

Possible Changes for FINRA's Restricted Person and Spinning Provisions

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On July 26, 2019, the Financial Industry Regulatory Authority, Inc. ("FINRA") with the SEC issued proposed rules to amend FINRA Rule 5130, Restrictions on the Purchase and Sale of Initial Equity Public Offerings, and FINRA Rule 5131, New Issue Allocations and Distributions. The proposals would, among other things, exempt additional persons and certain types of offerings from the scope of the rules. [View a full copy of the proposed rules online here.](#)

Current FINRA Rule 5130(a) provides that, except as otherwise permitted under the rule: (1) a member (or an associated person) may not sell a new issue to an account in which a restricted person has a beneficial interest; (2) a member (or an associated person) may not purchase a new issue in any account in which such member or associated person has a beneficial interest; and (3) a member may not continue to hold new issues acquired as an underwriter, selling group member, or otherwise. FINRA Rule 5131 prohibits "spinning" of new issues by barring allocation of new issues by a firm to executive officers and directors of the firm's current, former, or prospective investment banking clients. Based on public input received by FINRA in 2017 in response to a request for comment on its rules to support capital formation, FINRA is proposing to amend both Rules 5130 and 5131 to provide for certain additional exemptions.

The proposed rules would remove certain family offices from the scope of "restricted persons" under Rule 5130 by defining the exception for a "family investment vehicle" to include entities that are beneficially owned solely by "family members" and "family clients" as those terms are defined under Investment Advisers Act rules. The proposed rules also provide exclusions for sovereign entities from the scope of owners of broker-dealers that might otherwise cause a sovereign entity to be considered a restricted person. Additional relief is proposed for certain foreign employee retirement benefits plans and foreign investment companies.

FINRA is also proposing an exclusion from Rules 5130 and 5131 for Regulation S offerings and other offerings made outside of the United States or its territories, as well as a conforming change to expand the exemption for issuer-directed securities to allocations directed by affiliates and selling shareholders of the issuer. Additional proposals include certain relief for executive officers or directors of unaffiliated charitable organizations from Rule 5131's spinning provisions in an allocation of IPO shares, and the addition of an anti-dilution provision to FINRA Rule 5131 to allow executive officers and directors subject to the spinning provisions to retain their relative percentage equity

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