



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 16, 2021

Ms. Racquel Russell
Senior Vice President and
Director of Capital Markets Policy
Office of General Counsel
Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006

Re: Amended Rule 15c2-11 in Relation to Fixed Income Securities

Dear Ms. Russell:

On September 24, 2021, the staff of the Division of Trading and Markets issued a no-action letter stating that the staff would not recommend enforcement action to the Securities and Exchange Commission (“Commission”) under the amendments to Rule 15c2-11¹ (the “Amended Rule”) under the Securities Exchange Act of 1934 (“Exchange Act”) until January 3, 2022, for quotations of fixed income securities published by brokers or dealers in quotation mediums, in order to allow for an orderly and good faith transition into compliance with the Amended Rule.²

In response to requests from industry representatives that have indicated, through telephonic meetings with Commission staff, they need additional time beyond January 3, 2022 to complete the operational and systems changes necessary to comply with the Amended Rule for fixed income securities, the staff will not recommend enforcement action to the Commission under the Amended Rule for brokers or dealers that publish or

¹ 17 CFR 240.15c2-11 (the “Rule”). All terms from Rule 15c2-11 that are used in this letter have the same meanings as in the Rule. For example, “current” and “publicly available” are defined terms in paragraphs (e)(2) and (e)(5) of Rule 15c2-11.

² See Letter from Josephine Tao, Assistant Director, Office of Trading Practices, Division of Trading and Markets to Racquel Russell, Senior Vice President and Director of Capital Markets Policy, Office of the General Counsel, FINRA (Sept. 24, 2021) (Temporary Staff No-action Letter Regarding Rule 15c2-11 and Fixed Income Securities) at: <https://www.sec.gov/files/rule-15c2-11-fixed-income--securities-092421.pdf>.

submit quotations, including continuous quotations,³ in a quotation medium, for fixed income securities if the broker or dealer has determined that:

- *Phase 1* – the fixed income security or its issuer meets one of the criteria in Appendix A, or that there is current and publicly available financial information (consistent with Rule 15c2-11(b)) about the issuer. Phase 1 will be in place for a one-year period (from January 3, 2022 until, and including, January 3, 2023).
- *Phase 2* – the fixed income security or its issuer meets one of the criteria in Appendix B, or there is current and publicly available financial information (consistent with Rule 15c2-11(b)) about the issuer. Fixed income securities sold pursuant to Rule 144A that do not otherwise meet the criteria in Appendix B would no longer qualify for Phase 2 unless the broker or dealer determines that there is current and publicly available information (consistent with Rule 15c2-11(b)) about the issuer. Phase 2 will be in place for a one-year period (from January 4, 2023 until, and including, January 4, 2024).
- *Phase 3* – the fixed income security qualifies for Phase 2 and: (1) the fixed income security is foreign sovereign debt or a debt security guaranteed by a foreign government; or (2) there is a website link, on the quotation medium on which the security is being quoted, directly to the current and publicly available information about the issuer (consistent with Rule 15c2-11(b)), provided that the broker or dealer has determined at least on an annual basis that the website link and its underlying information is current (“Phase 3”). Phase 3 commences at the expiration of Phase 2 (on or after January 5, 2024).

Rule 15c2-11 governs the publication or submission of quotations for securities⁴ in a quotation medium other than on a national securities exchange. Since 1971, Rule 15c2-11 has applied to the publication or submission of quotations for any security (a

³ We understand that fixed income securities are often quoted on quotation mediums rather than on interdealer quotation systems. Rule 15c2-11 applies to any broker or dealer that publishes or submits quotations in a quotation medium. “Quotation medium” is defined in Rule 15c2-11(e)(8) as “any device that is used by brokers or dealers to make known to others their interest in any security.” Brokers or dealers that publish or submit quotations in a quotation medium that is an “interdealer quotation system” (“IDQS”), defined as a system of general circulation that regularly disseminates quotations of “identified brokers or dealers,” may become eligible for the piggybacking exception of Rule 15c2-11(f)(3) (*see* subparagraphs (e)(3) and (e)(8)). The piggyback exception allows brokers or dealers to publish or submit continuous quotations without complying with the information review requirements before publishing or submitting each quotation. The piggyback exception is not available for quotations in a quotation medium that is not an IDQS (i.e., does not identify brokers or dealers) and, thus, continuous quotations are generally not permitted in such quotation mediums. The staff would not recommend enforcement action if brokers or dealers quoted certain fixed income securities without complying with the information review requirements for each such quotation (upon determining eligibility for each Phase in accordance with this letter).

⁴ As explained in the Temporary Staff No-action Letter Regarding Rule 15c2-11 and Fixed Income Securities (September 24, 2021), the recent amendments to Rule 15c2-11 did not alter the types of securities covered by the Rule.

defined term that has and continues to include fixed income securities⁵), except “exempted securities”⁶ and the Rule has excepted municipal securities since 1976.⁷ The Commission also has stated that Rule 15c2-11 applies to fixed income securities.⁸

Following adoption of the amendments on September 16, 2020, certain market participants began requesting additional time to comply with the Rule. The amendments to Rule 15c2-11 are designed to modernize the Rule and to enhance investor protection by requiring that current and publicly available issuer information be accessible to investors. Accordingly, the phase-in approach outlined above should allow for brokers or dealers that publish or submit quotations for fixed income securities in a quotation medium to achieve the goals of Rule 15c2-11.

This Staff position⁹ concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of statutory or regulatory provisions of the federal securities laws.¹⁰ Furthermore, this no-action position does not apply to the anti-fraud and anti-manipulation provisions of the Exchange Act, including without

⁵ See, e.g., *Publication or Submission of Quotations Without Specified Information*, Exchange Act Release No. 68124 (Feb. 17, 1998); 63 FR 9661, 9669 (Feb. 25, 1998) (stating that Rule 15c2-11 covers debt securities but recognizing that brokers or dealers may not have focused on this aspect of the Rule).

⁶ See Section 3(a)(12)(A) of the Exchange Act (definition of “exempted securities”). For example, “any security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940” is an exempted security under Section 3(a)(12)(A)(v) of the Exchange Act and, as such, Rule 15c2-11 would not be applicable.

⁷ See Rule 15c2-11(f)(4). See also *Regulation of Municipal Securities Professionals Transactions in Municipal Securities*, Exchange Act Rel. No. 12468 (May 20, 1976); 41 FR 22820, 22821 (June 7, 1976) (Final Rule).

⁸ See, e.g., *Publication or Submission of Quotations Without Specified Information*, Exchange Act Release No. 41110 (March 2, 1999), 64 FR 11124 (March 8, 1999) (re-proposing amendments to Rule 15c2-11 amendments proposed in 1998). The Commission, in stating that it agreed that applying Rule 15c2-11 to the securities of larger issuers, more liquid securities, and certain fixed-income debt securities was not directly related to microcap fraud concerns, proposed to exclude debt securities, non-participatory preferred stock, and investment grade asset-backed securities.

In connection with the earlier 1998 proposed amendments to Rule 15c2-11, the Commission stated, “the proposed amendments apply to all securities covered by Rule 15c2-11, not just microcap securities. . . [t]he Commission believes that the scope of the amendments is appropriate to preserve the general integrity of quotations in the over-the-counter market and to foster greater information transparency in a marketplace where issuers often are relatively unknown and their securities are traded infrequently.” See *Publication or Submission of Quotations Without Specified Information*, Exchange Act Release No. 39670 (Feb. 17, 1998), 63 FR 9661, 9669 (Feb. 25, 1998).

⁹ This letter represents the views of the staff of the Division of Trading and Markets. It is not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved its content. This letter, like all staff statements, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

¹⁰ This letter does not address any FINRA rules applicable to the OTC market.

limitation Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Broker-dealers must continue to comply with these and other applicable provisions of the federal securities laws.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. J. Tao', with a stylized flourish at the end.

Josephine J. Tao
Assistant Director

APPENDIX A

For Phase 1, the broker or dealer publishing or submitting the quotation for the fixed income security reasonably has determined:

- The issuer of the fixed income security also has a class of securities that is listed on a national securities exchange;
- The issuer is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act and has filed all required periodic reports under section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports);
- 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;
- The fixed income security is foreign sovereign debt or a debt security guaranteed by a foreign government;
- 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))¹¹ 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 subject security is a corporate fixed income security or asset-backed security offered pursuant to Rule 144A under the Securities Act, and the broker or dealer reasonably believes that the issuer of the subject security will provide the information specified in Rule 144A(d)(4), prior to a Rule 144A transaction, upon request.

¹¹ For purposes of this no-action letter, staff would consider the Information Requirement discussed in Section II.D. of the Rule 144A Adopting Release, Release No. 33-6862 (Apr. 30, 1990), 55 FR 17933, 17939, to be consistent with Rule 15c2-11(b).

APPENDIX B

For Phases 2 and 3, the broker or dealer publishing or submitting the quotation for the fixed income security reasonably has determined:

- The issuer of the fixed income security has a class of securities that is listed on a national securities exchange;
- The issuer is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act and has filed all required periodic reports under section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports);
- 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;
- The fixed income security is foreign sovereign debt or a debt security guaranteed by a foreign government;
- 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))¹² about the issuer of the fixed income security; or
- 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 NCUA that reports information to the Federal Financial Institutions Examination Council or files call reports with the NCUA.

¹² For purposes of this no-action letter, staff would consider the Information Requirement discussed in Section II.D. of the Rule 144A Adopting Release, Release No. 33-6862 (Apr. 30, 1990), 55 FR 17933, 17939, to be consistent with Rule 15c2-11(b).