

# FINRA PROPOSES CHANGE TO THE PRIVATE PLACEMENT FILER FORM

On March 28, 2017, the Securities and Exchange Commission (“SEC”) issued a Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, by the Financial Industry Regulatory Authority (“FINRA”), relating to the Private Placement Filer Form (the “Filer Form”). [SEC Release No. 34-80321](#).

FINRA rules 5122 and 5123 require broker-dealers to file information regarding private placements in which the broker-dealer participates. The Filer Form has three main components: (1) the “Participating Member Information” section, which seeks information about the broker-dealers 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.

The amendments relate solely to the information requested on the Filer Form and do not change the text of FINRA rules 5122 and 5123.

## *Participating Member Information Section*

- The changes add questions on whether the broker-dealer is the exclusive selling agent for the private placement and whether the broker-dealer is an affiliate of the issuer or a sponsor of the private placement.
- The changes remove questions soliciting certain contact information for the contact person at the broker-dealer or other FINRA members identified in the Filer Form.

### *Issuer Information Section*

- The changes add a question on whether the issuer is a reporting company.
- The changes remove the question soliciting certain contact information for the issuer's contact person.

### *Offering Information Section*

- The amendments to 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 broker-dealer 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;  
for contingency offerings, whether a contingency has been met as of the date of the filing, and
  - the date on which the broker-dealer first offered the private placement if sales have commenced.
- The changes remove questions soliciting certain information about non-commission compensation, the

offering's conclusion date, whether a term sheet was used, whether the issuer has independently audited financials, and whether the issuer's directors are independent.

- The changes clarify that the question about a stated or target rate of return relates only to those offerings in which an actual or target rate of return is offered to investors and that the question about general solicitation relates only to whether the broker-dealer or issuer has engaged in general solicitation before or at the time of filing.

Because broker-dealers will be able to select "unknown" in response to all of the new questions added by these amendments, FINRA has determined that the new Filing Form does not add an additional obligation on Broker-dealers.

Through the proposed amendments to the Filer Form, 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).

FINRA anticipates that the implementation date for these amendments will be **May 22, 2017**.

The SEC is seeking public comment on the proposed changes for 21 days following publication in the Federal Register.