

SEC Again Delays Broker-Dealer Quotation Rules for Fixed Income Securities

Just before an already extended, phased implementation deadline for the SEC's final rule, [Publication or Submission of Quotations Without Specified Information](#), the SEC extended the deadline once again for fixed income securities, most notably 144A debt securities. On November 30, 2022, a [no-action](#) letter noted that the SEC will not bring enforcement actions under the rule for brokers and dealers that publish or submit quotations for fixed income securities that meet certain criteria until January 4, 2025.

Background

Rule 15c2-11 was issued in 1971 and governs the publication or submission of quotations for securities in a quotation medium other than on a national securities exchange (NSE). This is commonly referred to as the penny stock rule. On September 16, 2020, the SEC issued a [final rule](#) amending Rule 15c2-11 to modernize requirements to better reflect technology advancements. The rule also required broker-dealers to ensure that certain issuer documents and information are current and publicly available before initiating or resuming quotation for the issuers' securities in the over-the-counter market. The effective date was originally December 28, 2020.

Rule 15c2-11 had traditionally only applied to equity securities and the SEC had no previous history of enforcement actions related to fixed income securities. A [September 2021 staff interpretation](#) surprised market participants by indicating that the rule and updates have always applied to fixed income securities. This interpretation was inconsistent with long-standing practice and issued without an opportunity for public comment.

“Although the text of the rule always has encompassed more than just equity securities, there appears to have been limited, if any, application of the rule to fixed income markets prior to the Commission’s 2020 adopting release. Nothing in the adopting release suggests that the Commission considered the application of these rules to the fixed-income markets.”

Commissioner Hester M. Peirce

Fixed income products are generally not exchange traded and vastly outnumber equity securities. Even where information is publicly available, such as for registered transactions or publicly traded issuers, there is no existing compliance infrastructure for broker-dealers to rely on.

Market participants requested additional time to complete operational and system changes necessary for fixed income securities and a [December 2021 no-action letter](#) established the following time frames for limited exceptions from application of the final rule and set forth criteria thresholds:

- Phase 1 – The fixed income security or its issuer meets certain criteria, or there is current and publicly available financial information about the issuer. Phase 1 will be in place from January 3, 2022 until January 3, 2023.

- Phase 2 – The fixed income security or its issuer meets certain criteria, or there is current and publicly available financial information about the issuer. **Fixed income securities sold pursuant to Rule 144A that do not otherwise meet certain criteria would no longer qualify for Phase 2 unless the broker or dealer determines there is current and publicly available information about the issuer.** Phase 2 will be in place from January 4, 2023 until January 4, 2024.
- Phase 3 – The fixed income security qualifies for Phase 2 and:
 - The fixed income security is foreign sovereign debt or a debt security guaranteed by a foreign government, or
 - 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, 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 commences at the expiration of Phase 2, on or after January 5, 2024.

This no-action letter fundamentally conflicts with Rule 144A, which are offerings where information is specifically not required by SEC rules to be public.

November 2022 No-Action Letter

On November 30, 2022, the SEC issued a no-action letter that withdraws the December 2021 letter and delays enforcement actions until January 4, 2025 for broker-dealers that publish or submit quotes for fixed income securities if the broker-dealer has determined the fixed income security or its issuer meets one of the criteria in the [Appendix](#) or if there is current and publicly available financial information about the issuer. Foreign sovereign debt or a debt security guaranteed by a foreign government also is covered by the no-action letter.

This will provide nonreporting issuers and U.S. broker-dealers more time to implement compliance systems to meet the demands of the rule.

Conclusion

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Appendix

November 2022 No-Action Letter Exemptions

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 NSE listed.
- The issuer is subject to the requirement to file reports pursuant to Section 13 or §15(d) of the Exchange Act and has filed all required periodic reports under §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 issued by an issuer where a qualified interdealer quotation system makes a publicly available determination 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.
- There is current and publicly available information about the issuer of the subject security.
- The issuer of the fixed income security is a bank, 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.
- 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.