

## **Securities Regulation Daily Wrap Up, BROKER-DEALERS—SEC reproposal would require more brokers to join FINRA, (Jul 29, 2022)**

By [Anne Sherry, J.D.](#)

The rule amendments would replace the current proprietary trading exemption with a narrower exemption, bringing within FINRA's oversight "potentially dozens of broker-dealers" engaging in cross-market trading.

The SEC is proposing to bring more broker-dealers under FINRA oversight by withdrawing the exemption that allows certain registered dealers to engage in unlimited proprietary trading without triggering the FINRA membership requirement. Chair Gary Gensler [said](#) that the overhaul of the 40-year-old proprietary trading exemption "would modernize and improve market oversight for regulators ... helping to protect investors and maintain fair, orderly, and efficient markets" (*Exemption for Certain Exchange Members*, [Release No. 34-95388](#), July 29, 2022).

Exchange Act Section 15(b)(8) requires any SEC-registered broker or dealer to become a member of a national securities association (uniquely, FINRA) unless the broker or dealer effects securities transactions solely on an exchange where it is a member. Rule 15b9-1 exempts certain proprietary trading dealers as a means of addressing what was, at the time of its adoption, limited proprietary trading activity ancillary to dealers' floor-based business. The SEC [observes](#) that the securities markets have since evolved towards mostly electronic trading and that some Commission-registered dealers engage in significant proprietary, off-member-exchange trading, including in U.S. Treasuries.

The firms that rely on the proprietary trading exemption are not subject to FINRA rules, making SRO oversight of their cross-exchange trading "less certain and consistent," the SEC states. These firms are also not required to report their Treasury securities transactions to FINRA's TRACE system.

The proposal would replace the exemption with more narrow exemptions from the FINRA membership requirement. Under the proposal, a broker or dealer would be exempt from FINRA membership only if it is a member of a national securities exchange, it carries no customer accounts, and its cross-exchange transactions either (1) result solely from orders routed by an exchange of which it is a member to comply with Rule 611 of Regulation NMS or the Options Order Protection and Locked/Crossed Market Plan; or (2) are solely for the purpose of executing the stock leg of a stock-option order.

The public comment period will remain open for 60 days following publication of the proposing release on the SEC's website or 30 days following publication of the proposing release in the *Federal Register*, whichever period is longer.

This is [Release No. 34-95388](#).

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