

CLIENT ALERT

SEC Extends Relief from Rule 15c2-11 for Certain Fixed-Income Securities

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On November 22, 2024, the Division of Trading and Markets of the U.S. Securities and Exchange Commission (the “SEC”) expanded its relief with respect to Rule 15c2-11 under the Securities Exchange Act of 1934 (the “Exchange Act”). The prior relief, which was due to expire on January 4, 2025, allowed broker-dealers to provide quotes for fixed-income securities, including fixed-income securities offered and sold pursuant to Rule 144A under the Securities Act of 1933 (the “Securities Act”), without the need for specified information about the issuer being made public.

Rule 15c2-11

The SEC adopted Rule 15c2-11 under the Securities Exchange Act of 1934 (“Exchange Act”) in 1971 to, among other things, prevent “the hasty submission of quotations in the daily sheets of the National Quotation Service, Inc., in the absence of any information about the security or the issuer and before any opportunity is afforded to public investors to acquire such information in order to make an informed investment judgment.”¹ To prevent perceived abuses, Rule 15c2-11 requires broker-dealers, before they publish quotations for over-the-counter securities, to obtain, keep and review key, basic information regarding the subject security and its issuer that is “current” and “publicly available.” Rule 15c2-11 also required the broker-dealer, based upon a review of the provided information, together with certain other supplemental documents

¹ *Fraudulent, Manipulative, Deceptive and Fictitious Quotations*, SEC Release No. 34-8909, 35 Fed. Reg. No. 10597 (June 30, 1970) (proposing release); see also *Initiation or Resumption of Quotations by a Broker or Dealer Who Lacks Certain Information*, SEC Release No. 34-9310, 36 Fed. Reg. 18641 (Sept. 18, 1971) (adopting release).

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and information available to the broker-dealer, to have a reasonable basis under the circumstances for believing that the information was accurate in all material respects and was from a reliable source.

In 2020, the SEC adopted a number of amendments to Rule 15c2-11 intended primarily to “better address risks to retail investors and promote market efficiency.”² The amended Rule required that the information reviewed by broker-dealers be “current” and “publicly available.” The 2020 adopting release specifically noted that “Rule [15c2-11] governs the publication of quotations for securities in a quotation medium other than a national securities exchange, i.e., over-the-counter (‘OTC’) securities.”³ In September 2021, the Staff of the SEC published a [no-action letter](#)⁴ providing additional time to broker-dealers to comply with amended Rule 15c2-11 and, more significantly, clarifying its view that Rule 15c2-11 applied to fixed-income securities, meaning broker-dealers could not publish quotes for fixed-income securities unless the broker-dealer first determined that there was “current” and “publicly available” information about the issuer. This took broker-dealers by surprise as Rule 15c2-11 had not previously been thought to apply to fixed-income securities. This “new” position had profound implications for the markets for, among other securities, Rule 144A securities issued by private companies and those issued by asset-backed issuers. Compliance with amended Rule 15c2-11 would also require broker-dealers to put in place significant new procedures which would take considerable time and expense to accomplish. Also, significantly, it would require private companies to make publicly available certain financial information.

Following concerted efforts by market participants, the SEC staff issued another [no-action letter](#)⁵ two months later in December 2021 that provided phased timelines for compliance with Rule 15c2-11 as applied to fixed-income securities. Most significantly, the no-action letter exempted – through January 3, 2023 – corporate fixed-income securities or asset-backed securities offered and sold under Rule 144A for which the broker-dealer reasonably believes that the issuer would provide the information required by Rule 144A(d)(4) upon request.

As January 3, 2023 approached, market participants began to focus on the fact that private companies issuing securities under Rule 144A would need to make certain financial information publicly available to allow broker-dealers to publish quotations on their securities. Absent such quotations, the secondary market for such securities would significantly dry up. Issuers and trade groups lobbied both the SEC and Congress to permanently exempt from rule 15c2-11 corporate fixed-income securities and asset-backed securities offered and sold under Rule 144A. In September 2022, the National Association of Manufacturers (“NAM”) and the Kentucky Association of Manufacturers (“KAM”) sued the SEC claiming that the SEC’s “reinterpretation” of Rule 15c2-11 to cover fixed-income securities amounted to an amendment to the Rule on which companies were not given the opportunity to comment. To supplement their lawsuit, in November 2022, NAM and

² *Publication or Submission of Quotations Without Specified Information*, SEC Release No. 34-87115, 84 Fed. Reg. 58206, 58208 (Oct. 30, 2019) (proposing release) (“2019 Amendment Proposing Release”); *Publication or Submission of Quotations Without Specified Information*, SEC Release Nos. 33-10842, 34-89891, 85 Fed. Reg. 68124 (Oct. 27, 2020) (adopting release).

³ See 2019 Amendment Proposing Release, *supra*, note 9 at 58206

⁴ *Financial Industry Regulatory Authority, Inc.* (SEC No-action letter dated September 24, 2021).

⁵ *Financial Industry Regulatory Authority, Inc.* (SEC No-action letter dated December 16, 2021).

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KAM submitted a petition to the SEC to either amend Rule 15c2-11 to expressly exempt from Rule 15c2-11 Rule 144A fixed-income securities or, in the alternative, to issue an order exempting Rule 144A fixed-income securities from Rule 15c2-11.⁶

On November 30, 2022, the Staff of the SEC issued a [no-action letter](#) (the “November 2022 Letter”) stating that the Staff would not recommend enforcement action to the SEC for broker-dealers that publish or submit quotations for fixed-income securities if the broker-dealer determined that the fixed-income securities, including corporate Rule 144A securities, or its issuer met one of the specified criteria or that there was current and publicly available financial information (consistent with Rule 15c2-11(b)) about the issuer. The no-action letter stated that this position was temporary and would expire on January 4, 2025. Neither the NAM/KAM request nor the November 2022 Letter applied to securities other than Rule 144A fixed-income securities, such as securities issued by banks which are exempt under Section 3(a)(2) of the Securities Act.

Nearly a year later, in October 2023, the SEC issued an [order](#) exempting Rule 144A fixed-income securities from Rule 15c2-11. However, the exemptive order still left certain classes of fixed-income securities, including securities issued by banks and foreign governments, subject to Rule 15c2-11.

On November 22, 2024, the Staff of the SEC issued a [no-action letter](#), withdrawing the November 2022 Letter and removing the temporary nature of the relief, stating that the Staff would not recommend enforcement action to the SEC under Rule 15c2-11 against a broker-dealer that publishes or submits quotations, including continuous quotations, in a quotation medium, for a fixed-income security if the broker-dealer determined that the fixed-income security or its issuer met one of the following criteria

1. The issuer security also has a class of securities that is listed on a national securities exchange;
2. The issuer is subject to the SEC’s periodic reporting requirements under Section 13 or Section 15(d) of the Exchange Act and has filed all required periodic reports during the preceding 12 months (or for such shorter period that the issuer was required to file such reports);
3. The issuer security has a class of equity securities that is exempt from registration pursuant to Rule 12g3-2(b) under the Exchange Act (i.e., a foreign private issuer);
4. The fixed-income security is issued by an issuer where a qualified interdealer quotation system (e.g., OTC Markets Group) makes a publicly available determination (in accordance with the requirements in Rule 15c2-11(a)(3)) that there is current and publicly available information about the issuer for any class of

⁶ See, e.g., [Letter from Andrew Pincus](#) to Vanessa Countryman, Petition for Rulewriting and Application for Exemption from Rule 15c2-11 (Nov. 22, 2022).

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security of the issuer that is eligible for exception in paragraphs (f)(2)(iii)(B), (f)(3)(ii)(A), or (f)(7) of Rule 15c2-11;

5. There is current and publicly available information (consistent with Rule 15c2-11(b)) about the issuer;
6. The issuer is a bank or a bank holding company that reports information to the Federal Financial Institutions Examination Council or a credit union that files call reports with the National Credit Union Association (“NCUA”); or
7. The issuer of the subject security is an asset-backed issuer covered by the 2011 no-action position from the Division of Corporation Finance regarding its reporting requirements in respect of its outstanding asset-backed securities.⁷

In addition, the Staff stated that it will not recommend enforcement action against a broker-dealer that publishes or submits quotations, including continuous quotations, in a quotation medium, for any fixed-income security if the broker-dealer reasonably has determined that the fixed-income security is covered foreign sovereign debt or a debt security guaranteed by a foreign government.

While the SEC has not backed off of its position that Rule 15c2-11 applies to fixed-income securities as a general matter, with this final no-action letter, the SEC has, in large measure, alleviated the adverse effects of that position.

⁷ Letter from Steven Hearne, Special Counsel, Division of Corporation Finance, SEC (Jan. 6, 2011), available at <https://www.sec.gov/divisions/corpfin/cf-noaction/2011/asf010611-15d.htm>

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