Institute for Portfolio Alternatives

February 20, 2026

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
rule-comments@sec.gov

Re: Release No. 34-104695; File No. SR-FINRA-2026-002 (the "Proposed Rule Change")

Dear Ms. Countryman:

On behalf of the Institute for Portfolio Alternatives ("IPA"), thank you for the opportunity to express our strong support of the Proposed Rule Change.[1] IPA also appreciates the Financial Industry Regulatory Authority's ("FINRA") thoughtful engagement with industry stakeholders and its careful development of the Proposed Rule Change.

FINRA proposes to amend Supplementary Material .01 to Rule 5110 by providing an exclusion from underwriting compensation to codify an exemption that FINRA gave regarding capital investments for direct participation programs ("DPPs") and nonlisted real estate investment trusts ("REITs").

The amendment would exclude from the definition of underwriting compensation:

> securities acquired before or during the distribution of an offering by a participating member in the issuer or an affiliated entity in connection with the investment of cash to capitalize a direct participation program or a real estate investment trust, as defined in Rule 2231(d), provided that:

[1] For more than 40 years, the IPA has served as the leading voice for global asset managers, distributors and service providers in the private markets and alternative investment industry. We deliver best-in-class education for practitioners and champion policies that expand investor access to wealth-building private market strategies, including real estate, credit, infrastructure, private equity and venture capital, among other asset classes. These investments offer lower correlation to public markets, strengthen retirement outcomes and enhance portfolio diversification while operating within robust investor-protection standards. Over the past 25 years, private market and alternative investments have driven more than $1 trillion in capital formation, playing a critical role in fueling national and local economic growth.

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(A) the acquisition of securities is disclosed in the issuer's prospectus as a capital investment or a comparable form of capitalization;

(B) the securities offered to the public and the securities acquired in the capitalization transaction are valued and priced on a net asset value or NAV basis;

(C) the offering for which the participating member is engaged is an offering subject to the requirements of Rule 2310; and

(D) the securities acquired and excluded are not sold, transferred, assigned, pledged or hypothecated, or be made the subject of any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of the securities for a period of 180 days beginning on the date of commencement of sales of the public equity offering.[2]

The IPA commends FINRA for proposing a clear, principles-based exclusion that appropriately balances investor protection with the practical capital formation needs of direct participation programs and nonlisted REITs. We respectfully urge the Commission to approve the Proposed Rule Change as submitted.

In December 2024, FINRA issued Regulatory Notice 24-17, requesting comment on a proposed rule change to exclude from underwriting compensation certain seed capital investments in DPPs and nonlisted REITs. IPA provided comments on March 20, 2025. We appreciate FINRA's willingness to consider and incorporate our comments.

In particular, we recommended that the exclusion be self-operating, rather than requiring FINRA staff to consider each exclusion request on a case-by-case basis. The exclusion is now self-operating in the Proposed Rule Change, an approach we believe the Commission should approve as it promotes regulatory certainty and consistent application.

Second, we recommended that, for a capital investment before the issuer has material assets, the securities acquired be conclusively deemed to have been priced on a net-asset-value basis.

[2] FINRA Rule Filing SR-2026-02, Exhibit 5.

Though FINRA did not change the rule language, the proposing release does clarify that "FINRA agrees that a capitalization transaction occurring before the issuer has material assets would be deemed to occur at or above NAV," which we appreciate and believe appropriately addresses commenter concerns.[3]

Finally, we recommended that the rule change refer to "capital investment" rather than "seed investment" and that FINRA amend the rule change to make clear that the safe harbor would be available to any capitalization transaction that meets the safe harbor's conditions, including one occurring after the initial offering. FINRA amended the rule language so that the exclusion applies to securities acquired "before or during" the distribution of the offering. The Proposed Rule Change also refers to "capital investment" rather than "seed investment" and the proposing release confirms that "the amendments are agnostic to the timing of the acquisition."[4]

We also agree with FINRA's decision not to accept certain proposed amendments from other commenters. In particular, we agree that FINRA need not amend the rule language to state that the acquired securities may be transferred to an affiliate of the sponsor. As FINRA points out, Rule 5110(e)(2)(b)(i) already permits "the transfer of any security to any member participating in the offering and its officers or partners, its registered persons or affiliates, if all transferred securities remain subject to the lock-up restriction in paragraph [5110](e)(1) for the remainder of the 180-day lock-up period."[5] We also agree that FINRA should not calculate the lock-up restriction period from the definitive date of effectiveness of the offering, rather than the date of commencement of sales.[6] As FINRA says, using the date of effectiveness could result in an unreasonably short lockup period.

As a result of the clarifications that FINRA has made to the rule language, the Proposed Rule Change will ensure that investors are protected while eliminating the confusion that the 2024 proposal might have created for the industry.

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[3] Release No. 34-104695, 91 Federal Register 4121, 4128 (January 30, 2026) ("Federal Register Notice").

[4] *Id.* at 4127.

[5] *Id.* (referring to letter from ADISA).

[6] *Id.* (referring to letter from ADISA).

IPA strongly supports the Proposed Rule Change and appreciates the opportunity to provide comments. Please contact Jeff Evans, IPA's director of government affairs and policy, at jevans@ipa.com, with any questions.

Sincerely,

President and CEO