response to the Order Instituting Proceedings.⁵

In response to comments on the Notice of Filing, on March 29, 2016, FINRA filed Partial Amendment No. 1, which amended proposed CAB Rule 016(c)(2) to clarify that the definition of “capital acquisition broker” does not include any broker or dealer that effects securities transactions that would require the broker or dealer to report the transaction under the FINRA Rules 6300 Series, 6400 Series, 6500 Series, 6600 Series, 6600 Series, 6700 Series, 7300 Series or 7400 Series. The Commission published Partial Amendment No. 1 for comment in the Federal Register on April 15, 2016.⁶ The Commission received one comment in response to the Partial Amendment No. 1.⁷

On June 28, 2016, FINRA filed Partial Amendment No. 2 to its proposed rule change in response to comments on the Notice of Filing. Partial Amendment No. 2 is described in Item II

Compliance Officer, Thomas Capital Group, Inc., dated January 13, 2016; Judith M. Shaw, President, North American Securities Administrators Association, Inc., dated January 15, 2016; and Peter W. LaVigne, Esq., Chair, Securities Regulation Committee, Business Law Section, New York State Bar Association, dated January 22, 2016.

³ 15 U.S.C. 78s(b)(2)(B).

⁴ Securities Exchange Act Release No. 77391 (March 17, 2016), 81 FR 15588 (March 23, 2016) (Order Instituting Proceedings on File No. SR-FINRA-2015-054).

⁵ Letter from Howard Spindel, Senior Managing Director, and Cassandra E. Joseph, Managing Director, Integrated Solutions, dated April 8, 2016.

⁶ Securities Exchange Act Release No. 77581 (April 11, 2016), 81 FR 22333 (April 15, 2016) (Notice of Filing of Partial Amendment No. 1 to File No. SR-FINRA-2015-054).

⁷ Letter from Anonymous dated May 3, 2016.

below, which has been prepared by FINRA. The Commission is publishing this notice to solicit comments on Partial Amendment No. 2 from interested persons.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

In response to comments on the Notice of Filing, the Order Instituting Proceedings, and Partial Amendment No. 1, FINRA filed this Partial Amendment No. 2 to amend proposed CAB Rule 016(c)(1)(F) regarding a CAB's authority to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder in connection with unregistered securities transactions. As revised by Partial Amendment No. 2, a CAB would be permitted to engage in:

qualifying, identifying, soliciting, or acting as a placement agent or finder (i) on behalf of an issuer in connection with a sale of newly-issued, unregistered securities to institutional investors or (ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. For purposes of this subparagraph a "control person" is a person who has the power to direct the management or policies of a company through ownership of securities, by contract, or otherwise. Control will be presumed to exist if, before the transaction, the person has the right to vote or the power to sell or direct the sale of 25% or more of a class of voting securities or in the case of a partnership or limited liability company has the right to receive upon dissolution or has contributed 25% or more of the capital. For purposes of this subparagraph a "privately-held company" is a company that does not have any class of securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12 of the Exchange Act or with respect to which the company files, or is required to file, periodic information, documents, or reports under Section 15(d) of the Exchange Act.

The purpose of this proposed rule change is to provide a rule set for member firms that advise companies on mergers and acquisitions, advise issuers on raising debt and equity capital in private placements with institutional investors, or provide advisory services on a consulting basis to companies that need assistance analyzing their strategic and financial alternatives. Consistent with this purpose, this amendment would narrow the range of activities that a CAB would be permitted to engage in with regard to securities transactions involving institutional

investors. Previously proposed CAB Rule 016(c)(1)(F) would have permitted a CAB to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder with respect to institutional investors in connection with purchases or sales of unregistered securities. This authority would have been limited by proposed CAB Rule 016(c)(2), which would have prohibited CABs from effecting securities transactions that would require the broker or dealer to report the transaction under the FINRA trade reporting rules.⁸

As amended, a CAB would be permitted to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder (i) on behalf of an issuer in connection with a sale of newly-issued, unregistered securities to institutional investors or (ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. “Control” and “privately-held company” would have the same meanings as those terms had in the SEC staff’s 2014 M&A Brokers no-action letter.⁹

Accordingly, under revised proposed CAB Rule 016(c)(1)(F), a CAB would be permitted to qualify, identify, solicit or act as a placement or agent only in two circumstances. First, a CAB could perform these functions on behalf of an issuer in connection with an initial offering of unregistered securities to institutional investors (as such term is defined in proposed CAB Rule 016(i)). Second, a CAB could perform these functions on behalf of an issuer or control person in connection with an initial or secondary securities transaction related to a change of control of a privately-held company. Except as described in proposed CAB Rules 016(c)(1)(F)(ii) and

⁸ FINRA Rules 6300 Series, 6400 Series, 6500 Series, 6600 Series, 6700 Series, 7300 Series and 7400 Series.

⁹ See M&A Brokers, 2014 SEC No-Act LEXIS 92 (January 31, 2014).

016(c)(1)(G),¹⁰ a CAB would not otherwise be permitted to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder in connection with secondary securities transactions.

With this Partial Amendment No. 2, FINRA included (1) Exhibit 4, which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 2, marked to show additions to the text as proposed in the original filing as amended by Partial Amendment No. 1; and (2) Exhibit 5, which reflects the changes to the current rule text that are proposed in the proposed rule change, as amended by this Partial Amendment No. 2.

III. Date of Effectiveness of the Proposed Rule Change As Modified By Partial Amendments No.1 and No. 2 and Timing for Commission Action

Within 180 days after the date of publication of the initial Notice of Filing in the Federal Register or within such longer period up to an additional 60 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will issue an order approving or disapproving such proposed rule change, as amended.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended by Partial Amendment No.

¹⁰ Proposed CAB Rule 016(c)(1)(G) would allow a CAB to effect securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, in accordance with the terms and conditions of an SEC rule, release, interpretation or no-action letter that permits a person to engage in such activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act.

2, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-054 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-FINRA-2015-054. This file number should be included on the subject line if e-mail 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change. The Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-054 and should be submitted on or before [insert 10 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Brent J. Fields
Secretary

¹¹ 17 CFR 200.30-3(a)(12).