

MEMO# 35512

November 21, 2023

SEC Issues Exemptive Order for Rule 144A Fixed Income Securities from Exchange Act Rule 15c2-11

[35512]

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TO: Fixed-Income Advisory Committee SUBJECTS: Fixed Income Securities
Investment Advisers
Portfolio Oversight
Risk Oversight
Trading and Markets RE: SEC Issues Exemptive Order for Rule 144A Fixed Income Securities from Exchange Act Rule 15c2-11

On October 30, the SEC issued an order granting exemptive relief to Rule 144A fixed income securities from SEC Rule 15c2-11.[\[1\]](#) The rule requires broker-dealers to collect, record, and review for currency, accuracy, reliability and "public availability" certain information related to securities before publishing or submitting quotations for them on a quotation medium. The SEC justified the issuance of this exemptive relief for Rule 144A fixed income securities on the basis that the information that a prospective purchaser of those securities can obtain serves the same purpose of investor protection as the information specified under Rule 15c2-11.[\[2\]](#)

In adopting amendments to Rule 15c2-11 in 2020, the SEC had expressed its view that the rule applies not only to OTC equities (as had long been understood), but also to fixed income securities. Since that time, ICI and other industry participants have maintained that the SEC should not apply the rule to the fixed income markets without first adapting its requirements, particularly for Rule 144A fixed income securities. The SEC's Division of Trading and Markets had issued (and most recently extended in November 2022) time-limited no-action relief for different categories of fixed income securities.[\[3\]](#) Prior to this grant of exemptive relief, this relief for Rule 144A fixed income securities was scheduled to expire in January 2025. ICI had advocated the SEC to not apply Rule 15c2-11 to fixed income securities generally, particularly to Rule 144A fixed income securities, based on concerns that doing so would lead to abrupt reductions in liquidity and transparency in this market.[\[4\]](#)

The exemptive order emphasizes that the relief applies only to Rule 144A fixed income securities, which can be sold only to "qualified institutional investors" (QIIs) (or purchasers

that the seller or a person acting on its behalf reasonably believes are QIIs.^[5] Given the limited application of this exemptive relief, the time-limited SEC staff no-action relief from November 2022 continues to apply to other fixed income securities. These include, for example, securities issued pursuant to Regulation S or Regulation D under the Securities Act of 1933.

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Notes

[1] Order Granting Broker-Dealers Exemptive Relief, Pursuant to Section 36(a) and Rule 15c2-11(g) under the Securities Exchange Act of 1934, from Rule 15c2-11 for Fixed-Income Securities Sold in Compliance with the Safe Harbor of Rule 144A under the Securities Act of 1933, Exchange Act Release No. 34-98819 (Oct. 30, 2023), 88 Fed. Reg. 75343 (Nov. 2, 2023) ("SEC Rule 15c2-11 Exemptive Order"), available at <https://www.govinfo.gov/content/pkg/FR-2023-11-02/pdf/2023-24245.pdf>.

[2] Rule 144A provides a prospective purchaser the right to obtain from an issuer reasonably current financial information about the issuer. SEC Rule 144A(d)(4).

[3] Amended Rule 15c2-11 in Relation to Fixed Income Securities (Nov. 30, 2022) (extension of December 2021 SEC staff no-action relief), available at <https://www.sec.gov/files/fixed-income-rule-15c2-11-nal-finra-113022.pdf>; see ICI Memorandum No. 34512 (Dec. 8, 2022), available at <https://www.ici.org/memo34512>. Amended Rule 15c2-11 in Relation to Fixed Income Securities (Dec. 16, 2021) (extension of September 2021 SEC staff no-action relief), available at <https://www.sec.gov/files/fixed-income-rule-15c2-11-nal-finra-121621.pdf>. Amended Rule 15c2-11 in Relation to Fixed Income Securities (Sept. 24, 2021), available at <https://www.sec.gov/files/rule-15c2-11-fixed-income-securities-092421.pdf>.

[4] Prior to the extension of the SEC staff no-action relief, ICI submitted a letter in October 2022 to SEC Chair Gary Gensler on the applicability of Rule 15c2-11 to fixed income securities, particularly to Rule 144A debt securities. See ICI Memorandum No. 34325 (Oct. 26, 2022), <https://www.ici.org/memo34325>. Among other things, ICI's letter provided data highlighting the size and importance of Rule 144A debt securities holdings to high-yield fund portfolios, in particular, those issued by private companies. ICI also previously joined several industry associations last fall in submitting a letter requesting the SEC to not apply the rule to fixed income securities without first adapting its requirements. See ICI Memorandum No. 33787 (Sept. 24, 2021), <https://www.ici.org/memo33787>.

[5] QIIs, except for registered dealers, must in the aggregate own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with such a QII. SEC Rule 144A(a)(1).

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