

FINRA Public Offering Proposal Excludes All Insurance Contracts

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For the first time since 2004, FINRA has proposed major amendments to its requirements that govern the terms of the underwriting arrangements for most public offerings of securities and mandate that such arrangements be submitted to FINRA for review. Currently, these requirements specifically exclude offerings of "variable contracts," as well as "modified guaranteed annuity contracts and modified guaranteed life insurance policies." However, it has not been clear whether certain other insurance product securities, if offered publicly, might be subject to FINRA's requirements governing underwriting arrangements. This has included, for example, certain index-linked annuity contracts and index-linked life insurance policies that are publicly offered, and do not qualify for the Dodd-Frank Act's so-called "Harkin Amendment" exclusion from regulation under the Securities Act of 1933. FINRA's proposed amendments, however, resolve any lingering uncertainty for these and any other novel insurance products that may be developed in the future. Specifically, the amendments would exempt offerings of "insurance contracts" not otherwise included in the specific exemptions mentioned above. In its proposing regulatory notice (no. 17-15), FINRA explained that this change is appropriate, because it relates to "highly regulated offerings" and "may reduce costs to firms." Although underwriters of insurance products historically have not had occasion to file many insurance products' underwriting arrangements with FINRA for review, the proposed clarification is very welcome.

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