

SUBMITTED ELECTRONICALLY

September 23, 2021

Ms. Vanessa Countryman
Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Request for Exemptive Relief for Fixed-Income Securities Pursuant to Rule 15c2-11(g)

Dear Ms. Countryman:

The ABA Securities Association¹ (ABASA) hereby requests exemptive relief as it applies to fixed-income securities according to the U.S. Securities and Exchange Commission's ("Commission" or "SEC") Rule 15c2-11 ("the Rule"), including recent amendments² to enhance publicly available information for securities quoted in the over-the-counter ("OTC") securities markets. The Rule, as currently written, is inclusive of both equity and fixed-income securities, only expressly exempting municipal securities. While the Rule has never been applied to fixed-income securities since its inception in 1971, the Commission's statements in the amendments to the Rule have made market participants aware that the Rule technically applies to most fixed-income securities and that compliance with the Rule could undermine the dissemination of quotes for bonds. This outcome, which does not appear to have been anticipated when the amendments were written, would have detrimental consequences to the fixed-income markets. As such, we request that the Commission provide express exemptive relief for those fixed-income products or bonds that fall or may fall within the scope of the amended Rule.

Background

Focused primarily OTC equity market fraud, Rule 15c2-11 governs information requirements related to the publication of quotes by broker-dealers, including submission of quotes into qualified interdealer quotation systems. In 2020, the Rule was amended to add publicly available requirements for certain issuer information and modify and reduce reliance upon the "piggyback exception". The Commission has stated that the amendments are designed to modernize the

¹ The ABA Securities Association (ABASA) is a separately chartered trade association and nonprofit subsidiary of the American Bankers Association whose mission is to represent the interests of banks underwriting and dealing in securities, proprietary mutual funds, and derivatives before Congress and the federal government.

² The amendments were effective as of December 20, 2020, with a compliance date of September 26, 2021

Rule, promote investor protection, and curb incidents of fraud and manipulation.³ It is evident that at the time the amendments were adopted, the SEC staff was concentrated on the integrity and availability of OTC equity market quotations:

“These *retail investor-focused* improvements to Rule 15c2-11 are long overdue. The technological advancements that have taken place since the rule was last amended enable us to require that information in the OTC market be more timely, enabling investors to make better informed investment decisions, and reducing fraud in these markets where *retail presence is significant* and, unfortunately, *pump-and-dump and other frauds are too common.*”⁴

Prior to the Commission’s amendments, the Rule required broker-dealers initiating quotations to obtain and review issuer information, with the aim of making the information for issuers available publicly to all market participants. Indeed, over the past several years, fixed-income markets (*i.e.*, Agency Securities, ABS/MBS, Corporate Bonds, and Treasury Bonds) have continued to evolve and become more efficient as electronic trading has provided greater liquidity and transparency. However, it is well established and accepted that, with respect to securities issuance and trading, the fixed-income markets are vastly different and distinct from the equity markets, and to our knowledge never have been, implicated in the concerns expressed by the SEC in promulgating the amendments or the original rule. In particular, there have been no reported instances of fraudulent or deceptive practices involving fixed-income securities in the OTC securities markets. In addition, it is clear from the Commission’s economic analysis of the impact of the Rule, as amended, and the data used by the Commission for that analysis, that the Commission only contemplated the applicability of the Rule to OTC equity securities, not fixed income markets in which the overwhelming majority of securities are not exchanged-listed.⁵ Analysis of these markets would have required significantly more (and different) data, notably and deliberately absent from the adopting release for the amendments.⁶

Request for Exemptive Relief

³ [17 CFR Parts 230 and 240](#)

⁴ Securities and Exchange Commission Press Release, “SEC Adopts Amendments to Enhance Retail Investor Protections and Modernize the Rule Governing Quotations for Over-the-Counter Securities,” www.sec.gov/news/press-release/2020-212. Commissioner Roisman’s comments clearly and explicitly refer to the OTC equity market, seemingly using the terms OTC market and OTC equity market interchangeably, and are also clearly and explicitly focused on the “pump and dump” protections afforded to retail investors. <https://www.sec.gov/news/public-statement/roisman-statement-adoption-amendments-rule-15c2-11> The focus on retail investor protection is also clear in Commissioner Peirce’s comments.

⁵ See Section VI.B. of the adopting release. <https://www.sec.gov/rules/final/2020/33-10842.pdf>

⁶ See footnote 640 of the adopting release. “The Commission believes that OTC Markets Group data are reasonably representative of all OTC quoting and trading activity in the U.S.” The OTC market data used by the Commission consists entirely of OTC equity market data.

The prospective application of the Rule to fixed-income securities markets thus has created unnecessary industry concern and confusion. Until recently, industry participants were given no reason to believe that the Rule would be applied to fixed-income products.⁷ While the amended Rule, like the current rule, specifically excludes municipal bonds, it does not explicitly exclude any other type of bond or fixed-income product, whether convertible or non-convertible, exempted or non-exempted. Application of the amended Rule to the fixed-income markets will lead to increased compliance costs for dealers and reduced liquidity for affected bonds, which in turn will lead to increased transaction costs for investors and higher funding costs for affected issuers. Ultimately, this could lead to broker-dealers being discouraged from providing quotes for OTC fixed income securities that currently benefit from active secondary markets. Such a result also could negatively impact corporate issuers who are reliant on robust secondary trading markets to procure capital and credit. Given these adverse results, exemptive relief would serve the public interest and is the only appropriate response.

Anticipating that there may be instances where exemptive relief would be necessary or appropriate, the Rule includes a paragraph G of the Rule⁸ and Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. Chapter 2B), stating:

“... the Commission may grant, conditionally, or unconditionally, an exemption from the Rule to the extent such exemption ‘is necessary or appropriate in the public interest, and is consistent with the protection of investors.’”

Conclusion

In light of the interpretive uncertainties surrounding the application of the Rule, and that exemptive relief for all fixed-income products would be appropriate and in the public interest, we urge the Commission to provide exemptive relief across all fixed-income securities.⁹ While SEC staff is considering our exemption request, we request further that the Commission refrain from applying and enforcing the provisions of the amended Rule with respect to fixed-income securities.

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⁷ We are not aware of any enforcement of the Rule by the Commission in the context of fixed income securities. In addition, it is worth noting that FINRA’s Rule 6432, which is intended to standardize and help ensure compliance with Rule 15c2-11, explicitly applies only to equity securities.

⁸ 17 CFR Parts 230 and 240.

⁹ Fixed-income securities that include corporate bonds, U.S. treasuries and agency securities, foreign sovereign debt, asset-backed securities, and others that would inadvertently be deemed “in scope” based on a literal reading of the Rule.

Thank you for the consideration of our views. If you have any questions, please do not hesitate to contact the undersigned at 202-663-5273 (junderwood@aba.com).

Sincerely,



Justin M. Underwood
Executive Director

CC: The Honorable Gary Gensler, Chair, SEC
The Honorable Hester M. Peirce, Commissioner, SEC
The Honorable Elad L. Roisman, Commissioner, SEC
The Honorable Allison Herren Lee, Commissioner, SEC
The Honorable Caroline A. Crenshaw, Commissioner, SEC