who have been granted access to classified information under part 95 of title 10 of *the Code of Federal Regulations* ''Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.''

7. *The estimated number of annual responses:* 72.

8. *The estimated number of annual respondents:* 19.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 3,189.5 hours (2,272.5 reporting + 917 recordkeeping).

10. *Abstract:* The NRC-regulated facilities and their contractors who are authorized to access and possess classified matter are required to provide information and maintain records to demonstrate they have established and are maintaining an Insider Threat Program to identify and protect classified information against a potential insider threat.

Dated: January 28, 2026.

For the Nuclear Regulatory Commission.

Kristen Benney,

NRC's Acting Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2026–01857 Filed 1–29–26; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2026–152; K2026–152]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 4, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* MC2026–152 and K2026–152; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1480 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 27, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* February 4, 2026.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Parvaneh Higareda,

Alternate Federal Register Liaison.

[FR Doc. 2026–01851 Filed 1–29–26; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104695; File No. SR–FINRA–2026–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) and 5123 (Private Placements of Securities)

January 27, 2026.

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 January 22, 2026, the 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

FINRA is proposing to amend FINRA Rules 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) and 5123 (Private Placements of Securities). The proposed amendments to Rule 5110 would improve and clarify the valuation method for securities considered underwriting compensation, add new exclusions from underwriting compensation that codify exemptions FINRA staff has issued, and include minor changes to improve the operation of the rule. The proposed amendments to Rule 5123 would expand available exemptions to include offerings sold to investors meeting the categories of accredited investor for certain family offices and certain entities with assets under management in excess of $5,000,000, consistent with the Commission's treatment of those categories.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org* and at the principal office of FINRA.

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

Background

The ability of small and large businesses to raise capital efficiently is critical to job creation and economic growth. Rule 5110 has played an important role in the capital raising process by prohibiting unfair underwriting terms and arrangements in connection with the public offering of securities. Moreover, Rule 5110 continues to be important to promoting investor protection and market integrity through effective and efficient regulation that facilitates vibrant capital markets.

Rule 5110 requires a member that participates in a public offering to file documents and information with FINRA about the underwriting terms and arrangements.[3] FINRA's Corporate Financing Department (''Department'') reviews this information prior to the commencement of the offering to determine whether the underwriting compensation and other terms and arrangements meet the requirements of the applicable FINRA rules.[4]

The unregistered offering market also is an important source of capital for American businesses, including small and midsize companies. Rule 5123 plays a critical role in providing information that assists FINRA in the identification of potential trends and rule violations in the private placement market.

In general, Rule 5123 requires members to file with FINRA any private placement memorandum, term sheet or other offering document, and any retail communication that promotes or recommends a private placement, including any material amended versions thereof, used in connection with a private placement of securities within 15 calendar days of the date of first sale, unless the member can rely on an applicable exemption from the rule. Rule 5123 contains an exemption from filing for offerings sold to certain types of sophisticated institutional investors that qualify as ''accredited investors'' under Rule 501 of the Securities Act of 1933 (''Securities Act'').[5] These institutional accredited investors have sufficient sophistication to warrant an exemption from the rule.

In 2020, the SEC amended the definition of accredited investor to include two additional types of institutional entities.[6] The amendments updated the definition of accredited investor to more effectively identify institutional and individual investors that have the knowledge and expertise to participate in private capital markets.

Overview of Proposed Amendments

The proposed amendments to Rule 5110 would improve and clarify parts of the rule covering the valuation method for securities deemed underwriting compensation. The proposed amendments would also include new exclusions from underwriting compensation that codify exemptions FINRA staff has issued and clarifications of other provisions, all of which would further promote capital formation without lessening investor or issuer protection. In addition, the proposed amendments would include several minor changes to improve the operation of the rule and address common questions encountered during the review process.

The proposed amendments to Rule 5123 would add two types of entities that would qualify under the existing filing exemption under Rule 5123, consistent with the Commission's treatment of the accredited investor definition.

Rule 5110 Proposed Amendments

Valuation Method for Securities Acquisitions Considered Underwriting Compensation

Currently, when participating members[7] acquire securities that are deemed underwriting compensation, the value of the securities is based on either the public offering price per security or the price paid per security on the date of acquisition if a ''bona fide public

[3] The following are examples of public offerings that are routinely filed: (1) initial public offerings (''IPOs''); (2) follow-on offerings; (3) shelf offerings; (4) rights offerings; (5) offerings by direct participation programs as defined in FINRA Rule 2310(a)(4) (Direct Participation Programs); (6) exchange offers; (7) offerings pursuant to SEC Regulation A; and (8) offerings by closed-end funds.

[4] FINRA does not approve or disapprove an offering; rather, the review relates solely to the FINRA rules governing underwriting terms and arrangements and does not purport to express any determination of compliance with any federal or state laws, or other regulatory or self-regulatory requirements regarding the offering. A member may proceed with a public offering only if FINRA has provided an opinion that it has no objection to the proposed underwriting terms and arrangements. *See* Rule 5110(a)(1)(C)(ii).

[5] These ''institutional'' accredited investors are: banks and savings and loan associations; registered broker-dealers; investment advisers; insurance companies; investment companies; business development companies; Small Business Investment Companies; Rural Business Investment Companies; state employee benefit plans with assets in excess of $5 million; or ERISA employee benefit plans, if the investment decision is made by a plan fiduciary, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5 million, or if a self-directed plan, with investment decisions made solely by persons that are accredited investors (*see* Rule 501(a)(1)); private business development companies (*see* Rule 501(a)(2)); organizations described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5 million (*see* Rule 501(a)(3)); and trusts with total assets in excess of $5 million, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) (*see* Rule 501(a)(7)).

[6] *See* Accredited Investor Definition, Securities Exchange Act Release 89669 (August 26, 2020), 85 FR 64234 (October 9, 2020), including new categories of accredited investor under Rule 501(a)(9) and (a)(12).

[7] The term ''participating member'' means any FINRA member that is participating in a public offering, any affiliate or associated person of the member, and any immediate family, but does not include the issuer. *See* Rule 5110(j)(15).

market'' exists for the security.[8] The definition of ''bona fide public market'' requires that the securities be traded on a national securities exchange and relies on SEC Regulation M's definitions of average daily trading volume and public float.[9] FINRA understands that members have experienced challenges determining whether a security had a ''bona fide public market'' on the acquisition date using this complex, multipart definition. When a security does not meet the definition, and does not have a public offering price, it cannot be valued under the rule and is therefore considered indeterminate compensation, which is prohibited under Rule 5110(g)(1).

The proposed rule change would amend Rule 5110(c)(2) and (3) by replacing ''bona fide public market'' with a valuation method in which the calculation is more predictable, based on the closing market price of a security traded on a registered national securities exchange or a ''designated offshore securities market'' [10] on the date of acquisition. Using this readily available market data would greatly simplify application of the rule.

Exclusions From Underwriting Compensation for Certain Securities Acquisitions

The proposed rule change is intended to foster capital raising by providing additional exclusions from underwriting compensation for certain types of investments by participating members in anticipation of, or concurrently with, a public offering. These proposed amendments cover (1) debt-for-equity exchanges; (2) capital investments for direct participation programs (''DPPs'') [11] and unlisted real estate investment trusts (''REITs''); [12] and (3) non-convertible preferred securities, and describe factors FINRA has considered regarding whether to exclude securities acquisitions from being deemed underwriting compensation when such acquisitions are in connection with bona fide financing that would benefit the issuer and investors. Each proposed amendment is discussed below.

Debt-for-Equity Exchanges

Rule 5110 does not now provide an exclusion from underwriting compensation for securities acquired by affiliates of underwriters in connection with debt-for-equity exchange transactions. Debt-for-equity exchanges have increasingly occurred in recent years and provide favorable tax treatment and economic benefits to issuers.[13] A debt-for-equity exchange is composed of a series of transactions in which a lender acquires equity securities of the issuer, often referred to as exchange shares, in return for a cash loan. The exchange shares are subsequently or concurrently registered and offered by underwriters in a public offering. The offering proceeds are used, in whole or part, as repayment of the loan. When the lender is an affiliate of an underwriter, it falls within the definition of participating member, and the equity securities acquired by the affiliated lender for making the loan fall within the definition of underwriting compensation.

The proposed rule change would add new Supplementary Material .01(b)(23) to provide relief from such exchanges being deemed underwriting compensation if the equity acquired is part of a transaction that provides economic and tax benefits to the issuer and meets the following conditions:

- the affiliated member subsequently offered all of the equity securities the lender acquired in a firm commitment offering following the debt exchange; [14]
- the parties determined the terms of the debt exchange and the subsequent equity issued through arms' length negotiations based on the market price of the equity; [15] and
- the affiliated member negotiated customary compensation for the subsequent equity offering.

The proposed rule change would facilitate capital formation by providing consistent regulatory treatment of a common financing strategy issuers employ.

Capital Investments for DPPs and REITs

Rule 5110 does not now provide an exclusion from underwriting compensation for capital investments in exchange for an equity stake made by affiliates of underwriters concurrently with or in advance of a public offering. Such investments are common in DPP and REIT offerings to provide the initial or subsequent equity capital or financing needed by an issuer.

The proposed rule change would add new Supplementary Material .01(b)(24) to provide relief from such transactions by setting out the conditions for excluding capital investments from being deemed underwriting compensation. Supplementary Material .01(b)(24) would work as a self-operating exclusion and would not limit when the transactions could occur. The conditions for Supplementary Material .01(b)(24) apply to securities acquired before or during the distribution of an offering by a participating member in the issuer or an affiliated entity and would require that:

- the capital investments are disclosed in the prospectus;
- the offering and the securities acquired in the capitalization transaction are valued and priced based on net asset value (''NAV''); [16]
- the offering is subject to the requirements of Rule 2310 (Direct Participation Programs); and
- the securities acquired are restricted for a period of 180 days following the commencement of sales.

These conditions are intended to promote transparency, ensure fair valuation, and address potential conflicts of interest in these transactions.

Non-Convertible Preferred Securities

Rule 5110 provides that non-convertible or non-exchangeable debt securities and derivative instruments acquired by any participating member in a transaction related to a public offering at a fair price [17] are considered underwriting compensation but have no compensation value.[18] Because both non-convertible debt and non-convertible preferred securities cannot be converted to common stock and provide predetermined payments to holders, resulting in fixed sources of income, FINRA views them as

[8] *See* Rule 5110(c).

[9] *See* Rule 5121(f)(3).

[10] *See* Securities Act Rule 902(b).

[11] *See* Rule 2310(a)(4).

[12] *See* Rule 2231(d)(4).

[13] Pursuant to Rule 5110(i), FINRA received 15 exemption requests for debt-for-equity transactions from 2022 through 2024.

[14] Typically, lenders and affiliated members coordinate to satisfy this condition. However, even if they do not coordinate, the affiliated member can satisfy the condition with the subsequent offering.

[15] Past exemptions that have been granted consistent with the conditions of this proposed Supplementary Material involved operating companies with equity listed on a national securities exchange with a market price and did not involve an IPO or a spinoff. Member firms intending to participate in transactions that do not align with the terms of this Supplementary Material may, as with any transaction subject to Rule 5110, request exemptive relief pursuant to FINRA Rule 5110(i) and the Rule 9600 Series.

[16] Capitalization transactions occurring before the issuer has material assets would be deemed to occur at or above NAV.

[17] *See* Rule 5110.06(b).

[18] *See* Rules 5110(c)(5) and 5110.06. As a general rule, compensation that cannot be valued is prohibited. *See* Rule 5110(g)(1). Under this exclusion, treating these transactions as compensation without value permits the participating member to receive the securities (as long as they are received at a fair price) while still allowing FINRA the ability to review the transactions to determine whether they were, indeed, received at a fair price. If they were not, the value of underwriting compensation that is attributed to these securities is the difference between their fair price and their actual price.

equivalent for purposes of the Rule 5110 exclusion and, accordingly, the proposed rule change would treat them in a comparable manner as long as non-convertible preferred securities are acquired at a fair price. This rule change would facilitate capital formation by providing members with predictable regulatory treatment and benefit issuers through the capital investments made in exchange for non-convertible preferred securities from affiliates of members that participate in public offerings.

Changes To Improve Operation of Rule 5110

The proposed rule change would make other minor modifications to Rule 5110 based on FINRA's experience reviewing filings that FINRA believes would improve the operation of the rule and reduce the number of questions raised by filers during the review process. For example, Rule 5110(g)(5)(B) permits termination fees or the receipt of compensation in the form of rights of first refusal in connection with a public offering that is terminated when specific requirements are met that protect the issuer (*i.e.,* they are not deemed to be prohibited unreasonable terms or arrangements). Increasingly, members negotiate payments often described as ''tail fees'' in engagement letters that are similar to the terms and requirements for termination fees or rights of first refusal. Because tail fees provide compensation in the event of a subsequent financing from investors introduced by a member following the termination of an agreement, these payments are comparable to termination fees for purposes of Rule 5110. The proposed rule change would amend Rule 5110(g)(5)(B) to clarify that the same requirements would apply to such fees.[19] If these requirements are not met, tail fees would constitute unreasonable arrangements under Rule 5110.

Proposed Amendments to Rule 5123

The proposed rule change would add two types of entities to the filing exemption under Rule 5123, consistent with the Commission's treatment of the accredited investor definition. As stated above, in August 2020, the Commission adopted amendments to the definition of ''accredited investor'' under Rule 501[20] to more effectively identify institutional and individual investors that have the knowledge and expertise to participate in private capital markets. These changes included:

- any entity, of a type not listed in paragraphs (a)(1), (2), (3), (7), or (8) of Rule 501, not formed for the specific purpose of acquiring the securities offered, owning investments in excess of $5,000,000;[21] and
- any ''family office'' with assets under management in excess of $5,000,000, that is not formed for the specific purpose of acquiring the securities offered and its prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment.[22]

Adding these two types of entities to the existing exemption would establish consistency with the purpose of Rule 5123. FINRA believes that the investors described above possess a level of sophistication and expertise that is similar to the institutional accredited investors currently exempted under Rule 5123 and generally do not need the additional protections and oversight provided through the filing requirements. FINRA notes that qualified purchasers, which currently are covered in another exemption from Rule 5123's filing requirements, are defined under the Investment Company Act of 1940 and the rules thereunder (''Investment Company Act'') to include natural persons or certain companies that own not less than $5,000,000 in investments.[23] The two entities above have a similar financial threshold, which indicates an equivalently high level of sophistication to justify exemption from Rule 5123.[24]

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed rule changes are consistent with the provisions of Section 15A(b)(6) of the Act,[25] 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 proposed amendments to Rules 5110 would enhance the efficiency of FINRA rules and further support capital formation. For example, the proposed amendments to Rule 5110 would improve and clarify the application of Rule 5110 and align the rule with current practices relating to underwriting compensation. The proposed amendments to Rule 5110 regarding valuation of securities that are considered underwriting compensation would replace a valuation process that members have stated is unnecessarily complex and cumbersome with a simpler, more straightforward valuation process, which would provide predictability and efficiency to members' valuation processes. The proposed amendments to Rule 5110 regarding new exclusions from underwriting compensation that codify exemptions FINRA staff has issued would provide additional flexibility and clarity for member firms that would reduce the need for and cost associated with certain participating members requesting exemptions from FINRA, reduce the amount of time for FINRA's review of these filings, allow issuers to access capital markets faster, and enhance the transparency and efficiency of the regulatory process.[26] The codification of these exemptions as exclusions may lead some members that would not request an exemption under the baseline to use an exclusion, generating additional or greater investments in issuers, thereby increasing access and options to capital raising.

The proposed amendments to Rule 5110 also would maintain important protections for issuers and investors

[19] These requirements are that: (i) the agreement specifies that the issuer has a right of ''termination for cause,'' which shall include the participating member's material failure to provide the underwriting services contemplated in the written agreement; (ii) an issuer's exercise of its right of ''termination for cause'' eliminates any obligations with respect to the payment of any termination fee or provision of any right of first refusal; (iii) the amount of any termination fee must be reasonable in relation to the underwriting services contemplated in the agreement and any fees arising from underwriting services provided under a right of first refusal must be customary for those types of services; and (iv) the issuer shall not be responsible for paying the termination fee unless an offering or other type of transaction (as set forth in the agreement) is consummated within two years of the date the engagement is terminated by the issuer. *See* Rule 5110(g)(5)(B).

[20] *See* SEC Accredited Investor Definition Release, *supra* note 6.

[21] *See* 17 CFR 230.501(a)(9).

[22] *See* 17 CFR 230.501(a)(12).

[23] *See* Investment Company Act Section 2(a)(51).

[24] The Commission's August 2020 accredited investor amendments promulgated additional categories of accredited investors, including natural persons holding professional certifications and designations or other credentials, knowledgeable employees of private funds, and certain family clients, which FINRA is not proposing to add in these amendments.

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] FINRA received 21 requests for exemptions for capital investments and debt-for-equity transactions from 2022 through 2024. Each request required substantial analysis by FINRA staff and discussions with the member firm, resulting in a longer review of a potential offering in order to consider the request.

participating in offerings. The proposed valuation method would continue to ensure that securities that are acquired by underwriters are valued fairly. In addition, the proposed exclusions are narrowly tailored and based on exemptive relief FINRA has provided, which have worked well for issuers and investors.[27] The proposed rule change also would not decrease FINRA's ability to oversee underwriting terms and arrangements. In totality, the proposed rule change would reduce the administrative and operational burdens for members and FINRA, promote regulatory efficiency, and enhance market functioning while maintaining issuer and investor protection.

The proposed amendments to Rules 5123 also would enhance the efficiency of FINRA rules and further support capital formation. By expanding the scope of private placements that are exempt from the requirement of Rule 5123, members that participate in these offerings would no longer be required to comply with Rule 5123.

In addition, the proposed amendments to Rule 5123 would not diminish investor protection. The institutional investors who would be covered by the filing exemption possess a level of sophistication and expertise that is similar to the institutional accredited investors currently exempted under Rule 5123 and generally do not need the additional protections and oversight provided through the filing requirements. Non-institutional accredited investors who may not possess the same level of sophistication and expertise as institutional investors would continue to receive the protections of the Rule 5123 filing requirement, with FINRA reviewing private placement offerings sold to these investors and helping detect misconduct in the private placement process, thereby promoting investor protection.

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

FINRA does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

Regulatory Need

As discussed earlier, the current approach to valuation of securities that are considered underwriting compensation under current Rule 5110 can be complex, creating unnecessary burdens for members and uncertainty on whether they are permitted to acquire certain securities or required to receive a different form of compensation. The proposed rule change would provide a simpler, more straightforward approach. In addition, certain transactions require participating members to request exemptions from FINRA. This approval process can increase the amount of time for issuers to access capital markets. By codifying existing FINRA staff positions, the proposed rule change would reduce such requests by replacing existing requirements with more practical and transparent alternatives. The proposed rule change would also expand the exemptions available in Rule 5123 and better align FINRA rules with SEC rules relating to the treatment of institutional accredited investors.

Economic Baseline

The economic baseline for the proposed rule changes is the existing regulation framework of public offerings and private placements subject to regulatory oversight under Rules 5110 and 5123 and their interpretations and implementation by FINRA. The economic baseline also includes industry practices relating to and compliance with these existing regulations and other relevant regulatory frameworks.

With respect to public offerings subject to Rules 5110, FINRA evaluated filing information to assess members' participation in public offerings required to be filed with FINRA. FINRA notes that the observations addressed here do not include observations in which members may have relied on a filing exemption under Rule 5110(h)(1). FINRA received 3,711 new filings under Rule 5110 during 2022–2024. The annual number of new filings ranged from 1,398 in 2022 to 1,209 in 2024, with an average number of 1,237 filings per year. These filings represented underwriting, allocation, distribution, advisory and other investment banking services in connection with a public offering conducted by 333 members, to the extent the member's participation in the public offering is required to be provided. The average and median number of filings in which a member participated was 15 and three during the period, respectively. The aggregate amount of offering proceeds in association with these filings was over $781 billion, with a median value of approximately $50 million per filing.

Certain proposed changes to Rule 5110 specifically relate to public offerings with capital investments for DPPs and REITs, debt-for-equity transactions, and securities acquired by a participating member without a ''bona fide public market.'' FINRA collected information on exemption requests submitted by members in non-shelf filings related to these three sets of acquisitions. An analysis of this data finds that among the 2,402 new non-shelf offerings filed under Rule 5110 during 2022–2024, six (0.25 percent) offerings requested exemptions relating to capital investments for DPPs and REITs, 15 (0.62 percent) offerings requested exemptions relating to debt-for-equity transactions, and 12 (0.5 percent) offerings requested exemptions relating to valuing securities without a bona fide public market.[28] A majority of these exemptions were granted after FINRA took into consideration all relevant factors.

With respect to private placement offerings under Rule 5123, FINRA collected information detailing 8,485 unique filings under Rule 5123 submitted by 525 members during the above period. The annual number of unique filings ranged from 3,807 in 2022 to 2,344 in 2024, with an average number of 2,828 filings per year. Among the 8,485 unique filings, 7,599 (90 percent) had projected proceeds totaling $388 billion with a median value of $10 million per filing. Projected proceeds were reported as unknown for the remaining filings. The average and median number of these filings submitted per participating member during the above period were 15 and three, respectively.

Economic Impact

The proposed rule change would directly impact members, issuers and investors that participate in public offerings and private placements. This economic impact analysis considers the significant impacts associated with specific rule changes relating to

[27] Rule 5110.01(b)(23)–(24) codifies the factors and factual circumstances FINRA has consistently considered when granting these exemptions.

[28] *See* Rule 5110(i). ''Pursuant to the Rule 9600 Series, FINRA, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally grant an exemption from any provision of this Rule to the extent that such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.''

underwriting compensation and private placement offerings.

Anticipated Benefits of Proposed Amendments to Rule 5110

Overall, the proposed changes to Rule 5110 would simplify and clarify the application of Rule 5110 and align the rule with current practice relating to underwriting compensation. The additional flexibility in the proposed changes would facilitate negotiation between members and issuers of underwriting terms and arrangements that comply with Rule 5110. The proposed changes would also reduce the need for certain participating members to request exemptions from FINRA, reduce the amount of time for FINRA's review of these filings, allow issuers to access capital markets faster, and enhance the transparency and efficiency of the regulatory process. The codification of the exemptions as exclusions may lead some members that would not request an exemption under the baseline to use an exclusion, generating additional or greater investments in issuers thereby increasing access and options to capital raising.

The proposed amendments related to the valuation method for securities acquisitions would increase the options participating members have for receiving underwriting compensation, which may include convertible and non-convertible securities. Currently, participating members in these offerings experience challenges using the market price on the date of the acquisition because a ''bona fide public market'' does not exist. Because a value cannot be determined, participating members must either negotiate to be compensated in cash or request an exemption from FINRA because the receipt of such securities would constitute an unreasonable term or arrangement under Rule 5110(g)(1).

Under current Rule 5110, transactions involving capital investments made by affiliates of underwriters in DPPs and REITs as well as securities acquired by affiliates of underwriters in connection with debt-for-equity exchange transactions are deemed underwriting compensation. Hence, participating members must either find alternative financing options or request exemptive relief from the presumption that these transactions may be deemed underwriting compensation.

The proposed changes to codify these exemptions would reduce compliance costs for participating members insofar as they reduce the time and expense incurred by members' employees and outside legal counsel in seeking such exemptions. The proposed changes may also create new financing opportunities for issuers and members and reduce costs associated with such exemptions. The benefits may also extend to offerings exempt from the filing requirements in Rule 5110(h)(1), but otherwise subject to compliance.

Participating members that acquire non-convertible preferred securities in connection with a public offering at a fair price will benefit from the proposed amendments to treat non-convertible preferred securities equivalently to non-convertible or non-exchangeable debt securities. FINRA believes that these proposed changes would provide participating members additional flexibility and clarity with respect to the applicable requirements for such securities acquisitions under Rule 5110.

Anticipated Costs of Proposed Amendments to Rule 5110

As discussed earlier, the proposed amendments would codify prior positions taken by FINRA staff that have not imposed costs on issuers and investors. To the extent that codification allows for greater use of the flexibilities provided, capital formation may be enhanced at limited additional risk to investors. FINRA does not expect this change to affect overall underwriting compensation or negatively affect investors, given FINRA's oversight and competitive pressure among underwriters. Therefore, the proposed changes are not expected to increase costs to issuers and investors that participate and invest in public offerings.

Anticipated Benefits and Costs of Proposed Amendments to Rule 5123

The proposed changes would expand the scope of private placements that are exempt from the requirement of Rule 5123. The proposed exemptions relate to private placements sold to two additional types of institutional entities that were included in the SEC's amended definition of accredited investor in 2020 (*i.e.,* certain entities owning investment in excess of $5,000,000 and certain family offices with assets under management in excess of $5,000,000).[29] Members in these offerings would no longer incur the costs to comply with Rule 5123, whereas the regulatory protection provided through the filings requirement is not necessary because the two new categories of accredited investors are considered to have sufficient sophistication to appropriately evaluate the risks and rewards of the investment and therefore warrant an exemption from Rule 5123.

The extent of the cost savings for members cannot be estimated in aggregate because FINRA does not collect the information that would identify the private placement offerings sold exclusively to the above two types of specified institutional entities. The expected cost savings would likely be greater for members that participate in these offerings more frequently or members that seek to expand their private placement activities.

Alternatives Considered

FINRA considered several alternatives in developing the proposed rule change. One alternative FINRA considered was to expand the types of securities that are eligible to be valued under the proposed rule to also include over-the-counter (''OTC'') equity securities. While this alternative would provide participating members with additional compensation options, FINRA notes that there can be material differences in the frequency and volume of trading among OTC equity securities, which may impact the availability of information for use in performing valuations for such securities.

Although FINRA has not incorporated this alternative into the current proposed rule change, FINRA is continuing to evaluate whether additional types of securities could be eligible for valuation under Rule 5110. In the interim, FINRA believes the proposed rule change as drafted achieves an appropriate balance between supporting capital formation and maintaining adequate issuer and investor protection. Under current Rule 5110, securities that trade only OTC in the U.S., including securities of foreign issuers, may nonetheless qualify as underwriting compensation. Further, foreign ordinary shares, including those traded OTC in the U.S., may be eligible for the designated offshore securities market provision proposed in this rule, and thus such securities would be eligible to be valued under the current proposal.[30]

[29] *See supra* note 6.

[30] FINRA estimates that, from February 1, 2025 to July 29, 2025, 9,435 out of 18,927 issuers with securities traded on the U.S. OTC market also have equity securities traded in foreign markets. These issuers account for most of total OTC market capitalization, with the dollar trade volume representing 89% of the total U.S. OTC equity market during the referenced six months period. The estimation is based on the American Depository Receipts, Global Depository Receipts, and foreign ordinary shares classification and market capitalization data for issuers for which this data is available.

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

In December 2024, FINRA published *Regulatory Notice* 24–17 (the ''*Notice*''), requesting comment on the proposed rule change (the ''*Notice* Proposal''). Six comments were received in response to the *Notice.* A copy of the *Notice* is available on FINRA's website at *http://www.finra.org.* A list of the commenters in response to the *Notice* and copies of the comment letters received in response to the *Notice* are available on FINRA's website.[31]

Most commenters were overall supportive of the direction of the proposed rule changes in the *Notice,* but not all commenters supported every aspect of the *Notice* Proposal. Some commenters sought clarifications or changes to specific rule provisions. FINRA has considered the concerns raised by commenters and, as discussed in detail below, has addressed many of the concerns noted by commenters in response to the *Notice* Proposal. The comments and FINRA's responses are set forth in detail below.

Valuation Method Under Rule 5110(c)

While the ABA expressed broad support for FINRA's efforts to continue to modernize its rules, simplify compliance and codify additional exclusions from underwriting compensation, the ABA expressed concern about the drafting of proposed FINRA Rule 5110(c) in the *Notice* Proposal. According to the ABA, because FINRA proposed to delete the words ''or to a security with a bona fide public market'' without substituting alternative language referring to ''a security traded on a U.S. exchange or designated offshore market,'' the new valuation methods in paragraphs (c)(2)(A) and (c)(3)(B) for securities traded on U.S. exchanges and offshore markets ''will be without effect.'' [32]

In response to the comments, FINRA has modified the proposed rule language to clarify that a security can be accurately valued ''using any method in this paragraph (c).'' This includes the valuation of a security traded on a national securities exchange that is registered under Section 6(a) of the Exchange Act or a designated offshore securities market as defined under Securities Act Rule 902(b). If the security can be accurately valued, it would not be subject to the prohibition in paragraph (g)(1), which precludes receipt of any underwriting compensation for which a value cannot be determined.

The ABA also suggested that FINRA expand the types of securities that are eligible to be valued under the rule to also include certain OTC equity securities, which are not traded on national securities exchanges. While FINRA has not incorporated this suggestion into the current proposed rule change, FINRA is continuing to evaluate whether additional types of securities could be eligible for valuation under Rule 5110.

Debt-for-Equity Exchanges

In general, FINRA received positive feedback and support for these proposed changes.[33] The ABA sought clarification that an affiliated member would not be prohibited from placing a portion of the equity securities acquired by the lender in its investment account if it is unable to sell that portion in the offering. In FINRA's view, the rule language in the *Notice* Proposal does not foreclose placing a portion of the equity securities acquired by the lender in its investment account if it is unable to sell that portion in the offering.

SIFMA sought clarification that the safe harbor would apply when the transaction is structured to provide economic and tax benefits to a direct or indirect shareholder of issuer. In FINRA's view, the definition of ''issuer'' is broad enough to capture significant shareholders.[34]

Capital Investments for DPPs and REITs

In general, FINRA received positive feedback and support for these proposed changes.[35] The ABA sought more guidance as to application of the exclusion in the *Notice* Proposal. The ABA, ADISA, and IPA also raised questions about whether the investments must be made before an offering, as the use of the word ''seed'' may imply before the offering. FINRA did not intend to limit the capital investments to before the offering in the *Notice* Proposal. Accordingly, FINRA has replaced references to ''seed capital'' with ''capital investments'' and confirms that the amendments are agnostic to the timing of the acquisition.

IPA suggested that the principles-based approach FINRA proposed in the *Notice* should instead be a self-operating exclusion to provide regulatory certainty. FINRA agrees that the exclusion for capital investments would operate most efficiently as a self-operating exclusion instead of a principles-based approach and has replaced Supplementary Material .05 with new Supplementary Material .01(b)(24) to include these capital investments as an example of payments not deemed to be underwriting compensation.

ADISA recommended that the conditions in the proposed capital investments exclusion to underwriting compensation in the *Notice* Proposal should fully align with the North American Securities Administrators Association (NASAA) REIT Guidelines. According to ADISA, the proposed conditions for this exclusion do not provide that securities may be transferred to an affiliate of the sponsor, which is allowable pursuant to Section II.A.2. of the NASAA REIT Guidelines. ADISA suggested adding language to the rule text that ''the securities acquired and excluded may be transferred to other affiliated entities, which transfer would not be deemed to constitute an economic disposition of the securities during the 180 day period.'' [36] In FINRA's view, this additional language is unnecessary, as the capital provided and transferred would already be excluded under FINRA Rule 5110(e)(2)(b), which permits the transfer of any security to any member participating in the offering and its officers or partners, its registered persons or affiliates, if all transferred securities remain subject to the lock-up restriction in paragraph (e)(1) for the remainder of the 180-day lock-up period.[37]

ADISA also recommended that for the purposes of calculating the lockup restriction period in the *Notice* Proposal, FINRA should use the definitive date of effectiveness of the offering as a measurement rather than commencement of sales. In FINRA's view, replacing the date of commencement of sales with the date of effectiveness could result in an unreasonably short lockup period, as a prospectus may become effective long before the commencement of sales. Accordingly, FINRA did not accept this suggestion.

IPA suggested that FINRA clarify that a capitalization transaction occurring before the issuer has material assets will be deemed to occur at or above NAV, as a NAV determination should not be necessary in connection with a capital

[31] *See* SR–FINRA–2026–002 (Form 19b–4, Exhibits 2b and 2c) for a list of abbreviations assigned to commenters (available on FINRA's website at *http://www.finra.org*).

[32] *See* ABA letter.

[33] *See* ABA, SIFMA letters.

[34] *See* Rule 5110(j)(12).

[35] *See* ABA, ADISA, IPA letters.

[36] *See* ADISA letter.

[37] *See* Rule 5110(e)(2)(b).

transaction.[38] FINRA agrees that a capitalization transaction occurring before the issuer has material assets would be deemed to occur at or above NAV.

Non-Convertible Preferred Securities

The ABA was generally supportive of treating non-convertible or non-exchangeable preferred securities the same as non-convertible or non-exchangeable debt or derivative instruments.[39] However, the ABA sought clarification that reliance on this exclusion in the *Notice* Proposal would not be prohibited where the otherwise non-convertible preferred securities convert into the class of securities to be sold to the public as part of a recapitalization or other reorganization in preparation for an IPO. FINRA views this comment as beyond the scope of the proposed rule change.

Changes To Improve Operation of the Rule

The ABA was generally supportive of this proposed change, however the ABA suggested further clarification in the rule text defining ''tail fee.'' [40] FINRA does not think it is necessary to define ''tail fee,'' as ''tail fee'' is a commonly understood term and FINRA does not define other fees under the rule (*e.g.,* termination fees, rights of first refusal). As FINRA stated in the *Notice* Proposal, tail fees provide compensation in the event of a subsequent financing from investors introduced by a member, following the termination of an agreement. Moreover, FINRA would review these fees based on the facts and circumstances of how they are structured.

Rule 5123

Several commenters, including SIFMA and ADISA, supported the Rule 5123 amendments in the *Notice* Proposal. However, Intellivest suggested that FINRA include all accredited investors under Rule 5123's filing exemption.[41] FINRA notes that the overwhelming majority of private placements are sold to accredited investors only. During 2022–2024, less than 4% of the private placements filed under Rule 5123 permitted sales to non-accredited investors. FINRA does not believe exempting review and oversight of the vast majority of private placements, including those that are offered and sold to all accredited investors, would be appropriate. First, retail accredited investors generally do not have the same level of sophistication and expertise as institutional accredited investors. Second, exempting review and oversight of the vast majority of private placements could impede FINRA's ability to detect misconduct in the private placement market, increasing risk exposure to retail investors. Third, FINRA notes that there are proposals in Congress and the SEC regarding the definition of accredited investor that we will monitor and consider in relation to Rule 5123 as they develop.

Intellivest also suggested that FINRA provide a safe harbor for a member that has a written agreement with another member to submit on its behalf the required 5123 filing, so a member would not need to follow up to ensure the other firm has met its filing obligations. FINRA views this comment as beyond the scope of the proposed rule change.

[38] *See* IPA letter.

[39] *See* ABA letter.

[40] *See supra* note 39.

[41] *See* Intellivest letter.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2026–002 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–2026–002. 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–2026–002 and should be submitted on or before February 20, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–01825 Filed 1–29–26; 8:45 am]

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[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0766]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 17a–14 and Form CRS

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''SEC'' or ''Commission'') is submitting to the Office of Management and Budget (''OMB'') this request for extension of the proposed collection of information provided for in Rule 17a–14 (17 CFR 240.17a–14) and Form CRS (17 CFR 249.640), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a–14 and Form CRS require a broker-dealer that offers services to retail investors to prepare and file with the Commission through WebCRD, post to the broker-dealer's website (if it has one), and deliver to retail investors a relationship summary. The relationship summary can assist retail investors in making an informed choice about whether to hire or retain a broker-dealer,