

January 13, 2022

Via Electronic Mail

Hon. Gary Gensler, Chair  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Publication or Submission of Quotations Without Specified Information (File No. S7-14-19)<sup>1</sup>

Dear Chair Gensler:

The Healthy Markets Association<sup>2</sup> writes to offer suggestions to consider as part of the Commission's efforts regarding Rule 15c2-11.

For decades, the Commission has recognized that quotations play an integral role in indicating securities' values.<sup>3</sup> Typically, public quotations help drive more fair, orderly, and efficient markets. However, if those quotations are provided without the benefit of important information about the securities or issuers, those quotations may create significant misallocations of capital, or even facilitate market abuses. Put another way, by preventing quotations in circumstances where there is little or no information about the securities or issuers, the Commission could curtail trading at fundamentally "inaccurate" prices and fraud.

Since its adoption in 1971,<sup>4</sup> Rule 15c2-11 has sought to reduce fraud and information asymmetries by requiring broker-dealers seeking to quote securities in a medium other than a securities exchange to review information about issuers of those securities and have a reasonable basis for believing that information is reliable and accurate.<sup>5</sup>

Historically, however, the Rule has allowed brokers who reviewed accurate information once to continue to rely upon that long after the information has become stale, and

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<sup>1</sup> *Publication or Submission of Quotations Without Specified Information*, SEC, 85 Fed. Reg. 68124 (Oct. 27, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-10-27/pdf/2020-20980.pdf>.

<sup>2</sup> Healthy Markets Association ("HMA") is a not-for-profit member organization of public pension funds, investment advisers, broker-dealers, exchanges, and market data firms focused on reducing conflicts of interest and improving the transparency, efficiency, and fairness of the capital markets. To learn more about HMA or our members, please see our website at <http://healthymarkets.org/about>.

<sup>3</sup> See, e.g., *Fact Sheet: Reproposal of Amendments to Rule 15c2-11*, SEC, Feb. 19, 1999, available at <https://www.sec.gov/news/extra/micro15c.txt> ("1999 Fact Sheet").

<sup>4</sup> *Initiation or Resumption of Quotations by a Broker or Dealer Who Lacks Certain Information*, SEC, Exch. Act Rel. No. 9310 (Sept. 13, 1971), 36 Fed. Reg. 18641 (Sept. 18, 1971), available at [https://archives.federalregister.gov/issue\\_slice/1971/9/18/18639-18643.pdf#page=3](https://archives.federalregister.gov/issue_slice/1971/9/18/18639-18643.pdf#page=3).

<sup>5</sup> See generally 17 CFR § 240.15c2-11.

allowed brokers to “piggyback” off of other brokers’ determinations.<sup>6</sup> As market speculation has grown in quoted securities for which little reliable, public information is available, the Commission has repeatedly considered revisions to these exemptions.

In March 2019, then-SEC Chairman Jay Clayton and Division of Trading and Markets Director Brett Redfearn gave joint remarks at Fordham University in which they raised a number of important market structure reforms.<sup>7</sup> One of the proposals they outlined was to update Rule 15c2-11 to make it more difficult for retail investors to trade OTC securities that didn’t have any current public information. Essentially, if a security isn’t quoted, then it would be harder for retail customers to buy it, which makes it harder for the retail customer to be victimized.

Six months after Director Redfearn first publicly outlined it, in September 2019, the SEC unanimously proposed revising the quotation rule and the exemptions.<sup>8</sup> The Proposal explicitly attempted to address situations where “there is no or limited current public information available about certain issuers of quoted OTC securities,” so as to “allow investors or other market participants to make informed decisions regarding company fundamentals.”<sup>9</sup>

Over 150 comments were received,<sup>10</sup> with the many objecting to the Proposal, including what appeared to be a large swath of day traders. Other objections came from the Security Traders Association<sup>11</sup> and high-frequency trading firm Global Trading Systems, LLC.<sup>12</sup> The North American Securities Administrators Association supported the Proposal,<sup>13</sup> while Better Markets<sup>14</sup> asserted that it did not go nearly far enough to combat abuses.

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<sup>6</sup> See, e.g., 1999 Fact Sheet.

<sup>7</sup> Remarks of Hon. Jay Clayton and Brett Redfearn, *Equity Market Structure 2019: Looking Back & Moving Forward*, SEC, Mar. 8, 2019, available at <https://www.sec.gov/news/speech/clayton-redfearn-equity-market-structure-2019>.

<sup>8</sup> *Publication or Submission of Quotations Without Specified Information*, SEC, 84 Fed. Reg. 58206 (Oct. 30, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-10-30/pdf/2019-21260.pdf> (the “Proposal”).

<sup>9</sup> 84 Fed. Reg. at 58207.

<sup>10</sup> *Comments on Proposed Rule and Concept Release: Publication or Submission of Quotations Without Specified Information*, SEC, Exch. Act Rel. No. 34-87115, available at <https://www.sec.gov/comments/s7-14-19/s71419.htm> (last viewed Jan. 4, 2022).

<sup>11</sup> Letter from James Toes and Chris Halverson, Security Traders Association, to Vanessa Countryman, SEC, Jan. 23, 2020, available at <https://www.sec.gov/comments/s7-14-19/s71419-6700895-206039.pdf>.

<sup>12</sup> Letter from Ari Rubenstein, Global Trading Systems, LLC, to Vanessa Countryman, SEC, Feb. 26, 2020, available at <https://www.sec.gov/comments/s7-14-19/s71419-6879161-210717.pdf>.

<sup>13</sup> Letter from Christopher Gerold, North American Securities Administrators Association, to Vanessa Countryman, SEC, Dec. 27, 2019, available at <https://www.sec.gov/comments/s7-14-19/s71419-6587836-201868.pdf>.

<sup>14</sup> Letter from Dennis Kelleher and Levon Bagramian, Better Markets, to Vanessa Countryman, SEC, Dec. 30, 2019, available at <https://www.sec.gov/comments/s7-14-19/s71419-6587882-201855.pdf> (“Better Markets Letter”).

Importantly, the vast majority of the public discussion surrounding the Proposal was about information and trading in equity securities. Combatting “pump and dump” schemes was clearly a major driving factor in the Commission’s decision to make the Proposal.<sup>15</sup>

However, while we often think about the need for accurate information in the context of valuing equities, the same is true for fixed income securities. However, in fixed income securities, the availability of information may be significantly lower than for equities. This may be particularly true for corporate bonds that may be offered and sold pursuant to the Commission’s numerous regulatory exemptions.

Oddly, the application of Rule 15c2-11 to fixed income securities was not materially addressed by the Commission in the Proposal. For example, the phrase “fixed income” appears nowhere in the Proposal, and only one question (number 87) appears to directly address the application to debt securities.<sup>16</sup> Similarly, commenters generally did not raise material concerns with the application of the changes (or Rule 15c2-11 more generally) to fixed income securities.

As Commissioner Peirce explained in September of last year, “The equity-focused nature of the discussion during the rulemaking process and the limited application of the pre-amendment rule in the fixed-income context meant little attention was focused on the possible broad application of the amended rule to fixed-income securities.”<sup>17</sup>

Without significant comment on the application of the revised Rule on fixed income securities, on September 16, 2020, the Commission unanimously adopted revisions to Rule 15c2-11.<sup>18</sup> Those reforms generally went into effect on September 28, 2020.

To be clear, the plain language of Rule 15c2-11 since its adoption over fifty years ago has been to all securities, not just equity securities. But it wasn’t generally applied beyond equity securities.

As market participants began to more fully appreciate how the Rule may be applied to fixed income securities, they have sought guidance from Commission staff on how to proceed. Some market participants, for example, have expressed concerns that the new Rule could negatively impact liquidity in certain fixed income securities, such as foreign issuers and some US corporate issuers. Similarly, some market participants have

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<sup>15</sup> A version of the word “pump” appears no less than thirty times in the Proposal. 84 Fed. Reg. 58206; See also, Better Markets Letter, at 2.

<sup>16</sup> 84 Fed. Reg. at 58230. However, the Proposal does seek input on how to address the value of convertible securities in applying the rule.

<sup>17</sup> Remarks of Hon. Hester Peirce, SEC, Sept. 24, 2021, available at <https://www.sec.gov/news/public-statement/peirce-nal-rule-15c2-11-2021-09-24>.

<sup>18</sup> *Publication or Submission of Quotations Without Specified Information*, SEC, 85 Fed. Reg. 68124 (Oct. 27, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-10-27/pdf/2020-20980.pdf>.

asserted that there is currently not clear whether or how to apply the Rule to structured product securities (e.g asset-backed securities) and security-based swaps.

On September 16, 2021, just days before the revised Rule 15c2-11 was to be implemented, the staff of the Division of Trading and Markets issued a “no action” letter in which the staff committed to not recommend enforcement action for quotations published by the broker-dealer in fixed income securities.<sup>19</sup> That relief was, however, time-limited and expired on January 3, 2022.

On December 16, 2021, after extensive negotiations with the securities industry, the staff of the Division of Trading and Markets released a second, more detailed, phased “no-action” letter (“Second No-Action Letter”).<sup>20</sup> The Second No-Action Letter plainly seeks to strike a workable balance between the objectives of Rule 15c2-11 and the evolution of the fixed income marketplace.

Rather than the blanket relief for all fixed income assets as the initial no-action letter had done, the Second No Action Letter scoped the relief so as to ease burdens on brokers providing quotations on securities for which important information is readily available, and those for which it is not.

Through January 3, 2023, the staff would not recommend enforcement action if a broker-dealer determined that:

- The issuer of the fixed income security also has a class of securities that is listed on a national securities exchange;
- The issuer is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act and has filed all required periodic reports under section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports);
- The issuer of the fixed income security has a class of equity securities that is exempt from registration pursuant to Rule 12g3-2(b) under the Exchange Act;
- The fixed income security is foreign sovereign debt or a debt security guaranteed by a foreign government;
- The fixed income security is issued by an issuer where a qualified interdealer quotation system makes a publicly-available determination (in accordance with the requirements in Rule 15c2-11(a)(3)) that there is current and publicly available information about the issuer for any class of security of the issuer that is eligible for an exception in paragraphs (f)(2)(iii)(B), (f)(3)(ii)(A), or (f)(7) of Rule 15c2-11;

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<sup>19</sup> Letter from Josephine Tao, SEC, to Racquel Russell, FINRA, Sept. 16, 2021, *available at* <https://www.sec.gov/files/rule-15c2-11-fixed-income-securities-092421.pdf>.

<sup>20</sup> Letter from Josephine Tao, SEC, to Racquel Russell, FINRA, Dec. 16, 2021, *available at* <https://www.sec.gov/files/fixed-income-rule-15c2-11-nal-finra-121621.pdf>.

- There is current and publicly available information (consistent with Rule 15c2-11(b)) about the issuer of the subject security;
- The issuer of the fixed income security is a bank as defined in section 3(a)(6) of the Exchange Act, a bank holding company, or a credit union regulated by the National Credit Union Association (“NCUA”) that reports information to the Federal Financial Institutions Examination Council or files call reports with the NCUA; or
- The subject security is a corporate fixed income security or asset-backed security offered pursuant to Rule 144A under the Securities Act, and the broker or dealer reasonably believes that the issuer of the subject security will provide the information specified in Rule 144A(d)(4), prior to a Rule 144A transaction, upon request.<sup>21</sup>

Then, for the period from January 4, 2023 through January 3, 2024, the staff slightly tightened the no-action relief, removing the exemption for “a corporate fixed income security or asset-backed security offered pursuant to Rule 144A under the Securities Act, and the broker or dealer reasonably believes that the issuer of the subject security will provide the information specified in Rule 144A(d)(4), prior to a Rule 144A transaction, upon request.”<sup>22</sup> As the Second No-Action Letter makes explicit, “Fixed income securities sold pursuant to Rule 144A that do not otherwise meet the criteria in Appendix B would no longer qualify for Phase 2 unless the broker or dealer determines that there is current and publicly available information (consistent with Rule 15c2-11(b)) about the issuer.”<sup>23</sup>

Thereafter, beginning on January 4, 2024, the Second No-Action Letter would apply to only (1) foreign sovereign debt or a debt security guaranteed by a foreign government; or (2) securities for which the broker-dealer has determined on at least an annual basis that the issuer of the security has a website with current, publicly available information that is consistent with Rule 15c2-11(b).

These criteria appear to be reasonably designed to ensure that potential investors would have access to essential information about the securities or their issuers, which remains the essential purpose of Rule 15c2-11. We support that objective.

With respect to corporate debt securities in particular, the criteria outlined in the Second No-Action Letter would appear to permit brokers to readily provide quotations so long as the issuers publicly provide basic financial information about themselves. However, there are some corporate debt issuers who are not otherwise public companies. As a result, unless those issuers agree to provide more information to the public in the near future, the application of Rule 15c2-11 may halt quotations of those securities, thereby inhibiting market liquidity. However, this potentially negative result would be entirely avoidable by the issuer – as it could provide sufficient information to comply with the Rule.

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<sup>21</sup> Second No-Action Letter, Appendix A.

<sup>22</sup> Second No-Action Letter, Appendix B.

<sup>23</sup> Second No-Action Letter, at 2.

Further, with respect to securities offered and sold pursuant to Rule 144A in particular, we expect the Commission to revise the offering exemption over the next two years, and hope that such revisions would lead to enhanced disclosures, which would lead to greater ultimate disclosures for investors. If that occurs, we would urge the Commission to revisit the parameters of the Second No-Action Letter to ensure it still fulfills the Rule's purposes.

While the Second No-Action Letter provides important relief and clarifications, we nevertheless believe further action by the Commission or staff is appropriate.

As an initial matter, the Second No-Action Letter did not resolve several key questions from firms seeking to apply Rule 15c2-11 to fixed income securities. For example, given the variability of how different trading platforms for fixed income securities operate, further guidance (by rulemaking or guidance) should address what constitutes a "quotation" in a "medium." How are brokers' communications to customers of their inventories and price levels to be viewed?

Additionally, the information fields necessary to fulfill the requirements for providing quotations, as articulated by the Commission for several decades, are oriented towards issuers of equity securities, not fixed income products. For a securitized product, who or what should count as an "issuer," and how is that relevant? Put simply, additional clarity from the Commission or staff is necessary to guide market participants' evaluations.

Lastly, while we assume this is obvious, market participants are rapidly developing systems that are intended to provide the appropriate reviews for compliance.<sup>24</sup> That process, which appears to have started for some firms late last year, is not currently fully operational across all market participants, and is subject to the still outstanding operational and regulatory uncertainties. We therefore respectfully request the Commission consider market participants' good faith efforts to develop systems to implement compliance in a timely manner, and avoid bringing actions for enforcement in such circumstances.

## **Conclusion**

HMA applauds the Commission's efforts to ensure that investors and the public have access to essential information about securities, including fixed income securities. We further applaud the Commission and staff for providing much-needed clarity on how Rule 15c2-11 may be applied to fixed income securities. However, given the lack of clear focus by the Commission and market participants during the recent related notice and comment rulemaking process, it is clear that many practical issues remain unaddressed and questions from market participants about how to comply remain unresolved.

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<sup>24</sup> See, e.g., Wesley Bray, *Bloomberg launches broker-dealer quotation transparency product for fixed income*, *The Trade*, Jan. 11, 2022, available at <https://www.thetrade.com/bloomberg-launches-broker-dealer-quotation-transparency-product-for-fixed-income/>.

We urge you to address these concerns quickly, either through additional Commission or staff guidance, or through a formal rulemaking.

Thank you for your consideration. Please feel free to have your staff contact me by email at [ty@healthymarkets.org](mailto:ty@healthymarkets.org) or telephone at (202) 909-6138 for any follow up.

Sincerely,



Tyler Gellasch  
Executive Director

Cc: Hon. Hester Peirce, Commissioner  
Hon. Elad Roisman, Commissioner  
Hon. Allison Herren Lee, Commissioner  
Hon. Caroline Crenshaw, Commissioner  
Haoxiang Zhu, Director, Division of Trading and Markets  
Renee Jones, Director, Division of Corporation Finance