Securities Regulation Daily Wrap Up, BROKER-DEALERS—Trading and Markets Division grants no-action relief for amended Rule 15c2-11, (Sept. 27, 2021)

Securities Regulation Daily Wrap Up

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The no-action relief applies to the firms that had informed the SEC that they may not be able to comply with the amended rule by September 28, 2021.

No-action relief granted by the SEC's Division of Trading and Markets will provide assurances that the Division will not recommend the Commission bring an enforcement action against firms that fail to comply with portions of amended Exchange Act Rule 15c2-11 by the compliance date of September 28, 2021. Specifically, the Division will not recommend such enforcement actions regarding fixed income securities until January 3, 2022, according to the staff letter issued to the Financial Industry Regulatory Authority, Inc. in response to telephonic requests from industry participants.

Current issuer information. As explained in a press release, the Commission amended Exchange Act Rule 15c2-11 about one year ago to bring the then-30-year-old rule into compliance with modern communications systems regarding the ability of broker-dealers to maintain quoted markets absent current information on an issuer's securities. The Commission noted that broker-dealers previously could use exceptions in the rule to maintain quotes despite the fact that the issuer's information was out of date.

Although the no-action relief suggests a halt to certain enforcement actions related to firms' updating their systems, the no-action relief explicitly states that it is not a legal conclusion about the applicability of federal securities laws and that the relief does not apply to the Exchange Act's antifraud and antimanipulation provisions.

Commissioner Peirce statement. Commissioner Hester Peirce agreed that SEC staff properly extended time-limited no-action relief, but she also suggested that the three- month reprieve was insufficient and that the Commission should reconsider its amendments to Rule 15c2-11 in the context of fixed income securities, which she said had not been an historic focus of the rule, even though the rule's language includes fixed income securities.

"I acknowledge that I thought of the rule's application only in the OTC equity context. I ought to have solicited comment on the rule's broader application," said Peirce. "However, my failure to do so, the failure of the Commission to highlight this issue for active consideration by the public, and the failure of the relevant market participants to identify the issue during the rulemaking process, is not a reason for us now to move forward robotically and apply the rule to fixed income markets without proper deliberation."

According to Peirce, a single question on whether to except non-equity securities from the rule had been included in the proposing release, but that question did not produce any relevant public comments.

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