

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103945; File No. SR-FINRA-2025-005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the FINRA Capital Acquisition Broker (“CAB”) Rules

September 11, 2025.

I. Introduction

On June 4, 2025, 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 certain FINRA Capital Acquisition Broker Rules (“CAB Rules”). Specifically, the proposed rule change would amend the CAB Rules to: permit CABs to qualify, identify, solicit, or act as placement agents or finders on behalf of an issuer in connection with a sale of newly issued unregistered securities to an expanded scope of investors; allow CABs, in limited circumstances, to qualify, identify, solicit, or act as placement agents or finders on behalf of an institutional investor that seeks to sell unregistered securities that it owns; amend CAB Rule 328 to permit CAB associated persons to participate in private securities transactions, subject to the requirements of FINRA Rule 3280 (Private Securities Transactions of an Associated Person); codify existing FINRA guidance on CAB compensation; and replace a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

reference to a withdrawn SEC no-action letter with a reference to a corresponding Exchange Act provision.³

The proposed rule change was published for comment in the Federal Register on June 16, 2025.⁴ The public comment period closed on July 7, 2025. The Commission received comment letters related to this filing.⁵ On July 17, 2025, FINRA consented to extend until September 12, 2025, 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.⁶

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act⁷ to institute proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

A capital acquisition broker (“CAB”) is a FINRA member firm that limits its activities to certain specified functions: “essentially acting as placement agents for sales of unregistered securities to institutional investors; acting as intermediaries in connection with the change of control of privately held companies; and advising companies and private equity funds on capital

³ See Exchange Act Release No. 103216 (June 10, 2025), 90 FR 25396 (June 16, 2025) (File No. SR-FINRA-2025-005) (“Notice”).

⁴ See id.

⁵ The comment letters are available at <https://www.sec.gov/comments/sr-finra-2025-005/srfinra2025005.htm>.

⁶ See letter from Joseph Savage, Vice President and Associate General Counsel, FINRA (dated Jul. 17, 2025), <https://www.finra.org/sites/default/files/2025-07/sr-finra-2025-005-extension1.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

raising and corporate restructuring.”⁸ CABs are not permitted to engage in broader broker-dealer activities, such as “accepting customers’ trading orders, carrying customer accounts, handling customers’ funds or securities, or engaging in proprietary trading or market-making.”⁹ In light of the limited CAB business model, FINRA permits eligible member firms to elect CAB status and supervision under the CAB Rules.¹⁰ As compared to the FINRA rules applicable to non-CAB member firms, the CAB Rules impose “fewer restrictions” and “less extensive supervisory requirements” on CABs given their limited activities.¹¹

B. The Proposed Rule Change

The proposed rule change addresses multiple aspects of the CAB Rules, and this Order addresses each proposed rule change in turn.

1. Sales of Newly Issued Unregistered Securities

The CAB Rules currently permit a CAB to, among other things, “qualify[], identify[], solicit[], or act[] as a placement agent or finder [] on behalf of an issuer in connection with a sale of [newly issued], unregistered securities to institutional investors.”¹² The proposed rule change would broaden this permissible activity by expanding the definition of institutional investor to include any “eligible employee,” as defined under proposed CAB Rules 016(i)(8) and 016(m).¹³ Under the proposed rule change, an “eligible employee” would mean, “with respect to an issuer for which the [CAB] has provided services to the issuer or a control person permitted under [CAB Rule 016(c)(1)(F) or (G)]: (1) any ‘Knowledgeable Employee’ as defined in Investment

⁸ Notice at 25396; see also CAB Rule 016(c) (identifying the limited functions of a CAB).

⁹ Notice at 25396 (citing CAB Rule 016(c)(2)).

¹⁰ Id.; see CAB Rules 112, 116(b).

¹¹ Notice at 25396.

¹² CAB Rule 016(c)(1)(F).

¹³ Notice at 25399; see CAB Rules 016(i)(8), 016(m).

Company Act Rule 3c-5 ('Rule 3c-5') with respect to services provided to an issuer that is a Covered Company as defined in Rule 3c-5 or services provided to an Affiliated Management Person of such Covered Company as defined in Rule 3c-5; and (2) the president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer that is not a Covered Company as defined in Rule 3c-5.”¹⁴

2. Secondary Transactions

The CAB Rules currently prohibit a CAB from acting as a placement agent or finder “in connection with secondary transactions involving unregistered securities, except when the transaction is in connection with the change of ownership or control of a [privately held] company.”¹⁵ The proposed rule change would broaden the circumstances in which a CAB could participate in a secondary transaction.¹⁶ Specifically, the proposed rule change would permit CABs to “qualify[], identify[], solicit[], or act[] as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns, provided that: (i) the purchaser of such securities is an institutional investor; and (ii) the sale of such securities qualifies for an exemption from registration under the Securities Act.”¹⁷

3. Private Securities Transactions

¹⁴ Proposed CAB Rule 016(i)(8), 016(m).

¹⁵ Notice at 25401.

¹⁶ See id.

¹⁷ Proposed CAB Rule 016(c)(1)(H).

CAB Rule 328 currently prohibits any person associated with a CAB from participating “in any manner in a private securities transaction.”¹⁸ For purposes of this rule, a “private securities transaction” is “any securities transaction outside the regular course or scope of an associated person’s employment with a member, including, though not limited to, new offerings of securities which are not registered with the Commission.”¹⁹ In contrast, FINRA Rule 3280 permits associated persons of non-CAB member firms to participate in private securities transactions, so long as they comply with certain restrictions.²⁰ The proposed rule change would eliminate the prohibition for CABs, and it would permit associated persons of CABs to participate in private securities transactions to the same extent as those of non-CAB FINRA member firms, subject to compliance with FINRA Rule 3280.²¹

4. Compensation

The CAB Rules do not currently address whether a CAB may receive equity securities as compensation for its services.²² In 2019, FINRA issued an interpretative letter indicating that “CABs may be compensated in the form of securities issued by a privately held CAB client, rather than in cash, provided that the receipt, exercise or subsequent sale of such securities will

¹⁸ CAB Rule 328.

¹⁹ See *id.* (cross-referencing FINRA Rule 3280(e) for the definition of a private securities transaction). The definition also excludes the following from the scope of a private securities transaction: “transactions subject to the notification requirements of Rule 3210, transactions among immediate family members (as defined in FINRA Rule 5130), for which no associated person receives any selling compensation, and personal transactions in investment company and variable annuity securities.” FINRA Rule 3280(e); CAB Rule 328.

²⁰ FINRA Rule 3280. FINRA Rule 3280 imposes certain notice, approval, and supervision requirements where an associated person of a FINRA member firm seeks to participate in a private securities transaction.

²¹ Proposed CAB Rule 328.

²² Letter from Joseph P. Savage, FINRA, to Jonathan D. Wiley, The Forbes Securities Group (dated May 30, 2019), <https://www.finra.org/rules-guidance/guidance/interpretive-letters/jonathan-d-wiley-forbes-securities-group>; see Notice at 25403.

not cause the CAB to engage in activities prohibited under CAB Rule 016(c)(2) (Definitions).”²³ The proposed rule change would codify this interpretation.²⁴ Specifically, the proposed rule change would provide that a CAB “may receive compensation in the form of equity securities of a privately held issuer on behalf of which the [CAB] provided services permitted under paragraphs (c)(1) of Rule 016, provided that the receipt, exercise or subsequent sale of such securities will not cause the capital acquisition broker to engage in any activity prohibited under [CAB] Rule 016(c)(2).”²⁵

5. M&A Brokers Exemption

CAB Rule 016(c)(1)(G) currently permits 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.”²⁶ FINRA stated that this rule was designed to “allow CABs to engage in merger and acquisition activities to the same extent as unregistered persons who

²³ Notice at 25403; see letter from Joseph P. Savage, FINRA, to Jonathan D. Wiley, The Forbes Securities Group, *supra* note 22.

²⁴ Notice at 25403.

²⁵ Proposed CAB Rule 511.

²⁶ CAB Rule 016(c)(1)(G) (emphasis added).

were relying on” an SEC Staff-issued no-action letter relating to merger and acquisition brokers (“M&A Brokers”) (hereinafter, the “M&A Brokers Letter”).”²⁷

After the issuance of the M&A Brokers Letter and the adoption of CAB Rule 016(c)(1)(G), the Exchange Act was amended to include a new registration exemption for M&A Brokers, as defined in the statute,²⁸ and the SEC Staff withdrew its no-action letter.²⁹ The proposed rule change would amend CAB Rule 016(c)(1)(G) to reference the new Exchange Act registration exemption.³⁰ Specifically, the proposed rule change would permit 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 *Section 15(b)(13) of the Exchange Act or any provision of an SEC rule, release, interpretation or ‘no-action’ letter that permits a person to engage in the same or materially similar activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act.*”³¹

²⁷ Notice at 25403; see letter from David Blass, Chief Counsel and Associate Director, Division of Trading and Markets, Securities and Exchange Commission (dated Jan. 31, 2014), <https://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-.pdf> (stating that the staff would not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act if, under certain specified circumstances, an M&A Broker, as defined in the no-action letter, were to effect securities transactions solely in connection with the transfer of ownership of a privately held company without registering as a broker-dealer).

²⁸ Notice at 25403; see 15 U.S.C. § 78o(b)(13).

²⁹ See letter from Emily Westerberg Russell, Chief Counsel and Associate Director, Division of Trading and Markets, Securities and Exchange Commission (dated Mar. 29, 2023), <https://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf>.

³⁰ See Notice at 24503.

³¹ Proposed CAB Rule 016(c)(1)(G) (emphasis added).

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2025-005 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change should be approved or disapproved.³² Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration.³³ The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³⁴

³² 15 U.S.C. 78s(b)(2)(B).

³³ Id.

³⁴ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

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-FINRA-2025-005 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-2025-005. 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 such filing 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.

Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

All submissions should refer to file number SR-FINRA-2025-005 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. If comments are received, any rebuttal comments should be submitted on or before [INSERT DATE 35 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Sherry R. Haywood,

Assistant Secretary.

³⁵ 17 CFR 200.30-3(a)(12).