

FINRA Corporate Financing Rule Amendments Bring Clarity for Insurance Products

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The SEC has approved amendments to FINRA's corporate financing rule. The purpose of the rule is to allow FINRA to determine that public offering terms and conditions are not unfair, unreasonable, or inconsistent with FINRA rules. The rule requires FINRA members that participate in a public offering covered by the rule to file information with FINRA about the underwriting terms and arrangements.

Portions of the amended rule that are significant to public offerings of insurance products become effective September 16, 2020.

Prior to the amendments, the rule exempted variable contracts, market value adjusted (MVA) insurance contracts, and exempt securities, including group annuity contracts sold to qualified plans, but not other types of insurance products such as registered index-linked annuities (RILAs) and contingent deferred annuities (CDAs). Accordingly, it was not clear whether FINRA required principal underwriters of nonexempt insurance products to either comply with the rule or obtain an exemption or other relief from the rule.

As amended, FINRA Rule 5110(h)(2) expands the list of offerings that are exempt from both the filing requirements and substantive rule compliance. In addition to open-end funds and closed-end investment companies under certain conditions, the amended rule exempts the following insurance product offerings from rule filing and compliance requirements:

- Variable contracts;
- Certain modified guaranteed annuity contracts and modified guaranteed life insurance policies with an MVA feature; and
- "Insurance contracts not otherwise included" in the above two categories.

The amended catchall phrase “insurance contracts not otherwise included” is welcome news for principal underwriters of RILAs, CDAs, and yet-to-be-developed insurance products not designed as variable or MVA contracts.

Authored By



Ann Began Furman

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