

December 6, 2024

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

Rule 15c2-11 Requires Broker-Dealers to Review Certain Information About an Issuer Before Quoting Securities in the OTC Market

No-Action Letter Extends Existing Relief for Fixed Income Securities Indefinitely

SUMMARY

On November 22, 2024, the Division of Trading and Markets of the Securities and Exchange Commission issued a no-action letter providing relief from the requirements of Rule 15c2-11 under the Securities Exchange Act of 1934 to fixed income securities that meet certain criteria. Rule 15c2-11 requires broker-dealers to make current and publicly available information about the issuer and its security accessible to investors before a broker-dealer can provide price quotations in the over-the-counter market. The SEC had previously provided exemptive relief from Rule 15c2-11 for fixed income securities offered and sold in reliance on Rule 144A under the Securities Act of 1933. The relief under the no-action letter has the effect of extending the current practice involving fixed income securities indefinitely.

BACKGROUND

Rule 15c2-11 was adopted in 1971 to prevent fraud and manipulation in the over-the-counter (“OTC”) market by requiring brokers or dealers (collectively, “broker-dealers”) to review certain specified information about an issuer before initiating or resuming a quotation for securities in the OTC market.¹

Amendments to Rule 15c2-11. In 2020, the Securities and Exchange Commission (the “SEC”) adopted amendments to Rule 15c2-11 (the “Amended Rule”) requiring certain issuer information to be current and “publicly available”² for broker-dealers to publish quotes on issuer’s securities.³ While historically the focus of Rule 15c2-11 had been on quotations for thinly traded and small capitalization equity securities for which

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there was little publicly available information, the SEC made clear following the adoption of the 2020 amendments that the SEC interpreted Rule 15c2-11 to apply to fixed income securities as well as equity securities. The implications of this interpretation were most significant to issuers of fixed income securities that are not registrants under the Securities Exchange Act of 1934 (the “Exchange Act”) nor otherwise required to publicly provide current financial and other information in the manner contemplated in Rule 15c2-11.

Because broker-dealers were only permitted to publish quotations in circumstances where the required information was publicly available, broker-dealers were faced with a significant problem when seeking to publish quotations for fixed income securities. In particular, issuers of many fixed income securities offered and sold pursuant to Rule 144A under the Securities Act of 1933 (“Rule 144A Debt Securities”) do not produce the information required by the Amended Rule and therefore would have been required to significantly expand the information they make public or risk reduced liquidity and limitations on price transparency on its outstanding fixed income securities.

Temporary No-Action Relief. Following the issuance of two no-action letters by the Division of Trading and Markets of the SEC in 2021⁴ and due to concerns that the market for Rule 144A Debt Securities would face disruption, in 2022, the Division of Trading and Markets issued a further no-action letter (the “2022 No-Action Letter”) granting an extension until January 4, 2025 to comply with the Amended Rule.⁵

Exemptive Relief Order for Rule 144A Debt Securities. On October 30, 2023, the SEC issued an order (the “Exemptive Relief Order”) providing exemptive relief from the requirements of the Amended Rule with respect to Rule 144A Debt Securities.⁶ The Exemptive Relief Order acknowledged that Rule 144A Debt Securities are limited to resales to sophisticated investors that are able to obtain certain basic financial information regarding an issuer’s business and that Rule 144A requires that any prospective purchaser of Rule 144A Debt Securities has the right to obtain from the issuer reasonably current financial information. Accordingly, the SEC determined that the availability of such information to prospective purchasers upon request serves the same purpose of investor protection as intended in the Amended Rule.

2024 NO-ACTION LETTER

The November 22, 2024 no-action letter (the “2024 No-Action Letter”) provides indefinite relief from the Amended Rule for broker-dealers that publish or submit quotations, including continuous quotations, for fixed income securities in a quotation medium if the broker-dealer has reasonably determined that the fixed income security or its issuer meets one of the following listed criteria:⁷

- the issuer of the fixed income security also has a class of securities listed on a U.S. national securities exchange;
- the issuer is subject to Exchange Act reporting 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);

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- the issuer of the fixed income security has a class of equity securities that is exempt from registration pursuant to Rule 12g3-2(b) under the Exchange Act (i.e., it is a foreign private issuer that maintains a listing of equity securities in its primary trading market outside the United States and makes its local disclosure documents in English available electronically to the public);
- the fixed income security is issued by an issuer where a qualified interdealer quotation system 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 security of the issuer that is eligible for an exception in paragraphs (f)(2)(iii)(B), (f)(3)(ii)(A), or (f)(7) of Rule 15c2-11;
- there is current and publicly available information (consistent with Rule 15c2-11(b)) about the issuer of the subject security;
- the issuer of the fixed income security is a bank as defined in Section 3(a)(6) of the Exchange Act, a bank holding company, or a credit union regulated by the National Credit Union Association (“NCUA”) that reports information to the Federal Financial Institutions Examination Council or files call reports with the NCUA; or
- 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.

The 2024 No Action Letter also applies to any fixed income security that the broker-dealer reasonably has determined is foreign sovereign debt or a debt security guaranteed by a foreign government.

The listed criteria are largely consistent with those provided in the 2022 No-Action Letter. However, the 2024 No-Action Letter also covers “the fixed income securities of a wholly owned subsidiary of a company (1) for which the applicable Rule 15c2-11(b) information is current and publicly available and (2) whose guarantee of such securities of the wholly owned subsidiary is full and unconditional.”⁸

KEY IMPLICATIONS

The 2024 No-Action Letter serves to extend the current practice under the 2022 No-Action Letter indefinitely, without imposing additional obligations on broker-dealers. In particular, the 2024 No-Action Letter provides assurance that compliance with the informational requirements under the Amended Rule is not required for fixed income securities and provides comfort to the broker-dealers intending to publish quotations for such securities.

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ENDNOTES

- 1 Final Rule, *Initiation or Resumption of Quotations by a Broker or Dealer Who Lacks Certain Information*, SEC Release No. 34-9310 (Sept. 13, 1971), available at https://archives.federalregister.gov/issue_slice/1971/9/18/18639-18643.pdf#page=3.
- 2 Rule 15c2-11(e)(5) defines “publicly available” to mean “available on EDGAR; on the website of a state or federal agency, a qualified interdealer quotation system, a registered national securities association, an issuer, or a registered broker or dealer; or through an electronic information delivery system that is generally available to the public in the primary trading Market of a foreign private issuer as defined in § 240.3b-4 of this chapter; *Provided, however, that publicly available shall mean where access is not restricted by user name, password, fees, or other restraints.*”
- 3 See Final Rule, *Publication or Submission of Quotations Without Specified Information*, SEC Release No. 34-89891 (Sept. 16, 2020), available at <https://www.federalregister.gov/documents/2020/10/27/2020-20980/publication-or-submission-of-quotations-without-specified-information>.
- 4 See SEC No-Action Letter, *Amended Rule 15c2-11 in relation to Fixed Income Securities* (Dec. 16, 2021), available at <https://www.sec.gov/files/fixed-income-rule-15c2-11-nal-finra-121621.pdf>; SEC No-Action Letter, *Amended Rule 15c2-11 in relation to Fixed Income Securities* (Sept. 24, 2021), available at <https://www.sec.gov/files/rule-15c2-11-fixed-income-securities-092421.pdf>.
- 5 SEC No-Action Letter, *Amended Rule 15c2-11 in relation to Fixed Income Securities* (Nov. 30, 2022), available at <https://www.sec.gov/files/fixed-income-rule-15c2-11-nal-finra-113022.pdf>.
- 6 Exemptive Relief Order, *Order Granting Broker-Dealers Exemptive Relief, Pursuant to Section 36(a) and Rule 15c2-11(g) Under the Securities Exchange Act of 1934, From Rule 15c2-11 for Fixed-Income Securities Sold in Compliance With the Safe Harbor of Rule 144A Under the Securities Act of 1933*, SEC Release No. 34-98819 (Oct. 30, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-11-02/pdf/2023-24245.pdf>.
- 7 SEC No-Action Letter, *Amended Rule 15c2-11 in Relation to Fixed Income Securities* (Nov. 22, 2024), available at <https://www.sec.gov/files/investment/no-action/fixed-income-rule-15c2-11-no-action-letter-finra-112224.pdf>.
- 8 *Id.*

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