

Statement

Statement Regarding Exemption from National Securities Association Membership



Chair Gary Gensler

Aug. 23, 2023

Today, the Commission is considering final amendments to a rule last meaningfully updated 47 years ago related to which broker-dealers must register with a national securities association, such as the Financial Industry Regulatory Authority (FINRA). I support this adoption because I believe it will modernize the rule to enhance cross-market and off-exchange oversight for some of the most active participants in the capital markets.

Today's adoption will amend Rule 15b9-1, a rule that the Commission expanded in 1976. So much has changed since 1976: 60 percent of Americans alive today weren't even born at the time.^[1] We've since had eight presidents and six Rocky movies. Speaking of the Rockies, 1976 also was when my cousin and I, each of us identical twins, on a boyhood teenage dare, rode our bikes all the way from Oregon to Virginia, crossing the Rocky Mountains multiple times.^[2]

First adopted in the 1960s, Rule 15b9-1 was designed to permit a limited number of exchange floor members to not become members of the National Association of Securities Dealers (NASD), FINRA's predecessor. The exemption applied to broker-dealers who typically were registered with a single exchange where they operated a floor business and met certain other criteria. For example, the current rule exempts broker-dealers from registering with a national association if they were individual floor brokers on one exchange, a situation which was common in the 1960s and '70s.

Our markets have changed drastically since then. As fast as Rocky is on the speed bag, high-frequency trading is far faster. Today, many broker-dealers conduct significant cross-exchange or off-exchange activity. Yet, some of today's broker-dealers continue to rely on an exemption from national securities association registration that's older than the cell phone era. This has led to a regulatory gap whereby a number of firms that have cross-market, monthly trading volume valued in the hundreds of billions of dollars are exempt from national securities association oversight.^[3]

Thus, these amendments update and narrow the circumstances in which broker-dealers do not need to register with a national securities association. National securities association membership will help enhance robust and consistent oversight, particularly with regard to cross-market and off-exchange oversight.

Required national securities association membership for many of these currently exempt firms will help enhance robust and consistent oversight. For example, firms joining FINRA will lead to greater transparency and strengthened oversight in the Treasury markets, given FINRA's requirement that members report post-trade activity in these markets.

This benefits investors and fair, orderly, and efficient markets.

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[1] See U.S. Census, "Age and Sex Composition in the United States: 2021," *available at* <https://www.census.gov/data/tables/2021/demo/age-and-sex/2021-age-sex-composition.html>.

[2] See Adventure Cycling Association, "Bikecentennial: Summer of 1976" (Feb. 15, 2019), *available at* <https://www.adventurecycling.org/blog/bikecentennial-summer-of-1976/>.

[3] "Of the estimated 64 broker-dealers that were exchange members but not FINRA members as of April 2023, 45 initiated orders in listed equities in April 2023 that were executed on or off an exchange. These firms' April 2023 off-exchange listed equities dollar volume executed was approximately \$405 billion, which was approximately 5.6% of total off-exchange volume of listed equities executed that month." ... "In April 2023, the Commission estimates that five broker-dealers that were exchange members but not FINRA members accounted for approximately \$302 billion in U.S. Treasury securities volume executed on covered ATs that was reported to TRACE, which was approximately 2.65% of total U.S Treasury securities volume traded in April 2023 that was reported to TRACE."