

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104097; File No. SR-FINRA-2025-005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Partial Amendment No. 1 to Proposed Rule Change to Amend the FINRA Capital Acquisition Broker (“CAB”) Rules

September 26, 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reference to a withdrawn SEC no-action letter with a reference to a corresponding Exchange Act provision.³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 On September 11, 2025, the Commission filed an order instituting proceedings to determine whether to approve or disapprove the proposed rule change.⁷

On September 24, 2025, FINRA responded to the comment letters received in response to the Notice⁸ and filed a partial amendment to the proposed rule change on the proposed rule change (“Partial Amendment No. 1”).⁹ Partial Amendment No. 1 is described in Item II below, which has been substantially prepared by FINRA.¹⁰ The Commission is publishing this notice to

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 Exchange Act Release No. 103945 (Sept. 11, 2025), 90 FR 44747 (Sept. 16, 2025) (File No. SR-FINRA-2025-005) (“OIP”).

⁸ See letter from Lisa Horrigan, Associate General Counsel, FINRA (dated Sept. 24, 2025), <https://www.sec.gov/comments/sr-finra-2025-005/srfinra2025005-662647-1977754.pdf>.

⁹ Partial Amendment No. 1 is available on FINRA’s website at <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2025-005>.

¹⁰ The Commission has reformatted FINRA’s presentation of its proposed modifications to, and descriptions of, the proposed rule change.

solicit comments on Partial Amendment No. 1 from interested persons.

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

FINRA is proposing the following amendments to the filing:

A. FINRA Proposes to Amend Proposed CAB Rule 016(c)(1)(F)(i) to Permit a CAB to Also Act on Behalf of an Institutional Investor Buyer

Currently, CAB Rule 016(c)(1)(F)(i) allows a CAB to 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. Partial Amendment No. 1 would amend this rule to provide that a CAB may represent an issuer or an institutional investor buyer in connection with a sale of newly issued unregistered securities. Thus, a CAB would no longer be expressly limited to acting on behalf of an issuer under CAB Rule 016(c)(1)(F)(i).

One commenter stated that “there is no material investor protection or other policy rationale for limiting CABs to acting as agent on the issuer/seller side of the market for institutional investor private placements.” FINRA agrees with this comment. FINRA believes that allowing a CAB also to act on behalf of an institutional investor buyer in connection with the sale of newly issued unregistered securities is consistent with CABs’ limited institutional business model and would not materially impact investor protection.

Following are the changes proposed in Partial Amendment No. 1 with the proposed changes in the original filing shown as if adopted. Proposed new language in Partial Amendment No. 1 is underlined; proposed deletions in Partial Amendment No. 1 are in brackets:

0.16. Definitions

...

(c) “Capital Acquisition Broker”

(1) A “capital acquisition broker” is any broker that solely engages in any one or more of the following activities:

...

(F) qualifying, identifying, soliciting, or acting as a placement agent or finder;

(i) on behalf of an issuer or institutional investor buyer in connection with a sale of newly-issued, unregistered securities to institutional investors[,]; or

...

B. FINRA Proposes to Amend Proposed CAB Rule 016(c)(1)(H) to Permit a CAB to Also Act on Behalf of an Institutional Investor Buyer

As originally proposed, proposed CAB Rule 016(c)(1)(H) would have allowed CABs to act as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns where (i) the purchaser is an institutional investor and (ii) the sale qualifies for an exemption from registration under the Securities Act.

Partial Amendment No. 1 would revise the proposed rule to provide that a CAB may engage in qualifying, identifying, soliciting, or acting as a placement agent or finder on behalf of an institutional investor that seeks to sell or buy unregistered securities. Thus, a CAB would no longer be expressly limited to acting on behalf of a seller under proposed CAB Rule 016(c)(1)(H). Partial Amendment No. 1 also would revise subparagraph (i) to provide that both the seller and buyer¹¹ of such securities must be institutional investors.

¹¹ FINRA also is revising proposed CAB Rule 016(c)(1)(H) to refer to a “buyer” rather than a “purchaser” in order to use consistent terms throughout paragraph (c).

As with the sale of newly issued unregistered securities, one commenter stated that the Proposal¹² is intended to allow CABs to provide a wider range of services to clients without materially impacting investor protection (because the Proposal would not permit acting as agent for sales to non-institutional investors) and to promote capital formation. Thus, the commenter stated, the proposed rule language limiting a CAB to acting for an institutional investor only “as seller” in a permitted secondary market transaction seems unnecessary. FINRA agrees with this comment. FINRA believes that allowing a CAB also to act on behalf of an institutional investor buyer in connection with secondary transactions of unregistered securities is consistent with CABs’ limited institutional business model and would not materially impact investor protection.

Following are the changes proposed in Partial Amendment No. 1 with the proposed changes in the original filing shown as if adopted. Proposed new language in Partial Amendment No. 1 is underlined; proposed deletions in Partial Amendment No. 1 are in brackets:

0.16. Definitions

...

(c) “Capital Acquisition Broker”

(1) A “capital acquisition broker” is any broker that solely engages in any one or more of the following activities:

...

(H) qualifying, identifying, soliciting, or acting as a placement agent or finder on behalf of an institutional investor that seeks to sell or buy unregistered securities [that it owns], provided that:

¹² For purposes of this document, the “Proposal” is a general reference to this proposed rule change (SR-FINRA-2025-005).

- (i) the seller and [purchaser] buyer of such securities [is an] are both institutional investors; and
- (ii) the sale of such securities qualifies for an exemption from registration under the Securities Act.

C. FINRA Proposes to Amend Proposed CAB Rule 016(c)(1)(F)(ii) to Make Certain Amendments Related to Change-of-Control Transactions

CAB Rule 016(c)(1)(F)(ii) currently permits a CAB to qualify, identify, solicit, or act as a placement agent or finder on behalf of an issuer or control person in connection with the change of control of a privately held company. This rule defines “control person” as a person who has the power to direct the management or policies of a company through ownership of securities, by contract, or otherwise. This rule further specifies that 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. “Privately held company” is defined to mean a company that does not have any class of securities registered, or required to be registered, with the SEC under Exchange Act Section 12 or with respect to which the company files, or is required to file, periodic information, documents, or reports under Exchange Act Section 15(d).

This rule text was in part modeled on the Commission staff’s 2014 M&A Brokers no-action letter, which the Commission withdrew when the M&A Brokers Exemption¹³ took effect.¹⁴ One key difference, however, is that CAB Rule 016(c)(1)(F)(ii) only permits a CAB to

¹³ See 15 U.S.C. 78q(b)(13).

¹⁴ See M&A Brokers, 2014 SEC No-Act. LEXIS 92 (Jan. 31, 2014) (“M&A Brokers Letter”); see also letter from Emily Westerberg Russell, Chief Counsel and Associate Director, SEC Division of Trading and Markets, to Faith Colish (dated Mar. 29, 2023) (informing attorneys who previously had requested the

act on behalf of an issuer or control person. Pursuant to the M&A Brokers Exemption (and prior to that, the M&A Brokers Letter), an M&A broker is permitted to represent both buyers and sellers, and to the extent the M&A broker represents both the buyer and seller in the same transaction, the M&A broker must provide clear written disclosure as to the parties it represents and obtain written consent from both parties to the joint representation.¹⁵

In addition, the M&A Brokers Letter and the M&A Brokers Exemption do not refer to a “control person”; instead, they use the defined term “control” and consider whether control exists *upon completion* of the transaction.¹⁶ By contrast, as noted above, CAB Rule 016(c)(1)(F)(ii) considers whether control exists *prior to* the transaction. Because the current CAB Rules use the defined term “control person” and permit a CAB to represent only an issuer or control person selling their shares, “control” must be considered prior to the transaction.

Finally, the M&A Brokers Letter and the M&A Brokers Exemption define “control” as the power, *directly or indirectly*, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Current CAB Rule 016(c)(1)(F)(ii) does not contain the language “directly or indirectly” in reference to control under the rule.

CAB Rule 016(c)(1)(G), as proposed to be amended pursuant to the Proposal, permits CABs to engage in M&A transactions to the same extent as exempt broker-dealers under the M&A Brokers Exemption. To more closely align the terms and conditions of these provisions, FINRA is proposing to amend CAB Rule 016(c)(1)(F)(ii) to eliminate the key differences described above. Specifically, Partial Amendment No. 1 would delete the term “control person”

M&A Brokers Letter that the staff was withdrawing the letter due to Congress’s adoption of the M&A Brokers Exemption), <https://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf>.

¹⁵ See 15 U.S.C. 78o(b)(13)(B)(vi).

¹⁶ See 15 U.S.C. 78o(b)(13)(E)(ii); M&A Brokers Letter, 2014 SEC No-Act. LEXIS 92, at *5-6.

in CAB Rule 016(c)(1)(F)(ii) and permit a CAB to represent the buyer or the seller in a change of control transaction. In addition, the rule would be amended to define the term “control” – similar to the M&A Brokers Exemption – as the power, *directly or indirectly*, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

Control will be presumed to exist if, *upon completion* of the transaction, the buyer or group of buyers 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. The proposed definition of “control” maintains the 25% voting securities and capital thresholds under the current definition of “control person,” which thresholds are also found in the definition of “control” under the M&A Brokers Exemption.

FINRA believes that a CAB should be permitted to represent both the buyer and seller in a transaction involving a change of control of a privately held company. However, such joint representation could present conflicts of interest for the CAB. Accordingly, FINRA is proposing new CAB Rule 016(c)(1)(F)(ii)b. to provide that a CAB may represent both the buyer and seller in the same transaction under paragraph (c)(1)(F)(ii) after providing clear written disclosure as to the parties the CAB represents and obtaining written consent from both parties to the joint representation. The proposed rule text mirrors the above-referenced language concerning joint representation found in the M&A Brokers Exemption, which addresses the same potential

conflicts of interest that FINRA has identified and imposes the same disclosure and consent requirements as proposed CAB Rule 016(c)(1)(F)(ii)b.¹⁷

While the proposed changes to CAB Rule 016(c)(1)(F)(ii) are not in direct response to a comment on the Proposal, FINRA nonetheless believes they are appropriate for similar reasons to the proposed changes to allow CABs to represent buyers in certain transactions (specifically, to represent institutional investor buyers in sales of newly issued unregistered securities and secondary unregistered securities transactions). In addition, as noted above, CAB Rule 016(c)(1)(G) permits CABs to engage in merger and acquisition transactions to the same extent as exempt broker-dealers under the M&A Brokers Exemption. Given the overlap between these provisions, FINRA believes that CAB Rule 016(c)(1)(F)(ii) should more closely align with the terms and conditions of the M&A Brokers Exemption to avoid having potentially confusing or conflicting requirements under the CAB Rules.

Although CABs would not be limited to representing buyers and sellers that are institutional investors in a transaction involving a change of control of a privately held company, FINRA believes that the proposed changes are nonetheless consistent with CABs' limited institutional business model and would not materially impact investor protection.

Following are the changes proposed in Partial Amendment No. 1 with the proposed changes in the original filing shown as if adopted. Proposed new language in Partial Amendment No. 1 is underlined; proposed deletions in Partial Amendment No. 1 are in brackets:

¹⁷ FINRA also is proposing that the definitions found in CAB Rule 016(c)(1)(F)(ii) will appear in new subparagraph a. of the rule.

0.16. Definitions

...

(c) “Capital Acquisition Broker”

(1) A “capital acquisition broker” is any broker that solely engages in any one or more of the following activities:

...

(F) qualifying, identifying, soliciting, or acting as a placement agent or finder;

...

(ii) [on behalf of an issuer or a control person] in connection with a change of control of a privately-held company, regardless of whether the capital acquisition broker acts on behalf of a seller or buyer.

a. For purposes of this subparagraph, [a] “control [person]” means [is a person who has] the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Control will be presumed to exist if, [before] upon completion of the transaction, the [person] buyer or group of buyers 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[;].

b. A capital acquisition broker may represent both the buyer and the seller in the same transaction under this paragraph (c)(1)(F)(ii) after providing clear written disclosure as to the parties the capital acquisition broker represents and obtaining written consent from both parties to the joint representation;

D. FINRA Proposes to Amend Proposed CAB Rule 016(m) to Make Conforming Changes

Because this Partial Amendment No. 1 would delete the defined term “control person” under CAB Rule 016(c)(1)(F)(ii), FINRA also is proposing a technical change to the proposed definition of “eligible employee” under new CAB Rule 016(m), which was proposed in the Proposal. Specifically, FINRA is proposing to replace “a control person” with “a person that controls the issuer.”

Following are the changes proposed in Partial Amendment No. 1 with the proposed changes in the original filing shown as if adopted. Proposed new language in Partial Amendment No. 1 is underlined; proposed deletions in Partial Amendment No. 1 are in brackets:

0.16. Definitions

...

(m) “Eligible Employee”

The term “eligible employee” means, with respect to an issuer for which the capital acquisition broker has provided services to the issuer or a [control] person that controls the issuer permitted under subparagraphs (F) or (G) of Rule 016(c)(1):

...

E. FINRA Proposes to Amend Proposed CAB Rule 511 to Make Technical Changes

FINRA also is proposing a technical change to CAB Rule 511 (Securities as Compensation), as proposed in the Proposal, to replace “paragraphs (c)(1) of Rule 016” with “Rule 016(c)(1).” This change would correct the inadvertent plural form used in the original proposed rule text and would be consistent with the format of the subsequent reference to Rule 016(c)(2) in that sentence.

Following are the changes proposed in Partial Amendment No. 1 with the proposed changes in the original filing shown as if adopted. Proposed new language in Partial Amendment No. 1 is underlined; proposed deletions in Partial Amendment No. 1 are in brackets:

511. Securities as Compensation

A capital acquisition broker may receive compensation in the form of equity securities of a privately held issuer on behalf of which the capital acquisition broker provided services permitted under [paragraphs (c)(1) of] Rule 016(c)(1), 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 Rule 016(c)(2).

III. 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. 1, is consistent with the Act. 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 the 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.

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*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).