FACT SHEET

Final Rules: Changes to Definition of Dealer and Government Securities Dealer

On Feb. 6, 2024, the Securities and Exchange Commission adopted final rules that require market participants that take on significant liquidity-providing roles to register with the SEC, become members of a self-regulatory organization ("SRO"), and comply with federal securities laws and regulatory obligations. The Commission proposed the rules on March 28, 2022. The public comment file is available online.

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

- Rules 3a5-4 and 3a44-2 set forth parallel *qualitative* standards designed to identify market participants who take on significant liquidity-providing roles.
- No presumption shall arise that a person is not a dealer or government securities dealer solely because that person does not engage in the activities identified in the final rules. The final 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 final rules exclude any person that has or controls total assets of less than $50 million. The final rules further exclude investment companies registered under the Investment Company Act of 1940, as well as central banks, sovereign entities, and international financial institutions (as defined in the final rules).

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 that has traditionally been performed by entities regulated as dealers or government securities dealers under Sections 3(a)(5) and 3(a)(44) of the Exchange Act, respectively. However, some of these market participants, despite engaging in liquidity-providing activities, and despite their significant share of market volume, are not 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 final rules will support market resiliency and stability and enhance investor protection across the U.S. Treasury market and other securities markets.

How The Rules Apply

Under the final rules, any person that engages in any of the following activities as part of a regular business would be a "dealer" or "government securities dealer:"

- Regularly expressing trading interest that is at or near the best available prices on both sides of the market for the same security and that is communicated and represented in a way that makes it accessible to other market participants; or

- Earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interest.

Absent an exception or exemption, these market participants would be 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 and applicable SRO and Treasury rules and requirements.

No presumption shall arise that a person is not a dealer or government securities dealer solely because that person does not engage in the activities identified in the final rules.

What's Next

The final rules will become effective 60 days following the date of publication of the adopting release in the Federal Register. The compliance date for the final rules will be one year after the effective date of the final rules.