

BROKER-DEALER

SEC Proposes to Amend Quotation Rule for OTC Securities

The Securities and Exchange Commission (SEC) has proposed to amend Rule 15c2-11, which governs the publication and submission of quotations by a broker-dealer in the over-the-counter (OTC) market. The proposed amendments would prohibit a broker-dealer from publishing quotes in a security not listed on a national securities exchange unless documents and information about the issuer are current and publicly available.

In addition, the proposed amendments would limit certain existing exceptions under Rule 15c2-11, including the piggyback exception and the unsolicited quotation exception, to circumstances in which documents and information about the issuer are current and publicly available. The proposed amendments also would limit the piggyback exception to circumstances in which, among other things, there are two-sided quotations that are published in an interdealer quotation system at specified prices.

The proposed amendments also would set forth new exceptions from the general requirements of Rule 15c2-11 under circumstances in which there is less concern regarding fraud and manipulation, including, for example, quotations for securities of well-capitalized issuers with actively traded securities. Similarly, the proposed amendments would provide an exception for quotations in which a qualified interdealer quotation system conducts a review of the issuer and makes known to others the quotation of a broker-dealer relying on the exception.

The proposed rule, including a complete description of the proposed changes to Rule 15c2-11, is available [here](#).

FINRA Amends Rules 2210 and 2241 to Conform to FAIR Act

The Financial Industry Regulatory Authority (FINRA) has amended its Rule 2210 (Communications with the Public) and Rule 2241 (Research Analysts and Research Reports) to conform to the requirements of the Fair Access to Investment Research Act of 2017 (FAIR Act) and subsequent rules adopted by the Securities and Exchange Commission (SEC). As background, the FAIR Act and related SEC rules establish a safe harbor under which unaffiliated broker-dealers may publish and distribute research reports on “covered investment funds” without the publication or distribution being deemed an offer of securities. For these purposes, the term “covered investment funds” generally includes registered investment companies, business development companies, and certain commodity- and currency-based trusts and funds.

The FAIR Act and related SEC rules also provide that a self-regulatory organization (SRO) cannot prohibit a member from publishing or distributing a covered investment fund research report solely because the member is participating in a registered offering or distribution of securities of a covered investment fund. Likewise, an SRO cannot prohibit a member from participating in a registered offering or other distribution of such securities solely because the member has published or distributed a covered investment fund research report about the fund or its securities.

To conform to these new requirements, FINRA has amended Rule 2210 to create a filing exclusion for covered investment fund research reports that qualify for the safe harbor described above. In addition, FINRA amended

Rule 2241 to eliminate the quiet period restrictions on publishing a research report or making a public appearance concerning a covered investment fund that is the subject of a report.

More information is available [here](#).

FINANCIAL MARKETS

See “ESMA Updates EMIR Implementation Q&As” in the EU Developments section.

See “ESMA Consults on Technical Advice on FRANDT Terms for Providing Clearing Services” in the EU Developments section.

See “EMIR Consults on MAR” in the EU Developments section.

EU DEVELOPMENTS

ESMA Updates EMIR Implementation Q&As

On October 2, the European Securities and Markets Authority (ESMA) published an updated version of its questions and answers document (Q&As) on the implementation of the European Market Infrastructure Regulation (EMIR).

The amendments include:

- A new procedure for financial counterparties (FCs) and non-financial counterparties (NFCs) to provide notice that they exceed or no longer exceed clearing thresholds;
- An amended question on whether a counterparty is responsible for assessing whether its counterparty is above or below the clearing threshold;
- An amended question on how a counterparty should determine the status of entities not established in the European Union (EU);
- An amended question adding an exception for when transactions within the same legal entity should be reported;
- An amended question adding further detail on position level reporting; and
- A new question to clarify how counterparties should report derivatives based on the new Euro short-term rate (€STR) and other derivatives based on reference rates that are not explicitly included in Regulation (EU) 2017/105.

The updated Q&A is available [here](#).

ESMA Consults on Technical Advice on FRANDT Terms for Providing Clearing Services

On October 3, the European Securities and Markets Authority (ESMA) published a Consultation Paper (the Paper) on Draft Technical Advice on the provision of clearing services on a fair, reasonable, non-discriminatory and transparent (FRANDT) basis pursuant to the European Market Infrastructure Regulation (EMIR).

Following the effectiveness of Regulation 2019/834 amending EMIR (EMIR Refit) on June 17, ESMA has been tasked with ensuring that the EMIR objectives are reached in a proportionate, efficient and effective manner. This Paper forms part of their “targeted action” on access to central clearing.

The focus of the Paper is the requirements on clearing members and clients to offer and provide clearing services on a FRANDT basis. To this end, the Paper suggests a number of obligations on firms that provide clearing services, including public disclosures, harmonization of certain elements of client agreements and ensuring that similarly situated clients receive services on similar commercial terms.

The deadline for comments on the Paper is December 2.

The Paper is available [here](#).

ESMA Consults on MAR

On October 3, the European Securities and Markets Authority (ESMA) published a Consultation Paper (the Paper) as part of the on-going review of the Market Abuse Regulation (MAR).

In the Paper, ESMA is consulting on a wide range of issues, including:

- The possible inclusion of spot foreign exchange contracts within the scope of MAR;
- The definition and delayed disclosure of inside information in different cases;
- The appropriateness of the trading prohibition and insider lists for persons discharging managerial responsibilities (PDMRs);
- A possible cross-market order book surveillance framework;
- Cum/ex and multiple withholding tax reclaim schemes; and
- Cross-border enforcement of sanctions.

The deadline for comments on the Paper is November 29.

The Paper is available [here](#).

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EU DEVELOPMENTS

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