

FINRA Proposes Rule Change to Subject Capital Acquisition Brokers to Pay-to-Play Rules

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On August 17, the Financial Industry Regulatory Authority (FINRA) proposed rule amendments to apply its established “pay-to-play” rules to capital acquisition brokers (CABs) that engage in distribution to, or solicitation of, government entities on behalf of investment advisers for compensation.

CABs are FINRA members that are engaged in a limited range of broker-dealer activities, such as advising firms on capital raising and corporate restructuring or acting as a private placement agent to institutional investors (subject to certain conditions). CABs elect to be treated as such and are subject to a separate set of streamlined FINRA rules. A Katten advisory discussing CABs and the rules applicable to CABs is available [here](#).

Securities and Exchange Commission rules prohibit an investment adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of the investment adviser, unless the person is a “regulated person.” The SEC defines a “regulated person” to include a FINRA member firm subject to a FINRA pay-to-play rule. Currently, the FINRA pay-to-play rules are not explicitly applicable to CABs.

FINRA now proposes a rule amendment that would make clear that CABs are subject to FINRA’s pay-to-play rules and, therefore, constitute “regulated persons.” If the SEC approves FINRA’s proposal, an investment adviser and its covered associates could make payments to a CAB to solicit a government entity for investment advisory services. Certain pay-to-play recordkeeping requirements would also apply to CABs.

More information is available in the FINRA [rule proposal](#).

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