

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80321; File No. SR-FINRA-2017-008)

March 28, 2017

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Private Placement Filer Form under FINRA Rules 5122 and 5123

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 17, 2017, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.⁴

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing changes to the Private Placement Filer Form (“Filer Form”) that members complete when submitting private placement filings under FINRA Rules 5122 (Private Placements of Securities Issued by Members) or 5123 (Private Placements of Securities). The proposal does not make any changes to the text of FINRA rules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6). FINRA has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

⁴ The text of the proposed rule change is available at the principal office of FINRA, on FINRA’s website at <http://www.finra.org>, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rules 5122 and 5123 require a FINRA member to file information regarding private placements in which the member participates.⁵ When Rule 5123 became effective on December 3, 2012,⁶ FINRA required members to use the Filer Form for filings under both rules.⁷ Members submit the Filer Form and relevant offering documents to FINRA through the FINRA Firm Gateway.⁸ On July 1, 2013, FINRA amended Rule 5123 to require members to file the requisite information “in a manner prescribed by FINRA” and also began using an updated version of the

⁵ Both Rules 5122 and 5123 provide exemptions from the filing requirement when certain types of securities are sold or securities are sold to certain types of investors. See Rules 5122(c) and 5123(b).

⁶ See Securities Exchange Act Release No. 67157 (June 7, 2012), 77 FR 35457 (June 13, 2012) (Notice of Filing of Amendments No. 2 and No. 3 and Order Granting Accelerated Approval of File No. SR-FINRA-2011-057); Regulatory Notice 12-40 (September 2012).

⁷ See Regulatory Notice 12-40 (September 2012). See also Regulatory Notice 13-26 (August 2013); Securities Exchange Act Release No. 69843 (June 25, 2013), 78 FR 39367 (July 1, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Members' Filing Obligations under FINRA Rule 5123 (Private Placements of Securities) File No. SR-FINRA-2013-026).

⁸ FINRA Firm Gateway is an online compliance tool that provides consolidated access to FINRA applications and allows members to submit required filings electronically to meet their compliance and regulatory obligations.

Filer Form.⁹ The changes proposed herein would further update the version of the Filer Form that has been in use since 2013 for filings made pursuant to Rule 5122 and Rule 5123.

The Filer Form has three main components: (1) the “Participating Member Information” section, which seeks information about the members that are selling the private placement; (2) the “Issuer Information” section, which captures basic information about the issuer; and (3) the “Offering Information” section, which seeks information about the offering. FINRA proposes changes to the Filer Form that will add, clarify and eliminate questions or other information requested in each section. Members may respond “unknown” for all new requests for information. Therefore, the Filer Form, as proposed to be modified, would not impose any new obligation on broker-dealers to seek out information that they do not already have. FINRA describes these proposed changes below.

The Participating Member section of the Filer Form would add questions regarding whether the member making the filing (“filing member”) is the exclusive selling agent in the private placement and whether there is any affiliation between the issuer or sponsor of the private placement with any member participating in the offering upon whose behalf the filing member is submitting the Filer Form. This section would no longer require the title and email address for the contact person of the filing member or the contact name, title and telephone number for other members identified in the filing.

The Issuer Information section of the Filer Form would add a question asking whether the issuer is a reporting company. This section would no longer require the filing member to enter the name, title and email address of the issuer’s contact person.

⁹ See Securities Exchange Act Release No. 69843 (June 25, 2013), 78 FR 39367 (July 1, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Members’ Filing Obligations under FINRA Rule 5123 (Private Placements of Securities) File No. SR-FINRA-2013-026).

The Offering Information section would add questions regarding:

- the type of security the issuer is offering;
- whether the issuer raised capital within the preceding 12 months from any source (excluding loans or investments by affiliates);
- minimum investment amount that the issuer will accept and whether the issuer can waive that minimum;
- whether the filing member sold or will sell the offering to any non-accredited investors;
- the exemption from the Securities Act of 1933 that the issuer is relying upon;¹⁰ and
- for contingency offerings, whether a contingency has been met as of the date of the filing.

The Offering Information section would also request the date on which the filing member first offered or sold the private placement and allow the filing member to indicate that sales have yet to commence. The Offering Information section would no longer include the requirements to provide the aggregate amount of non-commission compensation and the offering's conclusion date. This section also would no longer include the questions asking whether the member used a term sheet, whether the issuer has any independently audited financial statements and whether the issuer's directors are independent. In addition, the Offering Information section would clarify that the requirement to provide the stated or target rate of return is relevant, only if an

¹⁰ FINRA notes that one of the exemptions listed on the Filer Form is Rule 505 of Regulation D. The SEC has recently repealed Rule 505, with a stated effective date of May 22, 2017, in connection with its amendments to exemptions to facilitate intrastate and regional securities offerings. See Securities Exchange Act Release No. 79161, 81 FR 83494 (November 21, 2016). FINRA will modify the Filer Form to remove the reference to Rule 505 following the effective date of the repeal of that rule.

offering document provides an actual or target rate of return to investors. Finally, this section also would clarify that the question regarding general solicitation only seeks information regarding whether the filing member or the issuer has, in fact, engaged in general solicitation in connection with the private placement at or before the time of filing.

FINRA believes that these revisions will assist it in fulfilling its regulatory responsibilities by improving the information about the nature of the private placement and members' role in offering the securities. Specifically, FINRA proposes to eliminate questions or data fields that were not as useful as anticipated, clarify questions that may have raised questions with members, and add other questions that, with the benefit of experience, FINRA believes will help it better understand the issues and potential risks associated with a private placement (e.g., an offering with an unmet contingency).¹¹

FINRA has filed the proposed changes for immediate effectiveness. FINRA anticipates that the implementation date will be May 22, 2017.

2. Statutory Basis

FINRA believes that the proposed changes to the Filer Form are consistent with the provisions of Section 15A(b)(6) of the Act,¹² which requires, among other things, that FINRA rules must 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, in that it will assist in FINRA's efforts to detect and prevent fraud in connection with specified private placements. In addition, the proposed changes will assist FINRA in evaluating the

¹¹ FINRA published Regulatory Notice 16-08 (February 2016) to highlight issues that FINRA has observed concerning members' compliance with SEA Rules 10b-9 and 15c2-4.

¹² 15 U.S.C. 78o-3(b)(6).

specified private placement activities of members and assess whether members are conducting a reasonable investigation for specified private placement offerings in which they participate.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed changes to the Filer Form will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA notes that all members that participate in specified private placements will have to file electronically (or have another member that is participating in the specified private placement file on its behalf) a Filer Form in connection with the rules. In addition, all of the new questions proposed herein permit members to respond "unknown."

Because the proposed Filer Form does not impose an affirmative duty on members to obtain answers, but only requires the member to provide the information on the Filer Form if known, FINRA believes that the proposed changes present no new burden upon filing members. In light of the role of the rules and the accompanying Filer Form in assisting FINRA in its efforts to detect and prevent fraudulent and manipulative acts and practices and enhance the protection of investors, FINRA does not believe that the proposed changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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-2017-008 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-2017-008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

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-2017-008 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.¹⁵

Eduardo A. Aleman
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).