Bond Case Briefs

Municipal Finance Law Since 1971

SEC Exempts Brokers and Dealers from Rule 15c2-11 Review and Recordkeeping Requirements for Quotations on 144A Fixed Income Securities: Cadwalader

On October 30, 2023, the Securities and Exchange Commission issued an order (the "Order") that grants exemptive relief under Rule 15c2-11 under the Securities Exchange Act of 1934 to brokers and dealers that publish quotations with respect to fixed income securities sold in compliance with Rule 144A. This order is the latest attempt to quell the fixed income market distress created in 2021, when the SEC staff took the position that Rule 15c2-11 is applicable to quotations published with respect to fixed income securities. During the five decade period prior to that point, the markets, as well as FINRA, understood the rule to apply only in the context of the equity securities markets.

The first attempt to calm the market came on December 16, 2021, when the SEC staff issued a no-action letter making clear that the rule does not apply to exempted securities (such as securities issued by Freddie Mac and Fannie Mae), municipal securities and SEC-registered fixed income securities and providing a phased-in implementation schedule for other types of fixed income securities. Under that phased-in approach, quotations relating to Rule 144A securities could be published without regard to Rule 15c2-11 until January 3, 2023. However, beginning on that date, brokers and dealers seeking to publish quotations with respect to Rule 144A securities would have been required to assure that certain "current" and "publicly available" information was available with respect to those securities.1 In response to market participant concerns regarding the need to make that sort of information publicly available, the staff of the SEC staff granted no-action relief pursuant to a letter dated November 22, 2022 (the "November Letter") for Rule 144A securities, among other securities However, that no-action relief was set to expire on January 4, 2025.

All of the relief provided to date includes asset-backed securities sold in compliance with Rule 144A. The Order does not appear to affect the November Letter to the extent it relates to non-Rule 144A fixed income securities. We also note that the Order by its terms is subject to modification or revocation at any time by the SEC "but will be in effect unless and until the Commission determines that modification or revocation is necessary or appropriate in furtherance of the purposes of the Exchange Act, or the relief is otherwise superseded by future Commission action such as a rulemaking addressing the Rule 144A safe harbor or issues pertaining to the fixed income markets more generally."

1 Subsequent to January 4, 2024, hyperlinks relating to the required information also would have been required.

Cadwalader Wickersham & Taft LLP – Michael S. Gambro and Maurine Bartlett

November 01, 2023

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com