Simpson Thacher

Memorandum

Debt-For-Equity Exchanges Developments – New FINRA Rule

August 5, 2026

Debt-For-Equity Exchanges

Debt-for-equity (D4E) exchanges can be part of a structure in a tax-free spin-off transaction. If structured successfully within the confines of commercial, tax, legal and regulatory parameters, D4E exchanges enable a parent company (ParentCo) to complete the spin-off of an entity (SpinCo) on a tax-free basis and de-lever.

A D4E exchange involves several transactions. In general:

- Following the initial distribution of stock representing at least 80% of the voting power of SpinCo stock, ParentCo will hold the remaining SpinCo stock (generally up to 19.9%)
- Under current IRS guidance, to effect a D4E exchange, ParentCo must have certain "historic debt" (*i.e.*, bank debt or bonds that satisfy certain requirements, including the date of issuance of the debt) that is held (or acquired in the market) by a bank
- ParentCo agrees to exchange all or a portion of its remaining SpinCo stock (exchange shares) for such debt at the closing of the equity offering
- The bank, as holder of the exchange shares, sells such shares in the equity offering (as the selling securityholder) to the market through the underwriter[1]
- At closing of the equity offering, ParentCo is treated as repaying the applicable amount of such debt with the exchange shares

FINRA Rule 5110 – Historical Rule

Historically:

- Pursuant to FINRA Rule 5110, an underwriter's (or an affiliate of an underwriter) acquisition of an issuer's securities within FINRA's review period[2] was deemed "underwriting compensation"[3]

[1] In substantially all cases, the selling securityholder is an underwriter in the offering.

[2] Rule 5110(j)(20).

[3] Rule 5110(j)(22).

- Securities that were deemed underwriting compensation were subject to a 180-day lock-up following the applicable securities offering[4]
- Because exchange shares were deemed underwriting compensation, an underwriter was required to request exemptive relief to effect a D4E exchange

As a result of new FINRA Rule 5110.01(b)(23), exemptive relief will no longer be required to effect a D4E exchange.

FINRA Rule 5110 – New Rule

On July 24, 2026, the Securities and Exchange Commission approved new FINRA Rule 5110.01(b)(23), providing relief from exchange shares being deemed underwriting compensation if the following four conditions are met:

- The D4E exchange is structured to provide economic and tax benefits to the issuer[5] and not the bank or affiliated member
- The affiliated member subsequently offered all of the exchange shares the bank acquired in a firm commitment offering following the D4E exchange[6]
- The parties determined the terms of the D4E exchange and the subsequent equity issued through arms' length negotiations based on the market price of the SpinCo equity
- The affiliated member negotiated customary compensation for an equity public offering

The effective date of new FINRA Rule 5110.01(b)(23) will be announced by FINRA in a forthcoming Regulatory Notice.

If the transaction does not meet the above four conditions, an underwriter can still request exemptive relief.

Simpson Thacher Recent Representative Matters – Debt-For-Equity Exchanges

- **Western Digital / Sandisk:** In connection with Western Digital's spin-off of Sandisk, Western Digital exchanged an aggregate of 27 million shares of Sandisk common stock held by Western Digital for loans of Western Digital in two separate transactions

[4] Rule 5110(e)(1).

[5] Rule 5110(j)(12). The term "issuer" means a registrant or other person that is offering its securities to the public, any selling security holder offering securities to the public, any affiliate of the registrant or such other person or selling security holder, and the officers or general partners, and directors thereof.

[6] FINRA provided that an affiliated member can satisfy this condition with subsequent offerings.

- **General Electric / GE HealthCare Technologies:** In connection with General Electric's spin-off of GE HealthCare Technologies, General Electric exchanged an aggregate of 90 million shares of GE HealthCare Technologies common stock held by General Electric for loans of General Electric in five separate transactions
- **MDU Resources / Knife River:** In connection with MDU Resources' spin-off of Knife River, MDU Resources exchanged 6 million shares of Knife River common stock held by MDU Resources for loans of MDU Resources
- **Atmus Filtration Technologies / Cummins:** In connection with the Atmus Filtration Technologies separation from Cummins, Cummins exchanged 16 million shares of Atmus Filtration Technologies common stock held by Cummins for commercial paper of Cummins in the Atmus IPO
- **Post Holdings / BellRing Brands:** In connection with Post Holdings' spin-off of BellRing Brands, Post Holdings exchanged an aggregate of 19 million shares of BellRing Brands common stock held by Post Holdings for certain loans of Post Holdings in two separate transactions

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