

Proposed Changes to Definition of Dealer and Government Securities Dealer



The Securities and Exchange Commission proposed new rules that would require market participants, such as proprietary (or principal) trading firms, that assume certain dealer-like roles and/or engage in certain levels of buying and selling government securities to register with the SEC, become a member of a self-regulatory organization (“SRO”), and comply with federal securities laws and regulatory obligations.

New Rules 3a5-4 and 3a44-2 under the Securities Exchange Act of 1934 would further define the phrase “as a part of a regular business” in Sections 3(a)(5) and 3(a)(44) of the Act to identify certain activities that would cause persons engaging in such activities to be “dealers” or “government securities dealers” and subject to the registration requirements of Sections 15 and 15C of the Act, respectively.

- Rules 3a5-4 and 3a44-2 would set forth identical *qualitative* standards designed to identify market participants who assume certain dealer-like roles, in particular those who act as liquidity providers in the markets.
- Rule 3a44-2 would set forth a *quantitative* standard under which a person engaging in certain specified levels of activity would be deemed to be buying and selling government securities “as a part of a regular business,” regardless of whether it meets any of the proposed rule’s qualitative standards. No presumption shall arise that a person is not a dealer solely because that person does not engage in the activities identified in the proposed rules. The proposed rules do not seek to address all circumstances under which a person may be acting as a dealer or government securities dealer or to replace otherwise applicable interpretations and precedent.
- The proposed rules would exclude any person that has or controls total assets of less than \$50 million. The proposed rules would further exclude an investment company registered under the Investment Company Act of 1940.

Why This Matters

Advancements in electronic trading across securities markets have led to the emergence of certain market participants that play an increasingly significant liquidity providing role in overall trading and market activity – a role traditionally performed by entities registered with the Commission. However, these market participants – despite engaging in liquidity providing activities similar to those traditionally performed by either “dealers” or “government securities dealers” as defined under Exchange Act Sections 3(a)(5) and 3(a)(44), respectively, and despite their significant share of market volume – may not be registered as either dealers or government securities dealers. As a result, investors and the markets lack important protections that result from an entity’s registration and regulation under the

Exchange Act. In addition, obligations and regulatory oversight that promote market resiliency and stability are not being consistently applied to entities engaged in similar activities.

Consistent regulatory oversight of persons engaging in the types of activities contemplated by the proposed rules will support transparency, market integrity, and resiliency across the U.S. Treasury market and other securities markets.

How This Rule Applies

If the proposed rules are finalized, any market participant that engages in activities as described in the rules would be a “dealer” or “government securities dealer” and, absent an exception or exemption, required to:

- Register with the Commission under Section 15(a) or Section 15C, as applicable;
 - Become a member of an SRO; and
 - Comply with federal securities laws and regulatory obligations, including as applicable, SEC, SRO, and Treasury rules and requirements.
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Additional Information:

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.