

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103334; File No. SR-FINRA-2025-001]

## **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 1, to Exempt Certain Business Development Companies from FINRA Rules 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and 5131 (New Issue Allocations and Distributions)**

June 26, 2025.

### **I. Introduction**

On March 25, 2025, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (SR-FINRA-2025-001) to exempt certain business development companies, as that term is defined in Section 2(a)(48) of the Investment Company Act of 1940 (“Investment Company Act”), each a “BDC,” from FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and from paragraph (b) (Spinning) of FINRA Rule 5131 (New Issue Allocations and Distributions).<sup>3</sup> The proposed rule change was published for comment in the Federal Register on March 31, 2025.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 102723 (March 25, 2025), 90 FR 14284 (March 31, 2025) (“Notice”).

On May 13, 2025, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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.<sup>5</sup> On June 12, 2025, FINRA filed a partial amendment to the proposed rule change (“Partial Amendment No. 1”).<sup>6</sup> The Commission received two comment letters in response to the publication of the Notice,<sup>7</sup> as well as a response letter from FINRA.<sup>8</sup> The Commission is publishing this Order to provide notice of the filing of, and to solicit from interested persons comments on, Partial Amendment No. 1, and is approving on an accelerated basis the proposed rule change, as modified by Partial Amendment No. 1 (“Amended Proposal”).

## II. Description of the Proposed Rule Change

As described in more detail in the Notice,<sup>9</sup> FINRA proposed to amend FINRA Rule 5130 by adding a categorical exemption for non-traded BDCs in new paragraph (c)(12) and, by reference, in FINRA Rule 5131(b)(2) (together, the “proposed exemption”). The proposed exemption, as originally included in the Notice, would have applied to a BDC, “the shares of which are registered under the Securities Act[ of 1933].”<sup>10</sup> FINRA stated in the Notice that the

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<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 103033 (May 13, 2025), 90 FR 21377 (May 19, 2025). The Commission designated June 29, 2025, as the date by which the Commission shall approve or disapprove or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> See Partial Amendment No. 1, available at [https://www.finra.org/sites/default/files/2025-06/FINRA-2025-001\\_Partial\\_A-1.pdf](https://www.finra.org/sites/default/files/2025-06/FINRA-2025-001_Partial_A-1.pdf). In Partial Amendment No. 1, FINRA requested that the Commission find good cause pursuant to Section 19(b)(2) of the Exchange Act for approving the proposed rule change, as modified by Partial Amendment No. 1, prior to the thirtieth day after its publication in the Federal Register.

<sup>7</sup> Comments are available at: <https://www.sec.gov/comments/sr-finra-2025-001/srfinra2025001.htm>.

<sup>8</sup> See Letter from Ilana Reid, Associate General Counsel, FINRA (June 12, 2025) (“FINRA Response”), available at <https://www.sec.gov/comments/sr-finra-2025-001/srfinra2025001.htm>.

<sup>9</sup> See Notice, 90 FR 14284–88.

<sup>10</sup> See Notice, 90 FR 14285. As discussed below, in Part III, Partial Amendment No. 1 changed this text to state “provided that the business development company was not formed or maintained for the specific

proposed exemption would allow non-traded BDCs, and therefore investors in non-traded BDCs, to more easily obtain access to new issues in so much as they could be included in the allowable 30 percent of a non-traded BDC's portfolio.<sup>11</sup> In addition, the proposed exemption would expand the pool of investors who can participate in initial public offerings ("IPOs") through their investment in a non-traded BDC and would allow non-traded BDCs to more easily diversify their portfolios with new issues to the extent that such investments are consistent with all other applicable regulations.<sup>12</sup>

### III. Summary of Comments, FINRA's Response, and Commission Findings

After reviewing the Notice, Partial Amendment No. 1, and comment letters received, the Commission finds that the Amended Proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.<sup>13</sup> In particular, the Commission finds that the Amended Proposal is consistent with Section 15A(b)(6) of the Exchange Act,<sup>14</sup> 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. The Commission also finds that the Amended Proposal, is consistent, in particular, with Section 15A(b)(9) of the Exchange Act,<sup>15</sup> which requires that FINRA rules not impose any burdens on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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purpose of permitting restricted persons to invest in new issues." See Partial Amendment No. 1, supra note 6, at 5.

<sup>11</sup> See Notice, 90 FR 14286.

<sup>12</sup> See Notice, 90 FR 14286.

<sup>13</sup> 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).

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

<sup>15</sup> 15 U.S.C. 78o-3(b)(9).

The Amended Proposal will protect investors and the public interest by allowing non-traded and private BDCs,<sup>16</sup> which are subject to the investor protections provided by the Investment Company Act and the applicable rules adopted thereunder, to more easily invest in new issues and to diversify their portfolios, without diminishing investor protection. It will promote capital formation by expanding access to IPOs through the entities of non-traded BDCs and private BDCs. The Amended Proposal is designed to prevent fraudulent and manipulative acts and practices by maintaining the integrity of the public offering process through the requirement that BDCs not be formed or maintained for the specific purpose of permitting restricted persons to invest in new issues.<sup>17</sup>

The Commission received two comment letters on the proposed rule change.<sup>18</sup> Both commenters stated their general support for the proposed rule change,<sup>19</sup> one of which suggested that the proposed exemption should be expanded to cover all BDCs, including privately offered BDCs.<sup>20</sup> ICI stated that it is “difficult, if not impossible” for private BDCs, similar to non-traded BDCs, to satisfy the representation requirements of FINRA Rules 5130 and 5131.<sup>21</sup> In addition, ICI stated that BDCs are subject to “extensive” regulation by the Commission under the Investment Company Act and that “[i]t does not logically flow” that privately offered closed-end

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<sup>16</sup> FINRA stated that the term “private BDC” refers to a BDC that is offered in a private placement. See Partial Amendment No. 1, supra note 6, at 3 n.4.

<sup>17</sup> See Regulatory Notice 23-09 (May 2023) (“FINRA promotes the capital raising process through appropriately tailored rules for its members that are designed to promote transparency and to establish important standards of conduct for the benefit of all market participants, including investors and issuers.”). See also Notice, 90 FR 14286.

<sup>18</sup> See Letter from Kevin Ercoline, Assistant General Counsel, Investment Company Institute (April 21, 2025) (“ICI”); Letter from Anya Coverman, President and CEO, Institute for Portfolio Alternatives (April 21, 2025) (“IPA”).

<sup>19</sup> See ICI, at 2; IPA, at 2.

<sup>20</sup> See ICI, at 2–3.

<sup>21</sup> See ICI, at 2.

funds can avail themselves of an exemption from FINRA Rules 5130 and 5131 while a private BDC cannot qualify for the proposed exemption.<sup>22</sup> ICI also stated that extending the proposed exemption to private BDCs would not impact the integrity of the public offering process because private BDCs are subject to the same investment limitations under Section 55(a) of the Investment Company Act as non-traded BDCs are and are therefore unlikely to be formed for the purpose of investing in new issues.<sup>23</sup>

In response, Partial Amendment No. 1 amended the proposed rule change to include private BDCs. FINRA stated that it generally agrees with ICI that extending the proposed exemption to private BDCs would not impact the integrity of the public offering process because private BDCs are subject to extensive regulation under the Investment Company Act, including the same investment limitations to which non-traded BDCs are subject.<sup>24</sup> FINRA stated that it was therefore amending the proposed rule change to exempt from FINRA Rule 5130 and FINRA Rule 5131(b) all BDCs, provided that the BDC was not formed or maintained for the specific purpose of permitting restricted persons to invest in new issues. According to FINRA, for purposes of the exemption, the requirement that exempted BDCs not be formed or maintained for the specific purpose of permitting restricted persons to invest in new issues would further

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<sup>22</sup> See ICI, at 3. ICI stated that a private fund is not subject to the Investment Company Act (and generally has a much higher investment standard reflecting the associated investor sophistication and risk tolerance attributes) while a BDC is subject to “extensive” regulation under the Investment Company Act. See ICI, at 3.

<sup>23</sup> ICI, at 3.

<sup>24</sup> See FINRA Response, supra note 8, at 3. See also Partial Amendment No. 1, supra note 6, at 4.

preserve the integrity of the public offering process.<sup>25</sup> FINRA stated that similar language appears in the exemption for foreign investment companies under FINRA Rule 5130(c)(6)(C).<sup>26</sup>

The Commission agrees with FINRA that conditioning the proposed exemption on the requirement that a BDC not be formed or maintained for the purpose of circumventing the prohibition in FINRA Rule 5130 or 5131(b) will help to further mitigate the unlikely risk that an otherwise restricted or covered person may invest in a non-traded or private BDC for the purpose of investing in new issues.<sup>27</sup> Further, for the reasons discussed above, in this Part III, the Amended Proposal is designed to prevent fraudulent and manipulative acts and practices, as well as to promote just and equitable principles of trade, and does not impose any burdens on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### IV. Solicitation of Comments on Partial Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Partial Amendment No. 1 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet common form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-FINRA-2025-001 on the subject line.

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<sup>25</sup> See FINRA Response, *supra* note 8, at 4.

<sup>26</sup> In Partial Amendment No. 1, FINRA proposed to add the words "or maintained" to subparagraph (C) of FINRA Rule 5130(c)(6) to clarify that a foreign company cannot be formed or maintained for the purpose of circumventing the prohibition. See Partial Amendment No. 1, *supra* note 6, at 6.

<sup>27</sup> See FINRA Response, *supra* note 8, at 2.

## 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-2025-001. This file number should be included on the subject line if 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 submission, all subsequent amendment, 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. 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 the file number SR-FINRA-2025-001 and should be submitted on or before [INSERT 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

### V. Accelerated Approval of the Amended Proposal

The Commission finds good cause to approve Amended Proposal prior to the thirtieth day after the date of publication of notice of the filing of Partial Amendment No. 1 in the Federal

Register.<sup>28</sup> In Partial Amendment No. 1, FINRA modified the proposed rule change—in direct response to comment received—to promote capital formation while maintaining the protections that FINRA Rules 5130 and 5131(b) are designed to provide. FINRA did not propose to change the substantive intent of the proposed rule change. To reduce ambiguity regarding the scope of the proposed rule change, FINRA instead proposed to remove the text “the shares of which are registered under the Securities Act” and replace it with “provided that the business development company was not formed or maintained for the specific purpose of permitting restricted persons to invest in new issues.” The basis for this partial amendment is the same as the basis for the original proposed rule change, which the Commission previously noticed for public comment.

After consideration of the two comments received on the proposed rule change, the Commission concludes that Partial Amendment No. 1 responds to comments received, adds clarity to the proposed rule change, and does not raise any novel regulatory concerns. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> to approve the proposed rule change, SR-FINRA-2025-001, as modified by Partial Amendment No. 1, on an accelerated basis.

## VI. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with Section 15A(b)(6) of the Exchange Act,<sup>30</sup> 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.

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<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 15 U.S.C. 78q-3(b)(6).



IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act <sup>31</sup> that the proposed rule change (SR-FINRA-2025-001), as amended by Partial Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).