persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[17]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by July 7, 2025. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by July 21, 2025.

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–NASDAQ–2025–019 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–NASDAQ–2025–019. 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 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–NASDAQ–2025–019 and should be submitted on or before July 7, 2025. Rebuttal comments should be submitted by July 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–10878 Filed 6–13–25; 8:45 am]

BILLING CODE 8011–01–P

[17] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–103216; File No. SR–FINRA–2025–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the FINRA Capital Acquisition Broker (''CAB'') Rules

June 10, 2025.

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 June 4, 2025, 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.

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

FINRA is proposing amendments to the FINRA Capital Acquisition Broker (''CAB'') Rules (''CAB Rules''), which are discussed in greater detail below.

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

Overview

CABs are broker-dealers that help promote capital formation through specified functions, essentially acting as placement agents for sales of unregistered securities to institutional investors; acting as intermediaries in connection with the change of control of privately held companies; and advising companies and private equity funds on capital raising and corporate restructuring.[3] Member firms that meet the CAB criteria may elect to be governed by the CAB Rules. CABs' specified functions do not include broader broker-dealer activities, such as accepting customers' trading orders, carrying customer accounts, handling customers' funds or securities, or engaging in proprietary trading or market-making.[4]

Given their limited institutional business model, CABs are subject to fewer restrictions on particular activities (such as advertising) and are not subject to sales practice requirements for particular products that CABs do not offer, such as variable insurance contracts or investment company securities.

CAB Supervisory Requirements

CABs are subject to less extensive supervisory requirements than non-CAB member firms; however, pursuant to CAB Rule 311, CABs are subject to FINRA's core supervisory requirements. By subjecting CABs to specified

[18] 17 CFR 200.30–3(a)(57).

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

[2] 17 CFR 240.19b–4.

[3] *See* CAB Rule 016(c)(1).

[4] *See* CAB Rule 016(c)(2).

provisions of FINRA Rule 3110, CAB Rule 311 requires CABs to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and applicable FINRA rules. A CAB's supervisory system must provide, at a minimum:

- The establishment and maintenance of written procedures as required by FINRA Rule 3110;
- The designation, where applicable, of an appropriately registered principal with authority to carry out the CAB's supervisory responsibilities for each type of business in which it engages for which registration as a broker-dealer is required;
- The registration and designation as a branch office or office of supervisory jurisdiction (''OSJ'') of each location, including the CAB's main office, that meets the definitions contained in Rule 3110(f);
- The designation of one or more appropriately registered principals in each OSJ and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the CAB;
- The assignment of each registered person to an appropriately registered representative(s) or principal(s) who shall be responsible for supervising that person's activities; and
- The use of reasonable efforts to determine that all supervisory personnel are qualified, either by virtue of experience or training, to carry out their assigned responsibilities.[5]

CABs also must establish, maintain, and enforce written procedures to supervise the CAB's and its associated persons' activities that are reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules. Such procedures must include procedures for the review of incoming and outgoing written (including electronic) correspondence to properly identify and handle in accordance with firm procedures, customer complaints, and internal or external communications that require review under FINRA rules and federal securities laws.[6] CABs also must ascertain the good character, business reputation, qualifications, and experience of an applicant before the CAB applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.[7] Consistent with FINRA Rule 3110, CABs have the flexibility to tailor their supervisory systems to their limited business models.

CABs must designate and specifically identify to FINRA one or more principals to serve as chief compliance officer.[8] In addition, CABs are subject to FINRA Rules 3220 (Influencing or Rewarding Employees of Others), 3240 (Borrowing from or Lending to Customers), and 3270 (Outside Business Activities of Registered Persons).[9]

CABs are not subject to all of the same supervisory requirements that apply to non-CAB member firms, however. For instance, there is no requirement for CAB representatives and principals to participate in annual interviews with firm compliance personnel, for a CAB to conduct annual reviews of the businesses in which it engages, or for a CAB to conduct periodic inspections of its OSJ, branch, and non-branch offices.[10] CABs also are not subject to FINRA Rule 3110's requirement for members to adopt and implement procedures for the review of securities transactions that are effected for specified accounts of the member, its associated persons, and other related persons.[11]

Growth of CAB Membership

The CAB Rules became effective on April 14, 2017.[12] A firm may elect CAB status either by stating in its new member application that it intends to operate as a CAB, or if the firm is already registered as a broker-dealer, by amending its membership agreement to state that it will operate as a CAB going forward.[13]

The number of member firms that have elected CAB status has grown gradually since the CAB Rules became effective. During 2017, 44 member firms elected CAB status.[14] As of the end of 2024, the number of members that have elected CAB status had grown to 65 firms.[15] Some existing members that initially elected CAB status subsequently amended their membership agreements to revert to non-CAB status.[16] A few former CABs have filed a Form BDW and withdrawn their broker-dealer registration entirely.

Modernization of FINRA Capital Raising Rules

Adoption of the CAB Rules is one of a number of steps taken by FINRA to modernize its regulation of members' participation in capital-raising activities and to increase efficiency and reduce unnecessary burdens on the capital-raising process without compromising important protections for investors. The rules were intended to improve efficiency and reduce regulatory burdens by reducing the range of rules that apply to CABs given their limited activities and institutional business model, while maintaining necessary investor protections. FINRA believes that the CAB Rules continue to meet these goals, thereby supporting capital formation, particularly with regard to private placement activities.

FINRA notes that there has been tremendous growth in the number and dollar amount of unregistered securities offerings in the U.S. For example, an analysis of data derived from all initial Regulation D (''Reg D'') filings finds that the number of deals increased from 22,853 in 2015 to 32,554 in 2024 and the dollar value of these deals doubled during this time period.[17] To protect investors in these markets, FINRA has

[5] *See* CAB Rule 311(a); *see also* FINRA Rules 3110(a)(1) through (6).

[6] *See* CAB Rule 311(a); *see also* FINRA Rules 3110(b)(1), (b)(4), (b)(5), and (b)(7).

[7] *See* CAB Rule 311(a) and FINRA Rule 3110(e).

[8] *See* CAB Rule 313.

[9] *See* CAB Rules 322, 324, and 327.

[10] *See* CAB Rule 311(a) and FINRA Rule 3110(c).

[11] *See* CAB Rule 311(a) and FINRA Rule 3110(d).

[12] *See* Regulatory Notice 16–37 (October 2016). *See also* Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (Order Approving File No. SR–FINRA–2015–054).

[13] *See* CAB Rules 112 and 116.

[14] Thirty-eight of these firms were already member firms at the time the CAB Rules took effect and elected CAB status as permitted by CAB Rule 116(b). CAB Rule 116(b) provides a means by which an existing FINRA member can elect CAB status without having to file an application for approval of change in ownership, control, or business operations pursuant to FINRA Rule 1017. Six firms elected CAB status as part of their new member application in 2017. *See generally* CAB Rules 111–115.

[15] Thirty-three of these firms were existing member firms that elected CAB status pursuant to CAB Rule 116(b), and 32 firms elected CAB status as part of their initial application.

[16] During the first year after an existing member elects CAB status pursuant to CAB Rule 116(b), the member may terminate its CAB status and continue operations as a non-CAB broker-dealer member without having to file an application for approval of a material change in business operations pursuant to FINRA Rule 1017. The CAB must file a request to amend its membership agreement to provide that the member agrees to comply with all FINRA Rules and execute an amended membership agreement that imposes the same limitations on the member's activities that existed prior to the member's election of CAB status. *See* CAB Rule 116(d).

[17] *See* SEC Report, Market Statistics of Exempt Offerings under Regulations A, D, and Crowdfunding March 2025 (published April 28, 2025), *https://www.sec.gov/files/dera-offering-reg-d-cf-2504.pdf*. While initial Reg D filings indicate substantial increases between 2015 to 2024, in both number of deals and their dollar value (with a peak in 2021 in terms of number of filings and 2023 in terms of their dollar value), it is possible that the amendments to the initial Reg D filings would result in an increase to the aggregate amount.

in place both examination programs [18] and filing requirements [19] for specified members that engage in these activities to help ensure that they are complying with applicable SEC and FINRA standards and, per Regulation Best Interest (''Reg BI''), that recommendations of unregistered securities are in the best interest of retail customers.[20] FINRA's oversight applies to members that are registered broker-dealers and funding portals. While FINRA currently does not have data that would enable it to calculate the percentage of all private placements conducted through registered broker-dealers, it believes generally that only a fraction of private placement deals are conducted through registered broker-dealers.[21] FINRA believes that most of the remaining private placements are conducted through either the issuer of the securities or an intermediary that is not registered as a broker-dealer and therefore not subject to broker-dealer regulation by FINRA and the SEC. FINRA believes that investors would benefit if more private placements were conducted through CABs and thus subject to regulatory oversight.

Industry Engagement on Proposed Changes to CAB Rules

In December 2017, the FINRA Board of Governors (''Board'') approved the creation of an advisory committee to the Board called the Capital Acquisition and Placement Broker Committee (''CAP Committee''). The Board's resolutions instructed the CAP Committee to: (1) make recommendations to FINRA on SEC and FINRA policies that affect the activities of CABs and non-CAB broker-dealer members that have similar business models; and (2) propose to FINRA, for its consideration and decision, new initiatives, new rules, or amendments to the CAB Rules and to FINRA Rules that apply to non-CAB broker-dealer members that have similar business models. The CAP Committee included both individuals registered with CABs and those registered with non-CAB broker-dealer members that have similar business models.[22]

FINRA subsequently published *Regulatory Notice* 20–04 requesting comment on several proposed amendments to the CAB Rules. As stated in *Regulatory Notice* 20–04, FINRA believed that the proposed amendments would ''make [the CAB Rules] more useful to CABs without reducing investor protection.'' *Regulatory Notice* 20–04 and the comments received are discussed in greater detail below.

Overview of Proposed Amendments

FINRA has determined to amend the CAB Rules as part of its ongoing efforts to ensure that FINRA rules are effective and efficient and its rules relating to the capital-raising process support efficient capital formation.[23] FINRA believes that the proposed amendments are reasonable in light of the experience gained since adoption of the CAB Rules, as well as changes in the regulatory environment, such as the Commission's adoption and implementation of Reg BI and Form CRS,[24] which have added investor protections that did not exist at the time the CAB Rules were adopted.

As a result of the CAP Committee meetings, as well as ongoing engagement with industry members, including in the context of *Regulatory Notice* 20–04, FINRA believes that the current CAB Rules include limitations on CABs' activities that may be unnecessarily restrictive and have unintended consequences. The proposed rule change is designed to remedy such challenges. If the Commission approves these proposed changes, non-CAB broker-dealer members or firms that are eligible for an exemption from broker-dealer registration under the Exchange Act [25] may be encouraged to elect CAB status, thereby benefitting these firms and investors alike.

First, FINRA is proposing to expand the pool of permissible investors for sales of newly-issued unregistered securities under the CAB Rules to include ''eligible employees'' (under the proposed amended CAB Rules definition of ''institutional investor''). The proposed definition of ''eligible employee'' includes ''Knowledgeable Employees'' under Investment Company Act (''ICA'') rules for private fund issuers,[26] and specified officers, directors, and employees of issuers other than private funds. Such investors have the expertise and knowledge about the issuer, and the resources to retain counsel and advisors, if necessary, to understand the risks of their investment. As such, these investors do not raise the same investor protection concerns as, for example, retail investors [27] who are not officers, directors or employees of the issuer, or other institutional investors. Reg BI and Form CRS provide an additional layer of investor protection to the extent any eligible employee receives a recommendation of any securities transaction or investment strategy involving securities from a broker-dealer or its associated person, and uses the recommendation primarily for personal, family, or household purposes under Reg BI, or receives

[18] *See, e.g.,* 2025 FINRA Annual Regulatory Oversight Report, *https://www.finra.org/sites/default/files/2025-01/2025-annual-regulatory-oversight-report.pdf.*

[19] *See* FINRA Rule 5122 (Private Placements of Securities Issued by Members) and FINRA Rule 5123 (Private Placements of Securities). CABs are not subject to these rules' filing requirements. Under the current CAB Rules, CABs may only act as placement agents on behalf of issuers in connection with the sale of newly-issued unregistered securities to institutional investors, as defined under CAB Rule 016(i), or on behalf of an issuer or control person in connection with a change of control of a privately-held company. *See* CAB Rule 016(c)(1)(F). The term ''institutional investor'' under the CAB Rules includes, among other things, many of the same types of persons who are investing in private offerings that are excluded from filing under FINRA Rules 5122 and 5123. *See, e.g.,* FINRA Rules 5122(c)(1)(A), (B), and 5123(b)(1)(A) and (B) (exempting from filing private offerings sold solely to institutional accounts as defined in FINRA Rule 4512(c) and qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 (''ICA''). Nevertheless, FINRA believes that its examinations and oversight of CABs protect investors through the review and monitoring of CABs' activities, including private placements.

[20] 17 CFR 240.15*l*–1.

[21] For example, a 2020 white paper published by the SEC Division of Economic and Risk Analysis found that in the total population of Reg D offerings filed with the Commission between 2009 and 2015, fewer than 20 percent of issuers, on average, reported using an intermediary. Among a sample of 210 cases that the white paper analyzed, of the 154 cases that involved use of an intermediary, only 40 percent of these intermediaries were broker-dealers. *See* Rachita Gullapalli, Division of Economic and Risk Analysis, SEC, Misconduct and Fraud in Unregistered Offerings (August 2020) at 24, *https://www.sec.gov/files/misconduct-and-fraud-unregistered-offerings.pdf.* Moreover, FINRA analysis finds that only around 10 percent of new Reg D offerings during 2013–2022 involved at least one FINRA-registered broker-dealer. This analysis is based on initial Reg D filings and may underestimate the true number of intermediaries in such cases where an issuer decided to engage a finder or a placement agent after the initial Reg D filing.

[22] The CAP Committee met several times during 2018 and 2019 to discuss these issues, and pursuant to the Board's enabling resolutions, terminated as an advisory committee in December 2019.

[23] *See, e.g.,* Regulatory Notice 25–06 (March 2025) (requesting comment on modernizing FINRA rules, guidance and processes to facilitate capital formation, including the CAB Rules) and Regulatory Notice 17–14 (April 2017) (requesting comment on FINRA rules impacting capital formation).

[24] *See* 17 CFR 240.17a–14.

[25] *See infra* note 30 and accompanying text.

[26] *See infra* notes 36–38 and accompanying text.

[27] The CAB rules do not define ''retail investor.'' For purposes of this discussion, that term is intended to include investors that are not ''institutional investors'' under CAB Rule 016(i). *See infra* notes 34–35 and accompanying text. It should be noted that ''retail investor'' for purposes of this discussion, and the terms ''retail customer'' and ''retail investor'' under Reg BI and Form CRS, respectively, are not coterminous. For example, a natural person with $50 million in assets, and who uses a recommendation of a securities transaction for personal, family, or household purposes, would be an ''institutional investor'' under the CAB Rules, but would be a ''retail customer'' under Reg BI and a ''retail investor'' under Form CRS.

services primarily for personal, family, or household purposes under Form CRS. Thus, FINRA does not believe that this proposed expansion would materially impact investor protection.

Second, FINRA is proposing to allow CABs to act as placement agents or finders for secondary transactions of unregistered securities in the limited circumstance where both the seller and purchaser of such unregistered securities are institutional investors and the sale qualifies for an exemption from registration under the Securities Act of 1933 (''Securities Act'') (*e.g.,* Securities Act Rules 144 or 144A). FINRA believes that the proposed conditions would allow CABs to offer a wider range of services to their clients without materially impacting investor protection because proposed CAB Rule 016(c)(1)(H) would not permit CABs to act as a placement agent or finder in connection with a secondary transaction sale of unregistered securities to persons other than institutional investors. FINRA also believes that this proposed change may help promote capital formation. A commenter on *Regulatory Notice* 20–04 noted that secondary market liquidity for investors in exempt primary offerings of an issuer is integral to capital formation in the primary offering market.[28]

Third, FINRA is proposing to permit CAB associated persons to participate in private securities transactions (''PSTs''), subject to the same requirements that apply to associated persons of non-CAB broker-dealer members who participate in PSTs. As discussed in greater detail below, CAB Rule 328's express prohibition on PSTs, as defined in FINRA Rule 3280(e),[29] often creates logistical and other business-related difficulties, for example, for firms that have created two separate affiliates that effect securities transactions depending on whether a transaction may be effected through an exempt merger and acquisition broker (''M&A Broker'').[30] To the extent that an associated person of the registered broker-dealer affiliate is also an employee of the exempt M&A Broker affiliate, any securities transaction effected through the M&A Broker in which the associated person participated would be considered a PST. Since CAB Rule 328 prohibits associated persons of CABs from participating in PSTs, this structure does not work for such firms. Furthermore, FINRA has interpreted FINRA Rule 3280 to apply to many of the investment advisory activities of members' associated persons.[31] FINRA believes that a strict prohibition on PSTs is not necessary to achieve the goals of the CAB Rules.

FINRA believes that the proposed rule change increases efficiency by remedying some of the challenges CABs face under the current CAB Rules and promotes capital formation by reducing the regulatory burden on CABs. In addition, FINRA believes that the proposed rule change is reasonably designed to protect investors because it does not materially impact the limited institutional business model of CABs and may enhance regulation in this space. By addressing some of the challenges and burdens that have been identified since adoption of the CAB Rules, the proposed rule change may encourage some non-members and current FINRA broker-dealer members that conduct a limited range of corporate financing activities to register as a CAB. These include, for example, firms that have relied on the M&A Brokers Letter (prior to March 29, 2023) or the M&A Brokers Exemption (subsequent to March 29, 2023) to conduct limited securities activities without registering as a broker under the Exchange Act.[32] FINRA membership could benefit such firms by allowing them to expand their securities business and engage in the expanded range of activities permitted under the CAB Rules. In turn, increased regulatory oversight of these firms by FINRA and the SEC would further enhance investor protection. Firms that are currently FINRA members that elect CAB status as a result of the proposed rule change could benefit from lower compliance costs associated with maintaining FINRA membership.

Finally, FINRA believes that the proposed rule change is reasonable in light of Reg BI and Form CRS, which provide an additional layer of investor protection that was not available at the time the CAB Rules were adopted.

The specific proposed amendments are discussed in greater detail below.

Proposed Amendments to CAB Rules

Sales of Newly-Issued Unregistered Securities

Currently, a CAB may act as a placement agent or finder (1) on behalf of an issuer in connection with a sale of newly-issued unregistered securities to ''institutional investors'' or (2) on behalf of an issuer or a control person in connection with a change of control of a privately-held company.[33] FINRA proposes to expand the scope of such permissible activity by broadening the definition of ''institutional investor'' for purposes of the CAB Rules to include any ''eligible employee'' under new CAB Rule 016(i)(8). As discussed below, FINRA believes that ''eligible employees'' do not raise the same investor protection concerns as retail investors and as such, this proposed expansion will not materially impact investor protection.

The term ''institutional investor'' for purposes of the CAB Rules[34] includes,

[28] *See* NYSBA Letter. All references to commenters are to the comment letters as listed in Exhibit 2b. *See* Exhibit 2b for a list of abbreviations assigned to commenters.

[29] ''Private securities transaction'' means any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities which are not registered with the Commission. The term excludes transactions subject to FINRA Rule 3210's notification requirements, transactions among immediate family members for which no associated person receives any selling compensation, and personal transactions in investment company and variable annuity securities. *See* FINRA Rule 3280(e).

[30] The Consolidated Appropriations Act of 2023 amended Section 15 of the Exchange Act to create a new registration exemption for specified merger and acquisition brokers. Under this exemption, a person may effect a securities transaction in connection with the transfer of ownership of a privately held company without registering as a broker or dealer under the Exchange Act, provided that the person and transaction meet specified conditions, which in many respects align with those contained in a prior SEC staff no-action letter. These amendments became effective on March 29, 2023. *See* Public Law 117–328, Division AA, Section 501, codified at 15 U.S.C. 78*o*(b)(13) (''M&A Brokers Exemption''). *See also M&A Brokers,* 2014 SEC No-Act. Lexis 92 (January 31, 2014) (''M&A Brokers Letter''). Prior to March 29, 2023, firms relied upon the M&A Brokers Letter to effect securities transactions through this structure. The SEC staff withdrew the M&A Brokers Letter on March 29, 2023.

[31] *See Notice to Members* 94–44 (June 1994) (''NtM 94–44''). As discussed in NtM 94–44, if an individual is registered as both a representative of a member firm and as an investment adviser (''IA'') or investment adviser representative and conducts their IA activities away from their member firm employer, the representative may be subject to Rule 3280. In particular, if the representative's participation goes beyond the mere recommendation of a securities transaction, such as where he or she enters an order on behalf of an IA client with a brokerage firm other than the member with which they are registered, or with another entity, and receives any compensation for the overall advisory services, the representative would be viewed as participating in a PST.

[32] FINRA does not have data that would enable it to estimate the number, if any, of such firms. However, some comments received on *Regulatory Notice* 20–04 suggest that this could be a possible outcome, for example: ''I believe the coordination [with the M&A Brokers Letter] will result in more firms opting for the CAB platform and thus performing M&A activities from start to finish under FINRA's jurisdiction, which will result in stronger investor protections.'' *See* M&R Letter.

[33] *See* CAB Rule 016(c)(1)(F).

[34] CAB Rule 016(i) currently defines ''institutional investor'' as any: (1) bank, savings and loan association, insurance company or registered investment company; (2) governmental entity or subdivision thereof; (3) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the

Continued

among others, banks, investment companies, large employee benefit plans, and ''qualified purchasers'' under the ICA.[35] FINRA proposes to broaden the definition of institutional investor to include ''eligible employees'' as defined in new CAB Rule 016(m). The term would include specified officers, directors, and employees of issuers or control persons for which the CAB has provided services as permitted under subparagraphs (F) and (G) of CAB Rule 016(c)(1).

First, ''eligible employee'' would include any ''Knowledgeable Employee,'' as defined in ICA Rule 3c–5,[36] with respect to services provided to an issuer that is a Covered Company, as defined in ICA Rule 3c–5,[37] or services provided to an ''Affiliated Management Person'' of such Covered Company, as defined in ICA Rule 3c–5,[38] under proposed CAB Rule 016(m)(1). The Commission adopted ICA Rule 3c–5 as directed by Congress pursuant to the National Securities Markets Improvements Act of 1996 (''NSMIA'').[39] The Commission stated that the purpose of this provision of NSMIA ''appears to be to allow private funds to offer persons who participate in the funds' management the opportunity to invest in the fund as a benefit of employment.''[40]

As noted above, the CAB definition of ''institutional investor'' currently includes qualified purchasers as defined under the ICA. ICA Rule 3c–5 permits Knowledgeable Employees of private funds and certain of their affiliates to invest in such funds to the same extent as other qualified purchasers, even if an employee does not fall within the definition of that term. Thus, the inclusion of ICA Rule 3c–5 Knowledgeable Employees in the CAB definition of ''eligible employee'' would align the scope of persons to whom a CAB may sell private fund securities under the CAB Rules with the scope of investors permitted to invest in private funds under the ICA relying on the exclusion from the definition of ''investment company'' provided by section 3(c)(7) of the ICA.

Second, the term ''eligible employee'' would include specified officers, directors, or employees of an issuer that is not a Covered Company as defined in ICA Rule 3c–5,[41] under proposed CAB Rule 016(m)(2). Thus, the CAB Rules would permit CABs to act as a placement agent or finder in connection with sales to persons who hold similar positions to Knowledgeable Employees at issuers that are not private funds. In this regard, it is common for officers, directors, and other employees of issuers that are not private funds to invest in those companies' securities, either through stock options that are paid to such persons as compensation, or as part of a private offering of securities. FINRA believes that the proposed expansion of CABs' permissible activities to include sales to eligible employees is appropriate because they are likely to understand and appreciate any risks and limitations associated with investing in the issuer's securities. Eligible employees likely have the expertise and knowledge about the issuer, and the resources to retain counsel and financial advisers, if necessary, to evaluate a potential investment. Accordingly, they do not raise the same investor protection concerns as, for example, retail investors. Eligible employees would still have to qualify to invest in securities of a private company under the federal securities laws. Thus, for example, they could invest in unregistered securities pursuant to Securities Act Regulation D, such as by meeting the definition of ''accredited investor.''[42]

These proposed changes are consistent with CABs' limited institutional business model because they would not expand permissible sales to allow CABs to sell newly issued unregistered securities to retail investors who are not eligible employees. If the CAB recommends a securities transaction to an eligible employee who qualifies as a retail customer under Reg BI, or a retail investor for purposes of Form CRS, the CAB will be required to comply with the requirements of Reg BI and Form CRS.[43] FINRA believes that

requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans; (4) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans; (5) other person (whether a natural person, corporation, partnership, trust, family office or otherwise) with total assets of at least $50 million; (6) person meeting the definition of ''qualified purchaser'' as that term is defined in Section 2(a)(51) of the ICA; and (7) any person acting solely on behalf of any such institutional investor.

[35] The term ''qualified purchaser'' includes, among others, any natural person, family-owned company or specified trust that owns not less than $5,000,000 in investments, and any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments. *See* ICA section 2(a)(51), 15 U.S.C. 80a–2(a)(51).

[36] Specifically, under ICA Rule 3c–5(a)(4), the term ''Knowledgeable Employee'' with respect to any Covered Company means any natural person who is: (i) an Executive Officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company or an Affiliated Management Person of the Covered Company; or (ii) an employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company, other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, provided that such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months. Under ICA Rule 3c–5, shares beneficially owned by knowledgeable employees are excluded for purposes of determining whether a private fund is excluded from the definition of ''investment company'' under ICA sections 3(c)(1) or 3(c)(7). *See* ICA Rule 3c–5(b).

[37] ''Covered Company'' includes companies that would be investment companies under the ICA but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the ICA. *See* 17 CFR 270.3c–5(a)(2), (a)(5), and (a)(6).

[38] Under ICA Rule 3c–5(a)(1), the term Affiliated Management Person ''means an affiliated person, as such term is defined in section 2(a)(3) of the [Investment Company] Act [15 U.S.C. 80a–2(a)(3)], that manages the investment activities of a Covered Company. For purposes of this definition, the term 'investment company' as used in section 2(a)(3) of the Act includes a Covered Company.''

[39] *See* NSMIA section 209(d)(3), Public Law 104–290, 110 Stat. 3416, 3436 (1996).

[40] *See* ICA Release No. 22405 (December 18, 1996), 61 FR 68100, 68102 & n.25 (December 26, 1996).

[41] Specifically, this sub-category of ''eligible employee'' includes the president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer that is not a Covered Company as defined in ICA Rule 3c–5.

[42] *See* Securities Act Regulation D, 17 CFR 230.500 *et seq.*

[43] Reg BI establishes a standard of conduct for broker-dealers and their associated persons when they make a recommendation to a retail customer of any securities transaction or investment strategy involving securities. Reg BI aligns the standard of conduct with retail customers' reasonable expectations by requiring broker-dealers, among other things, to act in the retail customer's best interest at the time a recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interests of the retail customer; and to address conflicts of interest by establishing, maintaining, and enforcing policies and procedures reasonably designed to identify and fully and fairly disclose material facts about conflicts of interest, and in instances where disclosure is insufficient to reasonably address the conflict, to mitigate or, in certain instances, eliminate the conflict. *See* Regulation Best Interest: The Broker-Dealer Standard of Conduct, Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019). In addition, a broker-dealer making a recommendation to a retail investor of any securities transaction or investment strategy involving securities must provide a brief relationship summary prior to, or at the time of, the recommendation. The relationship summary is intended to inform retail investors about the types of client and customer relationships and services the firm offers; the fees, costs, conflicts of interest,

the additional protections that Reg BI and Form CRS provide will help ensure that any such securities recommendations are in the eligible employees' best interests, and that such employees will receive disclosures concerning the CAB required by Form CRS. Accordingly, FINRA does not believe that this proposed change will have a material impact on investor protection.[44]

Secondary Transactions

CABs currently may not act as placement agents in connection with secondary transactions involving unregistered securities, except when the transaction is in connection with the change of ownership or control of a privately-held company.[45] FINRA proposes also to allow CABs to act as placement agents or finders for secondary transactions of unregistered securities in the limited circumstance where both the seller and purchaser of such unregistered securities are institutional investors for purposes of the CAB Rules and the sale qualifies for an exemption from registration under the Securities Act (*e.g.,* Securities Act Rules 144 or 144A).[46]

FINRA believes that this proposed change is appropriate and would not have a material impact on investor protection, particularly in light of the implementation of Reg BI and Form CRS following adoption of the CAB Rules. As discussed above, CABs would only be permitted to act as a placement agent or finder in a secondary transaction involving unregistered securities if both the seller and the buyer of such securities are institutional investors as defined in CAB Rule 016(i). Institutional investors often possess the knowledge and financial expertise to evaluate whether a transaction is appropriate for their needs or have the resources to hire a financial adviser who can assist and advise them in the transaction. FINRA notes that, as amended pursuant to the proposed rule change, the CAB Rules definition of ''institutional investor'' also would include eligible employees, as discussed above.

If CABs were permitted to act as intermediaries in connection with secondary transactions involving unregistered securities, they would be subject to the CAB Rules rather than the entire FINRA rulebook. Nevertheless, FINRA believes that there would be sufficient investor protections for CAB customers under both the CAB Rules and applicable SEC rules.

First, CABs still would be subject to CAB rules prohibiting any communication concerning the unregistered securities or the CAB's services from including false, exaggerated, unwarranted, promissory or misleading statement or claim. Such a communication could not omit any material fact or qualification that would cause the communication to be misleading and would be required to be based on principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts regarding the security or service.[47] Among other things, as discussed above, CABs would still be subject to FINRA's core supervisory requirements, and would be subject to FINRA rules restricting borrowing from or lending to customers.[48]

In addition, if the CAB recommended a secondary transaction to a natural person who falls within the CAB institutional investor definition and qualifies as a retail customer under Reg BI, the CAB would be required to comply with the requirements of Reg BI, including the obligation to have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile. If a CAB recommends a securities transaction to an institutional investor who does not qualify as a retail customer under Reg BI, pursuant to CAB Rule 211, the CAB still must have a reasonable basis to believe that the recommended transaction is suitable for the customer based on information obtained through reasonable diligence of the CAB to ascertain the customer's investment profile.[49]

FINRA believes that the proposed conditions for participating in secondary market transactions are appropriately tailored to allow CABs to offer a wider range of services to their clients while remaining consistent with the purpose of the CAB Rules and CABs' limited institutional business model. The proposed rule change would not expand CABs' permitted activities to broader broker-dealer activities, such as accepting customers' trading orders, carrying customer accounts, handling customers' funds or securities, or engaging in proprietary trading or market-making. CABs would only be permitted to act as an intermediary with respect to secondary transactions in securities where both the seller and purchaser are institutional investors and would not be permitted to sell unregistered securities to persons who are not institutional investors.

This limitation would help mitigate any concerns that CABs would be acting as a placement agent or finder in connection with the secondary sale of unregistered securities to individuals who lack the knowledge and expertise to understand the risks and limitations of such securities or lack the resources to employ a person with such knowledge and expertise. In addition, to the extent that an institutional investor qualifies as a retail investor for purposes of Form CRS, or a retail customer under Reg BI, the CAB may need to file and deliver a relationship summary, and any recommendation that the CAB would make to such an investor about a qualifying secondary transaction may trigger the requirements of Reg BI.[50]

Private Securities Transactions

FINRA Rule 3280 (Private Securities Transactions of an Associated Person) governs situations in which an associated person of a member firm participates in any manner in a private securities transaction (*i.e.,* a securities transaction outside of the regular course or scope of the associated person's employment with the broker-dealer) without providing prior written notice to the employer firm. If the private securities transaction involves selling compensation, the firm must determine whether to approve or disapprove the person's participation in the proposed transaction. If the member approves the transaction, it must record it on its books and records and must supervise the person's participation as if the

and required standard of conduct associated with those relationships and services; whether the firm and its financial professionals currently have reportable legal or disciplinary history; and how to obtain additional information about the firm. *See* Form CRS Relationship Summary; Amendments to Form ADV, Securities Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492 (July 12, 2019).

[44] FINRA is also proposing to make a technical change to the definition of ''institutional investor'' by deleting the word ''any'' at the beginning of CAB Rule 016(i)(7). This deletion is appropriate because ''any'' already appears in the introductory clause of Rule 016(i). FINRA also is moving the word ''and'' from the end of Rule 016(i)(6) to the end of Rule 016(i)(7) due to the addition of proposed Rule 016(i)(8).

[45] *See* CAB Rules 016(c)(1)(F) and (G).

[46] *See* proposed CAB Rule 016(c)(1)(H); *see also* 17 CFR 230.144 and 230.144A.

[47] *See* CAB Rule 221.

[48] *See* CAB Rules 311 and 324.

[49] *See* CAB Rule 211 (Suitability). A CAB fulfills its customer-specific suitability obligation for an institutional investor if (1) the CAB has a reasonable basis to believe that the institutional investor is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities, and (2) the institutional investor affirmatively indicates that it is exercising independent judgment in evaluating the CAB's recommendations. Where an institutional investor has delegated decision-making to an agent, such as an investment adviser or a bank trust department, these factors are applied to the agent. *See* CAB Rule 211(b).

[50] *See supra* note 43 and accompanying text.

transaction were executed on behalf of the member.

Currently, CAB Rule 328 prohibits any person associated with a CAB from participating in a PST as defined in Rule 3280(e). At the time of adoption of the CAB Rules, FINRA believed that an associated person of a CAB should not be engaged in selling securities away from the CAB and a CAB should not have to oversee and review such transactions, given its limited business model. However, FINRA believes that it would be appropriate to amend the CAB Rules to permit PSTs to remedy the challenges and unintended consequences presented by this prohibition. FINRA believes the proposed change is reasonable in light of changes in the regulatory landscape since adoption of the CAB Rules, including implementation of Reg BI and Form CRS, which add a layer of investor protection that did not exist at the time, and the M&A Brokers Exemption, which resulted in some firms foregoing their broker-dealer registrations to become exempt M&A Brokers.

As noted above, the current prohibition on PSTs presents operational and other challenges for some broker-dealers. For example, some registered broker-dealers have exempt affiliates that engage in limited merger and acquisitions activities in reliance on the M&A Brokers Exemption.[51] Under FINRA Rule 3280(a), an associated person of a FINRA member firm ''shall not participate in any manner in a private securities transaction except in accordance with'' Rule 3280's requirements. Accordingly, if a CAB associated person is also associated with an exempt affiliated M&A Broker that is relying on the M&A Brokers Exemption, that person is not permitted to participate in PSTs through the exempt affiliate.

A commenter on *Regulatory Notice* 20–04 noted that, in addition to creating significant operational challenges, the current prohibition on PSTs places CABs at a competitive disadvantage relative to firms relying on the M&A Brokers Exemption. This is because it may be unclear whether a future transaction will be an asset or stock sale, and the CAB may have to forgo entering into strategic referral arrangements.[52]

In addition, many firms that have considered electing CAB status declined to do so due to the inability of their associated persons to act as supervised persons of registered investment advisers (''RIAs'') if they participate in private securities transactions.[53]

Such impacts on CABs and firms that might otherwise consider registering with FINRA as a CAB was not intended at the time the CAB Rules were adopted, and FINRA believes that the prohibition on PSTs is unnecessarily restrictive. FINRA believes it is appropriate to amend CAB Rule 328 and apply the same risk controls and compliance procedures relating to PSTs to CABs and non-CAB broker-dealer members alike. FINRA believes that the proposed rule change may help support capital formation by expanding the range of activities in which CABs can participate without materially impacting investor protection. Today, CABs and non-CAB broker-dealer members are subject to the same core supervisory obligations (as discussed above), and under the proposed rule change, they would have the same supervisory and record-keeping obligations with respect to PSTs.

Specifically, FINRA is proposing to amend CAB Rule 328 to subject CABs to FINRA Rule 3280 (or its successor) [54] rather than strictly prohibiting persons associated with CABs from participating in PSTs.[55] In this regard, prior to participating in any PST, an associated person of a CAB must provide written notice to the CAB with which the person is associated, describing in detail the proposed transaction and the person's proposed role therein, and also stating whether the person will receive selling compensation in connection with the transaction.[56] ''Selling compensation'' includes any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, but not limited to, finder's fees, securities or rights to acquire securities, rights of participation in profits, tax benefits, or dissolution proceeds, as a general partner or otherwise, and expense reimbursements.[57]

If the person will receive selling compensation, the CAB must advise the person in writing stating whether the CAB approves or disapproves the proposed transaction. If the CAB approved the person's participating in the transaction, the CAB must record the transaction in its books and records and must supervise the person's participation in the transaction as if the transaction were executed on behalf of the CAB. If the CAB disapproved the person's participation in the proposed transaction, the person could not participate in it in any manner.[58] If the person has not and will not receive any selling compensation, the CAB must provide the person prompt written acknowledgement of the person's notice of the proposed transaction, and may, at its discretion, require the person to adhere to specified conditions in connection with the transaction.[59]

FINRA believes that this proposed change is appropriate to address the challenges that the current prohibition on PSTs presents for CABs while maintaining investor protection through the CABs' limited business model and other restrictions on CABs' activities. While this proposed change would expand the permissible activities of a CAB and its associated persons, it also would expand the CAB's supervisory responsibilities, for example, where the CAB approves its associated person's participation in a transaction for which the person will receive selling compensation.

Applying the FINRA Rule 3280 requirements to CABs would benefit investors by allowing persons who are employees or representatives of exempt M&A Brokers to also act as associated persons of CABs. If such exempt M&A Broker employees currently are also not associated persons of a member firm, they are subject to little, if any, regulatory oversight. If this proposed change were approved, such exempt M&A Broker employees may choose also to be associated persons of CABs. In such circumstances, the CAB's oversight of its associated persons' participation in PSTs conducted through the exempt M&A Broker would be subject to examination for compliance with FINRA Rule 3280. This proposed change also could remove an impediment for currently exempt firms

[51] Under this business model, if a transaction meets the conditions and requirements of the M&A Brokers Exemption, the transaction is effected through an exempt affiliated M&A Broker. If a transaction does not meet the M&A Brokers Exemption's requirements, it is effected through a registered broker-dealer affiliate.

[52] *See* Waterview 1 Letter.

[53] *See* NtM 94–44.

[54] FINRA has requested comment on a proposed new rule to address the outside activities of its member firms' associated persons, which would replace current FINRA Rules 3270 and 3280. *See* Regulatory Notice 25–05 (March 2025). If FINRA files, and the Commission approves, a proposed rule change to adopt the new rule, FINRA would propose to replace CAB Rules 327 (Outside Business Activities of Registered Persons) and 328 (Private Securities Transactions of an Associated Person) with a new CAB Rule that would cross-reference the new FINRA rule.

[55] FINRA notes that Rule 3280 applies to persons associated with a member. Accordingly, pursuant to amended CAB Rule 328, the requirements of Rule 3280 would apply to the associated persons of CABs as defined under FINRA Rules. *See also* CAB Rule 014 (Application of the By-Laws and the Capital Acquisition Broker Rules).

[56] *See* FINRA Rule 3280(b).

[57] *See* FINRA Rule 3280(e)(2).

[58] *See* FINRA Rule 3280(c).

[59] *See* FINRA Rule 3280(d).

to create new CAB affiliates, which would benefit investors through increased oversight of the exempt affiliate's transactions.

Compensation

In 2019, FINRA issued a staff interpretation of the CAB Rules stating that CABs may be compensated in the form of securities issued by a privately held CAB client, rather than in cash, provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in activities prohibited under CAB Rule 016(c)(2) (Definitions).[60] In pertinent part, the interpretation states:

> The CAB Rules do not specifically address whether a CAB may receive compensation for its services in the form of equity securities. Provided that compensation is for services in which CABs are permitted to engage under CAB Rule 016(c)(1), and [the CAB] does not engage in activities that are specifically prohibited under CAB Rule 016(c)(2), [the CAB] may accept equity securities issued by privately held companies as compensation for its services as described in your letter. Thus, for example, upon receiving equity securities as compensation, [the CAB] may not accept orders from customers to purchase or sell securities either as principal or agent for the customer, and may not engage in proprietary trading or market making activities.

FINRA proposes to codify this interpretation in proposed CAB Rule 511 (Securities as Compensation).

M&A Brokers Exemption

Currently, CAB Rule 016(c)(1)(G) permits a CAB to effect securities transactions solely in connection with the transfer of ownership and control of a privately held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company to a buyer that will actively operate the company of the business conducted with the assets of the company, in accordance with the terms and conditions of an SEC rule, release, interpretation or ''no-action'' letter that permits a person to engage in such activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act. The purpose of this provision was to allow CABs to engage in merger and acquisition activities to the same extent as unregistered persons who were relying on the M&A Brokers Letter when it was in effect.[61] The M&A Brokers Letter was withdrawn on March 29, 2023.[62]

As discussed above, since the adoption of CAB Rule 016(c)(1)(G), Congress has amended the Exchange Act to create a new registration exemption for M&A Brokers similar to the no-action relief that firms previously relied upon under the M&A Brokers Letter. Accordingly, FINRA is proposing to amend Rule 016(c)(1)(G) to reference Exchange Act Section 15(b)(13), as well as any SEC rule, release, interpretation, or no-action letter, that permits a person to engage in the same or materially similar activities without registering as a broker or dealer under the Exchange Act. The purpose of this proposed amendment is to make clear that CABs may effect M&A transactions to the same extent as an exempt M&A Broker under the M&A Brokers Exemption.

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

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[63] 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.

FINRA believes that the proposed rule change will enhance the efficiency and effectiveness of the CAB Rules without materially impacting investor protection. The proposed rule change addresses some of the challenges presented by the current CAB Rules by expanding some of CABs' permissible activities without materially impacting CABs' limited institutional business model. The CAB Rules are part of FINRA's regulatory program designed to, among other things, support efficient capital formation. By expanding the range of permissible activities, the proposed rule change may further support capital formation.

At the same time, however, the proposed rule change ensures that the scope of the corporate financing activities that CABs are permitted to engage in will continue to be limited and the protections for investors and the public under the CAB Rules will not be materially impacted. CABs would remain subject to the core supervisory requirements discussed above and would remain subject to many other investor protection rules. For example, CABs would continue to be subject to content standards governing their communications with the public, a requirement to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business, and audit, recordkeeping, financial reporting, and net capital compliance requirements.[64]

The proposed rule change would amend the current definition of ''institutional investor'' for purposes of the CAB Rules to include ''eligible employees,'' thus permitting CABs to act as placement agents or finders in the sale of newly-issued unregistered securities to ''Knowledgeable Employees'' under ICA rules for private fund issuers, and specified officers, directors, and employees of issuers that are not private funds. FINRA believes that the proposed rule change is consistent with investor protection and the public interest because these eligible employees have the expertise, knowledge, and resources to understand the risks of investing in the issuer. Given the knowledge and resources of these eligible employees, and the additional investor protections provided by Reg BI and Form CRS, FINRA believes that this proposed change would not materially impact investor protection or CABs' limited institutional business model. Additionally, CABs' permissible investor pool would not be expanded to retail investors who are not eligible employees.

The proposed rule change would permit CABs to act as intermediaries for specified secondary transactions involving unregistered securities provided that the sale qualifies for an exemption from registration under the Securities Act. This proposed change is consistent with CABs' current authority to act as a placement agent or finder on behalf of an issuer in connection with the sale of newly-issued unregistered securities to institutional investors. Similar to acting as a placement agent or finder for newly-issued unregistered securities, CABs only would be allowed to act as an intermediary for a secondary transaction involving unregistered securities and only where both the seller and the purchaser are institutional investors. However, under the proposed rule change, CABs would be allowed to engage in such services on behalf of securities holders that are institutional investors, as newly defined to include eligible employees, rather than just the

[60] *See* Letter from Joseph P. Savage, FINRA, to Jonathan D. Wiley, The Forbes Securities Group, dated May 30, 2019.

[61] *See* Securities Exchange Act Release No. 76675 (December 17, 2015), 80 FR 79969, 79977 (December 23, 2015) (Notice of Filing of File No. SR–FINRA–2015–054).

[62] *See supra* note 30.

[63] 15 U.S.C. 78*o*–3(b)(6).

[64] *See, e.g.,* CAB Rules 201, 221, 311, 411, 414, 451, and 453.

issuer (and, as noted, sales would be restricted to institutional investors). This expansion in permissible activities would be consistent with the public interest and investor protection, as it would not allow CABs to act as an intermediary in a securities transaction where either the seller or the purchaser is a retail investor.

The proposed amendment to CAB Rule 328 would eliminate certain operational and other challenges with respect to associated persons' PSTs by eliminating the express prohibition on PSTs under CAB Rule 328 and subjecting CABs to current FINRA Rule 3280. FINRA believes that the proposed amendment to CAB Rule 328 is consistent with investor protection and the public interest since it would require a CAB to supervise and keep records of any PST to the same extent and in the same manner as a non-CAB broker-dealer member.

The proposed rule change would codify a previously issued staff interpretation of the CAB Rules providing that CABs may receive compensation in the form of equity securities of a privately held issuer on behalf of which the CAB provided permitted services, provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in any activity prohibited under the CAB Rules. This change is consistent with investor protection and the public interest in that it would not alter the way CABs operate today and would enhance the transparency of the CAB Rules.

Lastly, the proposed rule change would clarify that CABs may effect M&A securities transactions to the same extent as exempt M&A Brokers under the M&A Brokers Exemption. This amendment is consistent with the current provision in CAB Rule 016(c)(1)(G) that allows CABs to engage in such M&A transactions to the same extent that exempt M&A Brokers previously were permitted to engage in reliance upon the M&A Brokers Letter, which was withdrawn in 2023.

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

FINRA does not believe that the proposed rule change 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, as set forth below, to further 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 alternatives FINRA considered in assessing how best to meet its regulatory objective.

Regulatory Need

FINRA maintains a separate rule set for CABs with the goal of reducing regulatory burdens on broker-dealer firms that engage only in limited institutional corporate financing and private placement activities and do not interact with retail investors. Through its ongoing dialogue with the industry regarding the effectiveness of the CAB Rules, FINRA has learned that the current CAB definition and existing regulatory framework may discourage some firms for which the designation was intended from electing CAB status due to limits on CABs' permissible activities.

Economic Baseline

The economic baseline of the proposed rule change is the existing CAB regulatory framework, its adoption by the industry, and CAB-related industry practices and activities. FINRA sought comments on proposed changes to the CAB Rules in *Regulatory Notice* 20–04.[65] FINRA additionally obtained input from several advisory committees comprising member firms of different sizes and business models, investor protection advocates, member firms, and industry trade associations.

FINRA has identified the relevant member firms currently engaged in CAB activities. As of the end of 2024, these include 65 member firms that have elected CAB status, approximately 135 non-CAB FINRA member firms that conduct CAB-like activities (FINRA-registered CAB-like firms) [66] and an unknown number of firms that provide services similar to CABs but are not registered with FINRA or the SEC (unregistered CAB-like firms).[67] Of the 65 member firms registered as CABs at the end of 2024, approximately 92 percent had fewer than 20 registered persons at year end. In total, there were approximately 581 registered persons across the 65 CAB firms at the end of 2024.[68]

Economic Impacts

FINRA has analyzed the potential costs and benefits of the proposed rule change, and the different parties that are expected to be affected. FINRA has identified member firms that are currently registered as CABs, member firms engaged in CAB-like activities without being registered as CABs, that may or may not elect CAB status in the future, non-member firms that engage in CAB-like activities, and respective customers of such firms as the parties that would primarily be affected by the proposed rule change.

Anticipated Benefits

The proposed rule change's benefits would accrue to those firms whose business decisions or activities would be enhanced, or regulatory burdens reduced, by the proposed rule change. These include member firms that already have elected CAB status, member firms that have not chosen to elect CAB status due to the CAB Rules' limits on their current or future activities, and firms that have not applied for FINRA membership.

Existing CAB firms that expand the scope of their activities as a result of the proposed rule change would continue to benefit from a streamlined FINRA rulebook and would benefit from increased flexibility in their business practices. For example, they would be able to act as placement agents or finders in secondary transactions of unregistered securities (in certain cases). They also would be permitted to sell unregistered securities to ''eligible employees'' who are specified officers, directors, and employees of the issuer or certain affiliates if they so desire. Additionally, they would be allowed to participate in PSTs in accordance with FINRA Rule 3280 (or its successor).

The FINRA-registered CAB-like firms that could benefit from the proposed rule change include those firms whose activities would fall within the range of permissible CAB activities under the

[65] *See* Regulatory Notice 20–04 (January 2020).

[66] ''CAB-like'' refers to activities that are similar to those in which CABs may engage, including advising companies on mergers, acquisitions and corporate restructuring, advising issuers on raising debt and equity capital, and acting as a placement agent for sales of unregistered securities to institutional investors. To estimate the number of FINRA-registered CAB-like firms, FINRA analyzed all member firms' 2024 end-of-year FOCUS Supplementary Statement of Income (SSOI) filings. Member firms that reported M&A related fees that were 100 percent of total revenue, did not report any commissions, and did not elect the CAB status, were identified as CAB-like firms. In addition, FINRA used Form ADV information to calculate the number of member firms dually registered as broker-dealers and investment advisers that provide advisory services only to institutional investors and identified 25 such firms. The total number of 135 firms is believed to be a lower bound on the number of potential FINRA member firms that are CAB-like.

[67] For example, there may be some firms that are relying on Exchange Act Section 15(b)(13), which exempts an ''M&A broker,'' as defined in that section, from broker-dealer registration. *See, e.g.,*15 U.S.C. 78*o*(b)(13). The staff does not have an estimate on the number of these firms.

[68] As of December 2024, existing CAB firms have an average of 9 registered persons per firm.

proposed amendments and firms for which the expanded CAB definition would overlap sufficiently with their business activities that the benefits of becoming a CAB would exceed the costs. For example, any of the existing CAB-like member firms that act as placement agents or finders in secondary transactions of unregistered securities that would be permitted for CABs would now be CAB-eligible. Firms that sell unregistered securities to ''eligible employees'' and otherwise meet the expanded CAB definition, would now be CAB-eligible and would have the potential to realize any associated cost savings from electing CAB designation.

Member firms that elect CAB status as a result of the proposed rule change would benefit from reduced regulatory burdens and lower compliance costs associated with maintaining FINRA membership. For example, unlike non-CAB broker-dealer members, CABs are not subject to branch inspection requirements under FINRA Rule 3110, are not required to have a principal pre-approve, or file with FINRA, their communications with the public, and are only required to conduct an anti-money laundering audit every two years (versus annually for most non-CAB broker-dealer members). These firms also likely would benefit from more focused examinations that are tailored to their business activities. This should reduce compliance costs for these firms and allow them to deploy their capital more efficiently.

Some unregistered CAB-like firms may elect to become CABs as a result of the proposed amendments.[69] These firms are of two types: (1) firms that may be uncertain about whether their activities require broker-dealer registration; and (2) firms that are currently engaging in activities that do not require broker-dealer registration and would have to cease certain of these activities if they became CABs (for example, an M&A Broker engaging in transactions that constitute PSTs under the CAB Rules if the M&A Broker shared personnel with a newly created CAB affiliate). Unregistered firms that may currently engage in activities that require broker-dealer registration would benefit from removing the uncertainty of being sanctioned for acting as an unregistered broker-dealer while operating under a less burdensome regulatory framework. Firms that are not currently engaging in broker-dealer activities, but that choose to enter the broker-dealer space as a CAB because of the proposed rule change may benefit from new business opportunities.

The clients of firms that would benefit from the proposed rule change likely would benefit as well. They may benefit from lower costs to the extent FINRA-registered firms that become CABs pass any of their regulatory cost savings onto their customers. Clients of currently unregistered firms may benefit from the protections that come with FINRA's regulatory and supervisory framework. Clients of existing CAB firms may benefit from the expanded scope of the firms' activities, without loss of protections.

Finally, FINRA believes that the proposed amendments to the CAB Rules could individually, and collectively, support capital formation without materially impacting investor protection.

Anticipated Costs

The proposed rule change would impose certain direct costs on existing CAB firms. Such direct costs would include establishing written policies and procedures, and any attendant monitoring costs that arise from them, in response to the amendment related to persons associated with CABs participating in PSTs. Additional costs would stem from the required training and supervision of the associated persons and their activities.

The proposed rule change is expected to impose some direct costs on firms that elect to become CABs as a result of the proposal. Firms that register with FINRA as CABs would incur implementation and ongoing costs associated with applying for and maintaining FINRA membership. The implementation costs would include FINRA application fees, legal or consulting fees, and costs associated with setting up the infrastructure for regulatory reporting and developing written supervisory policies and procedures. The ongoing costs would be in the form of annual registration fees and expenses associated with ongoing compliance activities, including undergoing examinations. However, these are costs that firms may choose to incur, presumably because they conclude that the additional costs of regulation, supervision and compliance are outweighed by the benefits of FINRA membership. Some of the costs incurred from going from an unregistered to registered status might be passed on to the firms' customers. However, these costs could also be offset by the additional benefits stemming from the registration status and added investor protections that come with it.

Competitive Effects and Additional Considerations

To the extent that FINRA-registered CAB-like firms elect CAB status or non-FINRA members elect to register as CABs, the proposed rule change should reduce the competitive imbalance between these groups. For example, expanding the trading activities permissible for CAB associated persons, such as under proposed amendments to Rule 328, would potentially remove barriers for selecting CAB status or the ability of CAB firms to compete with CAB-like FINRA members or non-members. Overall, this should enhance competition among these groups particularly since the former group will experience reduced regulatory costs as a result of the proposed rule change.

FINRA considered the implications of the proposed rule change for investor protection. FINRA believes that the proposed rule change is reasonably designed to protect investors because it does not materially impact the limited business model of CABs and may enhance regulation in this space. To the extent that the proposed rule change expands CABs' permissible activities, FINRA does not believe there would be a material impact on investor protection. For example, as described above, eligible employees likely have the knowledge and expertise to understand the risks of investing in the issuer and resources necessary to conduct due diligence. Reg BI and Form CRS provide an additional layer of investor protection.

Alternatives Considered

FINRA has considered possible alternatives to the proposal. For example, FINRA considered exempting or reducing Continuing Education (CE) requirements for CAB firm registered personnel. However, FINRA determined, also considering the recent changes to the CE program,[70] that this change could hinder CAB registered persons' future employment opportunities with non-CAB firms, and potentially could reduce investor protection. FINRA further considered amending CAB Rule 016(c)(1) to expressly allow a CAB to act as an investment adviser as defined in section 202(a)(11) of the Advisers Act, provided that the advisory clients of the CAB and its associated persons consist solely of institutional investors. As discussed

[69] In addition, it is possible that, because of the expanded CAB definition, new firms may elect to enter the broker-dealer space as CABs. FINRA does not have data that would enable the staff to estimate the number of such firms.

[70] *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015).

below, FINRA has determined not to make this change and believes that it is appropriate to defer to the existing federal and state statutory framework with respect to whether CABs may register as investment advisers and engage in advisory activities.

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

Background

In January 2020, FINRA published *Regulatory Notice* 20–04 (the ''*Notice*''), requesting comment on proposed amendments to the CAB Rules (the ''*Notice* Proposal''). The *Notice* Proposal was intended to make the CAB Rules more useful to CABs without reducing investor protection. A copy of the *Notice* is available on FINRA's website at *https://www.finra.org.*

The comment period initially expired on March 30, 2020, and subsequently was extended until June 30, 2020. FINRA received eight comments in response to the *Notice.* 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.[71] A summary of the comments and FINRA's response is provided below.

Comments on Proposal

Investment Adviser Activities

The *Notice* Proposal would have amended CAB Rule 016(c)(1) to expressly allow a CAB to act as an investment adviser as defined in section 202(a)(11) of the Advisers Act, provided that the advisory clients of the CAB and its associated persons consist solely of institutional investors. Two commenters[72] supported permitting CABs to register as investment advisers. NYSBA commented that this proposed change would benefit CABs whose advisory services to companies contemplating a purchase or sale of securities, or to issuers who request advice concerning the investment of offering proceeds, may require registration as an IA. NYSBA also stated that allowing CABs to become investment advisers would enhance the oversight of CABs from the Commission or states, as regulators of investment advisers. NYSBA further recommended that FINRA amend CAB Rule 328 (Private Securities Transactions of an Associated Person) to exclude investment advisory activities of CAB associated persons who are employees or supervised persons of registered investment advisers, and employees of banks and trust companies who are engaged in permissible securities or advisory services. NYSBA argued that this exclusion should cover any type of advisory activities, but at a minimum, activities involving institutional clients.

FINRA has determined not to make this change and instead to retain the current approach under the CAB Rules (*i.e.,* neither expressly prohibiting nor expressly permitting CABs to register as investment advisers). FINRA believes that it is appropriate to defer to the existing federal and state statutory framework with respect to whether CABs may engage in advisory activities. In addition, FINRA is not proposing to exclude from CAB Rule 328 investment advisory or banking activities of associated persons who are also employees or supervised persons of investment advisers or banks, as recommended by NYBSA.

Institutional Investor Definition

The *Notice* Proposal would have amended the definition of ''institutional investor'' in CAB Rule 016(i) to include any ''knowledgeable employee.'' The *Notice* Proposal further would have added a new defined term ''knowledgeable employee'' that included: (i) Knowledgeable Employees as that term is defined in ICA Rule 3c–5 where the CAB has provided services permitted under CAB Rule 016(c)(1)(F) and (G) on behalf of an issuer that is a Covered Company[73] as defined in ICA Rule 3c–5, and (ii) the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer on behalf of which the capital acquisition broker has provided services permitted under CAB Rule 016(c)(1)(F) and (G); and (iii) any company owned exclusively by knowledgeable employees.

Two commenters supported the proposed amendment to the CAB Rules definition of ''institutional investor'' to include knowledgeable employees, noting that it is common industry practice for hedge fund and private equity fund senior officers and directors to invest in private placements in which they are involved.[74] March recommended that ''institutional investor'' also include accredited investors as defined in Securities Act Regulation D.[75] M&R suggested that the term also include professional legal representatives of investors under the definition. IS expressed concern that if a CAB sold unregistered securities to knowledgeable employees, those investors would be considered retail customers under Reg BI and retail investors for purposes of Form CRS, and that this status is ''perhaps . . . an unintended consequence brought about by the SEC.''

FINRA does not believe that, for purposes of the CAB Rules, ''institutional investor'' should include accredited investors as defined under Regulation D. Commenters on the original proposed CAB Rules made the same recommendation, and FINRA chose at that time not to adopt this change, in part because the CAB Rules are not intended to govern broker-dealers that engage in retail private placement activities, since the term ''accredited investor'' under Regulation D covers a much wider range of individual investors than does the term ''institutional investor'' under the CAB Rules, and may not possess the same wealth or expertise as other CAB institutional investors.

FINRA also does not believe it is necessary to revise the definition of ''institutional investor'' to include professional legal representatives of investors, since the term already includes any person acting solely on behalf of any such institutional investor.[76]

However, FINRA has determined to create a new proposed definition of ''eligible employee'' that would include, with respect to an issuer for which the CAB has provided services to the issuer or a control person permitted under CAB Rule 016(c)(1)(F) or (G): (1) persons that meet the definition of ''Knowledgeable Employee'' under ICA Rule 3c–5 with respect to services provided to an issuer that is a Covered Company as defined in ICA Rule 3c–5 or services provided to an Affiliated Management Person of such Covered Company as defined in ICA Rule 3c–5; and (2) specified officers, directors, and employees of issuers other than private funds.

FINRA believes that it is appropriate to create the new defined term ''eligible

[71] *See* SR–FINRA–2025–005 (Form 19b–4, Exhibit 2b) for a list of abbreviations assigned to commenters (available on FINRA's website at *https://www.finra.org*).

[72] M&R and NYSBA.

[73] A ''Covered Company'' under ICA Rule 3c–5 means any company that would be an investment company but for the exclusions provided by sections 3(c)(1) or 3(c)(7) of the ICA. *See* 17 CFR 270.3c–5(a)(2).

[74] M&R and NYSBA.

[75] *See* 17 CFR 230.501(a).

[76] *See* CAB Rule 016(i)(7).

employee'' rather than using the proposed definition of ''knowledgeable employee'' in a manner that differs from the meaning of that term under ICA Rule 3c–5. Using a new term ''eligible employee'' thereby avoids potential confusion with the term ''Knowledgeable Employee'' under ICA Rule 3c–5. As discussed above, this change to the CAB Rules would permit the sale of newly-issued unregistered securities to specified officers, directors, and employees of both private fund issuers and issuers that are not private funds, in addition to institutional investors as defined under the current rules. Such eligible employees often invest in their employer companies as part of a private securities offering.

In addition, because a CAB is a registered broker-dealer under the Exchange Act, FINRA agrees that if a CAB recommends any securities transaction or investment strategy involving securities to any natural person, or a legal representative of a natural person, who uses the recommendation primarily for personal, family, or household purposes, the person receiving the recommendation would be a ''retail customer'' under Reg BI.[77] FINRA also agrees that if a CAB offers services to a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family, or household purposes, the natural person would be a ''retail investor'' for purposes of Form CRS.[78]

Nevertheless, FINRA does not believe the application of Reg BI or Form CRS to a CAB or an associated person of a CAB is an unintended consequence brought about by the SEC. The Commission intended these rules to apply to broker-dealers' securities recommendations and offers of services to natural persons who use them for personal, family or household purposes, regardless of a natural person's net worth or whether a natural person is considered an institutional investor under FINRA Rules.[79] Further, FINRA does not believe that the application of Reg BI or CRS to CABs would impede the ability of CABs to comply with the CAB Rules.

Secondary Transactions

The *Notice* Proposal would have permitted CABs to qualify, identify, solicit, or act as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns, subject to specified conditions. The purchaser of such securities would need to be an institutional investor, the CAB would need to have previously provided services permitted under CAB Rules 016(c)(1)(F) and (G) to the issuer in connection with the initial sale of such securities, and the sale of such securities would need to qualify for an exemption from registration under the Securities Act.

Commenters supported this proposed change,[80] but urged FINRA not to restrict this authority to secondary transactions in securities of an issuer on behalf of which the CAB previously had acted as placement agent or finder.[81] NYSBA noted that widening the ability of CABs to act as intermediaries in the sale of any unregistered securities, regardless of whether the CAB had previously provided services to the issuer, would be consistent with the Commission's June 18, 2019, concept release on harmonizing of securities offering exemptions.[82] Similarly, two other commenters recommended that CABs be permitted to advise clients regarding the sale of minority interests (involving less than 25% of ownership interests) to institutional investors.[83] Metric further noted that if CABs are limited to acting as placement agents only in secondary transactions involving securities where the CAB had previously provided services to the securities' issuer, this restriction ''would eliminate 99%+ of the potential market and not justify the election of CAB status.''

After considering these comments, FINRA agrees that the proposed restriction only allowing a CAB to act as intermediary for secondary transactions involving securities issued by prior CAB clients would be too limiting. FINRA also believes that allowing CABs to act as intermediaries in other secondary unregistered securities transactions where both the purchaser and seller are institutional investors would be consistent with CABs' current business model, since it would not allow CABs to serve retail investors.

Accordingly, FINRA proposes to modify the *Notice* Proposal to allow CABs to act as intermediaries in secondary transactions involving unregistered securities. As revised, a CAB would be permitted to qualify, identify, solicit, or act as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered securities that it owns, provided that: (i) the purchaser of such securities is an institutional investor; and (ii) the sale of such securities qualifies for an exemption from registration under the Securities Act (such as Securities Act Rules 144 or 144A). FINRA believes that these conditions are in the public interest as they would allow CABs to offer a wider range of services to their clients and would maintain investor protection, since CABs could only privately place securities where the purchaser is an institutional investor and would not be permitted to sell unregistered securities to retail investors.

Personal Investments

The *Notice* Proposal proposed new CAB Rule 321 (Supervision of Associated Persons' Investments), which would have required any CAB whose business model creates potential insider trading risks to establish, maintain, and enforce written policies and procedures that are reasonably designed to mitigate and prevent those risks. Such firms would be subject to FINRA Rule 3110(d), which requires members to include in their supervisory procedures a process for the review and investigation of securities transactions that are reasonably designed to identify trades that may violate provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices that are effected for accounts of an associated person or any of his or her immediate family members. In addition, such firms would be subject to FINRA Rule 3210, which requires associated persons to obtain his or her firm's prior written consent before opening a securities account at another broker-dealer or financial institution and authorizes the employer member to request that the executing member transmit confirmations and statements of such accounts. Proposed CAB Rule 321 also would have clarified that an associated person of a CAB may purchase and sell unregistered securities, provided he or she provides prior written notice of the transaction to the person's employer broker-dealer.

Two commenters strongly opposed proposed Rule 321.[84] These commenters argued that the rule is not justified based on the nature of CABs' activities. They recommended instead that CABs be required to adopt and enforce a comprehensive insider trading policy,

[77] *See* 17 CFR 240.15*l*–1(b)(1).

[78] *See* 17 CFR 240.17a–14(e)(2).

[79] *See* Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318, 33342–43 (July 12, 2019), and Securities Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492, 33542–43 (July 12, 2019).

[80] M&R and NYSBA.

[81] Metric and NYSBA.

[82] *See* Securities Act Release No. 10649 (June 18, 2019), 84 FR 30640 (June 26, 2019).

[83] HW and Metric.

[84] Metric and Waterview.

including a restricted list of companies related to a CAB's projects, and to educate CABs' employees on the prohibitions of insider trading.

Waterview stated that, as a CAB, it does not have and cannot afford the automated systems that larger firms use to review associated persons' brokerage statements for accounts at other broker-dealers, and that this requirement would significantly burden small firms. Waterview also noted that exempt brokers that rely on the M&A Brokers Letter are not required to gather and review their employees' brokerage statements, which puts CABs at a competitive disadvantage relative to these exempt firms, and that FINRA should extend the same relief to CABs.

In contrast, two commenters supported proposed CAB Rule 321.[85] NYSBA stated that proposed Rule 321 would move CABs closer to their investment banking and corporate financing brokerage peers in terms of supervision of associated persons, and that it did not view this requirement as unduly burdensome.

In response to these comments, FINRA recognizes that uniformly applying FINRA Rules 3110(d) and 3210 to all CABs may be unduly burdensome for some smaller firms, and that such an approach fails to recognize the differences between firms' sizes and business models. FINRA has determined not to adopt proposed CAB Rule 321 in light of current SEC requirements and FINRA rules. CABs that are involved in transactions, either as a finder or a placement agent, that raise insider trading risks due to the potential misuse of material nonpublic information must maintain policies and procedures required by the federal securities laws to address such risks.[86] In addition, pursuant to CAB Rule 201, CABs are subject to FINRA Rule 2010, which requires that members ''observe high standards of commercial honor and just and equitable principles of trade.'' [87]

Two commenters also recommended that FINRA exclude from the definition of PST M&A transactions that are permissible for exempt firms that rely on the M&A Brokers Letter.[88] These commenters noted that if these types of transactions are considered PSTs, it creates significant operational and competitive challenges, particularly where it is unclear whether a future transaction will be an asset or stock sale. Waterview stated that CAB Rule 328's PST prohibition has prevented the firm from entering into strategic referral arrangements, which places the firm at a competitive disadvantage relative to exempt firms relying on the no-action letter.

FINRA is proposing to revise CAB Rule 328 in response to these and other comments. Currently CAB Rule 328 prohibits any associated person from participating in any manner in a PST. As proposed to be amended, CAB Rule 328 would subject all CABs to FINRA Rule 3280. Thus, while there no longer would be a flat prohibition on PSTs, CABs would still need to supervise and keep records of all associated persons' PSTs to the same extent as non-CAB broker-dealer members under FINRA Rule 3280. FINRA believes that, with the proposed amendment to CAB Rule 328, CABs would not face the operational and competitive challenges, described above, that CAB Rule 328 currently imposes.

Compensation

The *Notice* Proposal would have added a new CAB Rule 511 (Securities as Compensation) that would state that a CAB may receive compensation in the form of equity securities of a privately held issuer on behalf of which the CAB provided services pursuant to CAB Rule 016(c), provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in an activity prohibited under Rule 016(c)(2).[89] Proposed CAB Rule 511 would codify a prior FINRA staff letter that interpreted the CAB Rules to allow CABs to receive equity securities as compensation.[90]

NYSBA supported proposed CAB Rule 511, noted that CABs have evolved, and thanked FINRA for acknowledging this evolution.

FINRA is retaining the text of proposed CAB Rule 511 without change.

Other Comments

IS criticized the CAB Rules in general as too restrictive and complex, and suggested that FINRA needs to redo the entire rulemaking process instead of patching poorly conceived rules. For example, IS argued that CABs should not have to comply with anti-money laundering (''AML'') rules, and that FINRA should adopt a simple qualification examination for persons working for CABs. IS further stated that institutional investors do not need the protections that the CAB Rules provide, and that the proposed changes do not go far enough to encourage more firms to elect CAB status.

Metric recommended that FINRA eliminate continuing education (''CE'') requirements for associated persons of CABs, and that it did not believe that if a CAB representative moved to a non-CAB broker-dealer, not having kept up his or her CE requirements would impede the representative from obtaining employment.

M&R recommended that FINRA reach out to professional associations and communities that engage in intermediary activities outside the scope of FINRA registration to let them know the benefits that CAB registration offers to their business, which would also benefit investors should such firms actually register. M&R also urged FINRA to develop CAB-specific compliance tools for small firms and solicit CAB specific contributions to its Peer-2-Peer Compliance Library. M&R also recommended that FINRA coordinate the CAB Rules with the conditions in the M&A Brokers Letter, which would also encourage more firms that currently rely on the letter to register as CABs instead.

FINRA does not believe it would be useful or appropriate to repeal and replace the entire CAB Rules set. As of the end of 2024, 65 FINRA members have elected CAB status and operate under the CAB Rules. Completely repealing and then rewriting the CAB Rules would severely disrupt these firms' operations and FINRA's efforts to

[85] M&R and NYSBA.

[86] *See* SEA Section 15(g), 15 U.S.C. 78*o*(g); *see also Notice to Members* 91–45 (June 1991) (NASD/NYSE Joint Memo).

[87] *See All. for Fair Bd. Recruitment* v. *SEC,* 125 F.4th 159, 176 (5th Cir. 2024) (stating that ''SROs have frequently applied [FINRA Rule 2010 and similar rules] to discipline [their] members for conduct that is unethical, such as[ ] violating the securities laws''). *See also, e.g., Dep't of Enforcement* v. *Clark,* Complaint No. 2017055608101, 2020 FINRA Discip. LEXIS 46 (NAC Dec. 17, 2020) (affirming Hearing Panel's finding that respondent violated FINRA Rule 2010 by misusing confidential information concerning a corporate acquisition and purchasing shares for his own personal financial gain); *Dep't of Market Regulation* v. *Geraci,* Complaint No. CMS020143, 2004 NASD Discip. LEXIS 19 (NAC Dec. 9, 2004) (affirming Hearing Panel's finding that the respondent violated Section 10(b) of the Exchange Act, SEA Rule 10b–5, and NASD Rules 2110 (now FINRA Rule 2010) and 2120 (now FINRA Rule 2020) by engaging in insider trading).

[88] M&R and Waterview.

[89] CAB Rule 016(c)(2) provides that ''capital acquisition broker'' does not include any broker or dealer that carries or acts as an introducing broker with respect to customers' accounts, holds or handles customers' funds or securities, accept orders from customers (other than as permitted by CAB Rule 016(c)(1)(F) or (G)), has investment discretion on behalf of any customer, engages in proprietary trading of securities or market-making activities, participates in or maintains an online platform in connection with offerings of unregistered securities pursuant to Regulation Crowdfunding or Regulation A under the Securities Act, or effects securities transactions that would require the broker or dealer to report the transaction to FINRA under the FINRA Rules 6000 or 7000 series.

[90] *See supra* note 60.

regulate these firms. Moreover, some of IS's recommendations, such as exempting CABs from the AML rules, are beyond FINRA's authority, since those obligations stem from statutory requirements applicable to all registered broker-dealers.

FINRA believes it is premature to create a separate representative or principal registration category solely for CABs. CABs often have different business models that require different types of registrations. FINRA also believes that it is important for associated persons of CABs to maintain their CE requirements, both to ensure that these persons are current on applicable securities laws, and to ease their transition should they choose to work for a non-CAB broker-dealer.

FINRA appreciates M&R's suggestions to work with both CAB and non-CAB industry members to make them aware of the benefits of CAB registration, and its suggestions to make more compliance tools available to CABs. FINRA agrees that adding to and improving compliance tools and resources benefit the industry and investors.

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–2025–005 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–2025–005. 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 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 a.m. and 3 p.m. Copies of such filing also 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–2025–005 and should be submitted on or before July 7, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[91]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–10882 Filed 6–13–25; 8:45 am]

BILLING CODE 8011–01–P

[91] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–103219; File No. SR–CBOE–2025–011]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Allow Certain Expiring A.M.-Settled Index Options To Trade During the Global Trading Hours Trading Session Immediately Preceding the Expiration Date

June 10, 2025.

On February 26, 2025, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow expiring A.M.-settled non-Volatility index options and Volatility Index options that are eligible for Global Trading Hours (''GTH'') to trade during the GTH trading session immediately preceding the expiration date. As a result, expiring A.M.-settled non-Volatility index options would trade through the end of the GTH trading session on the expiration date and expiring A.M.-settled Volatility Index options would trade until 9:00 a.m. ET (''Eastern Time'') on the expiration date. The proposed rule change was published for comment in the **Federal Register** on March 17, 2025.[3]

On April 25, 2025, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 3, 2025, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] The Commission is publishing

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 102583 (March 11, 2025), 90 FR 12382 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 102937, 90 FR 18720 (May 1, 2025). The Commission designated June 15, 2025, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2025-011/srcboe2025011-*

Continued