



Marcia E. Asquith

Executive Vice President,
Board and External Relations

Direct: (202) 728-8831
Fax: (202) 728-8300

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Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposal Regarding the Publication or Submission of Quotations Without Specified Information (Release No. 34-87115; File No. S7-14-19)

Dear Ms. Countryman:

The Financial Industry Regulatory Authority, Inc. ("FINRA") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC's" or "Commission's") proposed amendments to Rule 15c2-11 under the Securities Exchange Act of 1934 (the "Rule" or "Rule 15c2-11").¹ FINRA commends the Commission's efforts to modernize Rule 15c2-11 and refine its operation to better protect investors through facilitating the increased availability of issuer information for securities quoted over-the-counter. FINRA strongly supports the SEC's proposal, and recommends that the Commission: (1) make limited refinements and clarifications to the proposal; and (2) provide renewed guidance to the industry regarding the importance of the Rule 15c2-11 information review process – particularly with respect to "red flags" regarding a subject issuer and security, as discussed below.

I. Background

Rule 15c2-11 serves a critical market integrity and investor protection function in the unlisted (over-the-counter) marketplace.² Adopted in 1971, the rule generally prohibits a broker-dealer from publishing any quotation for a security not listed or traded on a national securities exchange in a quotation medium unless it has gathered and reviewed specified information. In addition, a broker-dealer must have a reasonable basis under the circumstances for believing that such information is accurate in all material respects and obtained from a reliable source.³ The information requirements applicable to a security under Rule 15c2-11 differ depending on the characteristics of the issuer and the security being quoted.

¹ See Securities Exchange Act Release No. 87115 (September 25, 2019); 84 FR 58206 (October 30, 2019) (Proposed Rule and Concept Release) ("Release" or "Proposal").

² See 17 CFR 240.15c2-11.

³ See Securities Exchange Act Release No. 9310 (September 13, 1971), 36 FR 18641 (September 18, 1971).

In 1990, FINRA (then NASD) adopted Rule 6432, which facilitates member compliance with Rule 15c2-11 by prescribing the method by which member firms must demonstrate to FINRA compliance with Rule 15c2-11 for most equity securities traded over-the-counter.⁴ Rule 6432 generally provides that a firm may not initiate or resume quotations in a non-exchange-listed security unless it makes a filing with FINRA in the form required by FINRA ("Form 211").⁵ Form 211, requires that members provide information regarding the subject issuer and security, the member's knowledge of and relationship with the issuer, and the member's intended quotation activities with respect to the security.

FINRA typically processes over 400 Form 211s per calendar year and, in 2019, processed 357 Form 211s. Upon receipt of a Form 211, FINRA staff reviews the information provided by the submitting firm. FINRA staff will notify the submitting firm and the relevant quotation medium once the Form 211 has been processed, or if the Form 211 submission is incomplete, will request additional information from the submitting firm.⁶ The member is not permitted to initiate or resume quotations in the subject security without such notification (unless the member can rely upon an exception to, or exemption from, Rule 15c2-11 to quote the security).

In 2017, FINRA adopted a new electronic Form 211, which replaced the previous paper form.⁷ The electronic Form 211 made the Form 211 submission and communication process more efficient. As was the case with the paper Form 211, the electronic Form 211 includes a general section (containing instructions and requesting that the member identify the quotation medium on which it intends to initiate quotations), as well as five additional sections covering (1) issuer and security information; (2) information required pursuant to Rule 15c2-11(a)(1), (a)(2), (a)(3), (a)(4) or (a)(5), as applicable; (3) information required pursuant to paragraphs (b)(1) through (b)(3) of Rule 15c2-11; (4) supplemental information; and (5) a certification. This certification requires the submitting firm to attest to FINRA that neither the firm nor its associated persons have accepted or will accept any payment or other consideration, directly or indirectly, from the issuer of the security to be quoted, or any affiliate or promoter thereof, for publishing a quotation or acting as market maker in the security to be quoted, or submitting an application in connection therewith, including the submission of the Form 211.⁸

As is the case under Rule 15c2-11, the Form 211 review process differs for different types of issuers depending on the characteristics of the issuer and the security being quoted.

⁴ See Securities Exchange Act Release No. 27968 (May 1, 1990), 55 FR 19132 (May 8, 1990) (Order Approving File No. SR-NASD-90-2).

⁵ For purposes of Rule 6432, the term "non-exchange-listed security" means any equity security, other than a Restricted Equity Security (defined in Rule 6420), that is not traded on any national securities exchange. See Rule 6432(e).

⁶ The Form 211 requests that the member identify the quotation medium on which it intends to initiate quotations.

⁷ See *Regulatory Notice* 17-26 (August 2017).

⁸ See *Regulatory Notice* 14-26 (June 2014). See also Rule 5250 (Payments for Market Making).

The review also may explore possible “red flags,” consistent with guidance provided by the SEC regarding the scope of the required review and information broker-dealers should consider when reviewing required information.⁹

II. SEC’s Proposed Amendments to Rule 15c2-11

A. *Overhaul of the Piggyback Exception*

The current “piggyback exception” of Rule 15c2-11(f)(3) generally permits members to quote a security without complying with the information review requirements of Rule 15c2-11 if the security has been the subject of continuous quotations, as specified in the Rule. Under its current formulation, a security may be quoted pursuant to the piggyback exception years after current information on the company issuing the security has ceased to be available, as long as there have been continuous quotations during that time period. This often can persist until an event such as a trading suspension or halt occurs that restricts quoting for more than four days.¹⁰

If a trading suspension or halt exceeds four days, members no longer may rely on the piggyback exception and must find an alternative means to comply with Rule 15c2-11 prior to resuming quotation activity in the security. In these cases, members would file a Form 211 with FINRA providing the information required by the Rule, which includes information regarding any recent SEC trading suspension. In the course of the Form 211 review process, FINRA staff typically explores with the submitting member its basis for believing that the submitted information is accurate and reliable, including in light of any trading suspension or halt in the security. For example, in some circumstances, the SEC may institute a trading suspension due to concerns regarding the accuracy of the information available in the marketplace regarding the issuer or regarding trading in the security.¹¹ In this way, the information gathering requirements of Rule 15c2-11 and the Form 211 review process can help prevent the immediate resumption of nefarious market activity that may harm retail investors. This scenario also serves to highlight the important role that members play in serving as a gatekeeper when they research an issuer

⁹ Specifically, the SEC guidance provides that “[a] red flag is information that under the circumstances signals that one or more of the required items of information may be materially inaccurate. We consider these red flags to be indications that should lead a broker-dealer to inquire whether it had a reasonable basis to believe that the issuer information is accurate in all material respects and that it was obtained from a reliable source.” See Securities Exchange Act Release No. 41110 (February 25, 1999), 64 FR 11124 (March 8, 1999) (File No. S7-5-99) (“1999 Release”). See also Release at 58239.

¹⁰ FINRA institutes and disseminates notice of a trading halt in an OTC equity security for the duration of any SEC trading suspension in the security. In addition to halting in accordance with SEC trading suspensions, FINRA may initiate a trading halt under Rule 6440 (Trading and Quotation Halt in OTC Equity Securities), which provides FINRA authority to halt quoting and trading in an OTC equity security under certain circumstances.

¹¹ See e.g., SEC Investor Bulletin “Trading Suspensions – What Happens When They End?,” dated March 4, 2019, available at https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_tradingsuspensions.

and determine whether to initiate quotations in specific securities, whether immediately following a halt or suspension or otherwise.

The Commission has proposed to condition the use of the piggyback exception on the public availability of current issuer information. FINRA strongly supports this aspect of the proposal and agrees with the SEC that, among other things, this condition would benefit retail investors, “who might not have the same level of access to information available to other market participants, such as those that may have a relationship with the issuer,”¹² and may “help alleviate concerns that limited or no information for certain issuers of quoted OTC securities exists or that such information is difficult for retail investors to find.”¹³ FINRA requests clarification on how often (e.g., semiannually) a member or qualified inter-dealer quotation system (“IDQS”) must confirm the continued public availability of current information under proposed paragraph (b)(5) for purposes of the piggyback exception. FINRA also requests clarification on whether any grace period applies once a member or qualified IDQS determines that the required information is no longer current and publically available (e.g., may the member discontinue quoting on the next business day rather than ceasing quotes intra-day?).

FINRA also supports the proposed condition preventing reliance on the piggyback exception for the securities of shell companies. The SEC proposes that “shell company” means any issuer, other than a business combination related shell company as defined in Rule 405 of Regulation C, or an asset-backed issuer, as defined in Item 1101(b) of Regulation AB, that has: (1) no or nominal operations; and (2) either (i) no or nominal assets, (ii) assets consisting solely of cash and cash equivalents, or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets. However, the SEC also notes that this limitation should not prohibit reliance on the piggyback exception for the securities of startup companies or companies with a limited operating history.

FINRA suggests that the SEC provide further guidance or examples of the types or attributes of companies that would meet the definition of “shell company,” as well as of non-shell companies with limited operations and cash, cash equivalents, or nominal or other assets. Helpful examples could discuss the duration of the issuer’s operating history, asset types and amounts, asset sources, and organizational history and structure. Additional guidance and examples may reduce the likelihood that different members arrive at different conclusions as to whether a company is a shell. In addition, given the fluidity of corporate operations, FINRA requests guidance as to how often a member or a qualified IDQS is expected to confirm that a piggyback eligible company is not a shell company. In addition, will there be a grace period for this determination, such that a member may appropriately continue to rely on the piggyback exception for a specified number of months if an issuer’s status as a shell company becomes unclear?

The Commission also proposes to limit the availability of the piggyback exception to securities that have been the subject of two-sided, priced quotations over the requisite rolling period. Thus, under the Proposal, one-sided or completely unpriced quotes may no longer

¹² See Release at 58213.

¹³ *Id.*

serve as the basis for meeting the frequency requirement of the piggyback exception. FINRA supports this aspect of the proposal, and agrees with the Commission's view that, "two-way priced quotations are appropriate to support broker-dealers' reliance on the piggyback exception (i.e., by entering priced quotations, the broker-dealer provides substantive market information concerning its view about the value of the security)."¹⁴ FINRA requests clarification as to whether any duration of a one-sided quotation, even if for a limited intra-day time period, would eliminate reliance on the piggyback exception.

The Commission requested comment on whether the piggyback exception should be available for the securities of issuers that have undergone reorganizations, major mergers and acquisitions, reverse mergers, or other significant restructuring that affects their business or management. FINRA notes that issuers may submit corporate actions to FINRA (such as those described above) pursuant to Rule 6490 (Processing of Company-Related Actions). In such cases, FINRA may determine, based on the facts and circumstances of the corporate action, that the existing symbol for a publicly traded security must be removed and a new symbol assigned (when the security of the new entity cannot fairly be represented by a symbol that was assigned to represent the security of the previous entity). In such cases, when the old symbol is removed, the reorganized entity does not inherit the predecessor's security's piggyback eligibility and a member must submit a new Form 211 to FINRA prior to quoting the security of the company that emerged from the corporate action. This scenario is illustrative of a circumstance today where piggyback eligibility may not continue following certain corporate actions.

B. Reliance on a National Securities Association or Qualified IDQS

The Proposal provides that, subject to certain conditions, members may rely on the determination of a national securities association or a qualified IDQS regarding the availability of certain exceptions – specifically, the piggyback, ADTV and asset test, exchange-traded, and municipal security exceptions. FINRA requests that the SEC confirm that it does not contemplate that the quoting member also should independently verify the availability of the exception (e.g., in the case of the piggyback exception, confirming that the issuer is not a shell company and that there is current information publicly available as required under the proposal). In addition, FINRA asks that the SEC clarify how often a national securities association or qualified IDQS must confirm the accuracy of its public determination regarding the availability of an exception (e.g., must the ADTV determination be confirmed each day?).

The Proposal provides that, to facilitate a broker-dealer's reliance on a qualified IDQS or national securities association, the qualified IDQS or national securities association would represent in a publicly available determination that it has reasonably designed written policies and procedures to determine whether proposed paragraph (b) information is current and publicly available, and that the conditions of an exception under proposed paragraph (f) are met. FINRA requests guidance as to how often a national securities association or qualified IDQS would be required to assess its policies and procedures.

In addition, to the extent that a national securities association's or qualified IDQS's policies and procedures are deficient (or where policies and procedures are adequate but are

¹⁴ See Release at 58221.

not being followed), FINRA requests guidance as to the SEC's expectations for any quotations relying on such entity's public determination – *e.g.*, must quotes be pulled down until a quoting member performed the required review or until the national securities association or qualified IDQS updated (or adhered to) its policies and procedures? Does the SEC's expectation differ depending on whether or not the conditions of an underlying exception are, in fact, met (but where the entity's policies and procedures are deficient)?

The Proposal also provides that a member may rely on the initial review of a qualified IDQS to initiate quotations in a security, subject to certain conditions. Under proposed paragraph (f)(7), a broker-dealer may rely on the review conducted by a qualified IDQS to initiate quotations in a security (other than a security issued by a shell company) if such qualified IDQS makes a publicly available determination of its compliance with the proposal's requirements and if the other conditions of the exception are met.¹⁵ Proposed paragraph (a)(2) sets forth the requirements for a qualified IDQS that displays the quotations of broker-dealers relying on its review as provided for under paragraph (f)(7), including that the qualified IDQS has performed the required informational review and has confirmed the public availability of the required current information. FINRA requests clarification on whether the review conducted by the qualified IDQS (together with meeting the other requirements in proposed paragraph (a)(2)) are sufficient for broker-dealer reliance under paragraph (f)(7) or whether the SEC also envisions that the qualified IDQS would submit a Form 211 to FINRA for some or all categories of securities?¹⁶

C. Information Requirements

Under the Proposal, the SEC provides that the term "publicly available" would mean available on EDGAR or on the website of a qualified IDQS, a registered national securities association, the issuer, or a registered broker-dealer, so long as access is not restricted by user name, password, fees, or other restraints. For purposes of issuers under the proposed (b)(4) category, FINRA requests that the SEC also include within the scope of the definition of the term "publicly available" information available through Canada's System for Electronic Document Analysis and Retrieval ("SEDAR") – a database providing access to most public securities documents and information filed by issuers with the thirteen provincial and territorial securities regulatory authorities in Canada.¹⁷ FINRA also recommends that the term "publicly available" include other similar foreign regulatory or exchange websites (so long as the required

¹⁵ See Proposed Rule 15c2-11(f)(7).

¹⁶ FINRA rules currently do not contemplate that a qualified IDQS would be required to submit a Form 211 to FINRA. To the extent that FINRA rules were amended to require a qualified IDQS to submit a Form 211 to FINRA, any public determination made by a qualified IDQS should not represent that FINRA has confirmed that the qualified IDQS has, in fact, complied with Rule 15c2-11 (as is the case today with the processing of Form 211s submitted by market makers).

In addition, as noted above, the Form 211 includes a certification attesting that the submitting member has not accepted and will not accept payments for market making, which includes the filing of a Form 211. This prohibition would apply to all members. See *supra* note 9.

¹⁷ See https://www.sedar.com/homepage_en.htm.

information is available in English and access is not restricted by user name, password, fees, or other restraints).

FINRA also recommends that the SEC amend proposed paragraph (b)(5) to include two additional items of information: (1) the number of freely tradeable securities; and (2) the names of predecessor companies over the prior five-year period (along with their state of incorporation and the CUSIP numbers of any equity securities issued by such predecessors). FINRA believes that the number of freely tradeable securities would be a useful item of information that should be part of proposed paragraph (b)(5). FINRA currently obtains this information from members as part of the Form 211 review process for catch-all issuers. As previously noted by the Commission, concentration of ownership of freely tradeable securities is a prominent feature of microcap fraud cases.¹⁸ FINRA believes that adding this item of information, together with information on large shareholders, would be useful to broker-dealers in identifying potential red flags in connection the review of a subject issuer.

Similarly, FINRA recommends that the Commission revise proposed paragraph (b)(5) to include additional information regarding an issuer's predecessors. Currently, Rule 15c2-11(a)(5)(i) requires the exact name of the issuer and its predecessor (if any), and the SEC proposes to retain this requirement. As the Commission notes in the Release, it is not uncommon for fraudulent schemes to involve companies that engage in certain types of reorganizations (e.g., reverse mergers).¹⁹ Frequent corporate reorganizations can be difficult for investors to keep track of. In addition, FINRA believes that companies sometimes undertake a corporate action deliberately to distance the company from its regulatory past. For these reasons, FINRA believes that identifying recent predecessors (over the prior five years), along with their state of incorporation and the CUSIP numbers of any equity securities issued by the predecessors, is a reasonable requirement that would benefit retail investors in the over-the-counter marketplace.

The Commission requested comment on whether proposed paragraph (b)(5) also should require the ticker symbol of the security being quoted. FINRA notes that it may not yet have assigned a ticker symbol for a security that is the subject of a Form 211 review. In such cases, FINRA would assign a ticker symbol at the end of the review once FINRA has processed the Form 211. Therefore, FINRA recommends that the SEC only require a ticker symbol under proposed paragraph (b)(5) if FINRA already has assigned a symbol for the security.

D. Red Flags

While many legitimate companies are quoted and traded exclusively over-the-counter, FINRA shares the SEC's concerns regarding the occurrence of fraudulent and manipulative activity in this marketplace, including through pump-and-dump schemes that target retail customers.²⁰ Therefore, it continues to be important that firms' Rule 15c2-11 review processes

¹⁸ See 1999 Release.

¹⁹ See e.g., Release at 58222-58223.

²⁰ See e.g., Release at 58207-58208.

involve the exploration of any red flags that may arise with respect to a subject issuer or security. In this regard, FINRA and the industry have been guided by the 28 examples that the SEC provided in its 1999 Release.²¹

In discussing red flags in the Release, the Commission states that “[w]hen a red flag regarding the source’s reliability exists, the broker-dealer or qualified IDQS should conduct the inquiry called for by the circumstances to reasonably assess whether the source of the information is reliable.” FINRA believes that being alert to possible red flags during the review process is an important component to achieving the investor protection and market integrity benefits for which the Rule is designed. Further, FINRA generally believes that all of the red flag examples included in the 1999 Release, where applicable, continue to be relevant and are illustrative of the types of information that a broker-dealer or qualified IDQS should consider as part of the review requirement. In particular, FINRA has observed the continued importance of several of the 1999 examples to member firms’ reviews, including concentration of ownership, the presence of unusual auditing issues, suspicious documents, and large reverse stock splits.²²

In the 1999 Release, the SEC stated that the examples provided in the Appendix were present in enforcement actions, examinations, and the FINRA (then NASD) Form 211 review process, but that the list was not meant to be exhaustive and that a broker-dealer’s review must be considered on a case-by-case basis.²³ FINRA agrees and believes that, while these specific examples are very helpful, it is important that broker-dealers be alert to any information that, under the circumstances, raises questions about whether a source is reliable or whether the specified information is materially accurate. FINRA agrees with the SEC’s statements in the Release and the 1999 Release on the importance of red flags, and asks that the Commission incorporate the 1999 Appendix as part of the guidance included in any adopting release.

E. Implementation

If the Commission adopts the changes proposed in the Release, FINRA would be required to undertake several changes to comply with the revised Rule. These changes would include technological changes to the electronic Form 211 and modifications to FINRA’s internal processes and procedures. FINRA also would be required to amend Rule 6432 if the SEC contemplates that qualified IDQSS would submit Form 211s to FINRA where they undertake a Rule 15c2-11 review that market makers rely on to initiate quotations on an OTC equity security. For these reasons, FINRA requests that the SEC provide at least nine months for regulated entities to comply with the revised Rule.

FINRA also notes that, if the SEC adopts the proposal, members may be required to undertake a significant review of their quoted securities in advance of the compliance date of the revised Rule, particularly depending on whether or not grandfathering applies to currently

²¹ See Appendix to 1999 Release at 11145 (Guidance on the Scope of a Broker-Dealer’s Review Under Current Rule 15c2–11 and the Amendments).

²² While some of the red flag examples may be less prevalent today than others, we believe that reiterating all of the examples from the 1999 Release is appropriate.

²³ The Commission also stated that “[o]ther information may come into the broker-dealer’s knowledge or possession that would lead it to question whether the source is reliable or whether the required information is accurate in all material respects.” See 1999 Release at 11147.

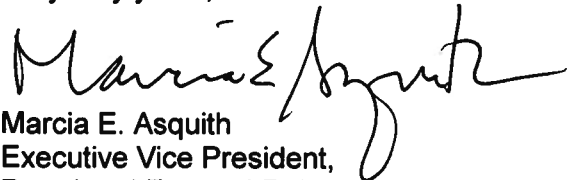
piggyback eligible securities. FINRA requests that the SEC provide guidance as to the treatment of securities that currently are piggyback eligible. Specifically:

- Will any of these securities be grandfathered? If not, what period of time do market makers have to ensure compliance with the new requirements if they wish to continue to quote a security?
- Does the SEC envision that quoting members only must confirm the availability of the piggyback exception for currently piggyback eligible securities (or, where available, rely on a national securities association or a qualified IDQS), or does the Commission envision that new Form 211s would be required?
- If the SEC envisions that new Form 211s would be required, would this requirement apply only to catch-all issuers under proposed paragraph (b)(5)?
- Would the SEC consider a longer compliance period (e.g., an additional six months) for catch-all issuers where a Form 211 was processed during the 12 month period prior to implementation?

III. Conclusion

FINRA commends the Commission for undertaking this significant effort to modernize Rule 15c2-11. We look forward to continuing to engage with SEC staff regarding this important initiative. Should you have any questions or wish to further discuss FINRA's views, please contact Racquel Russell, Associate General Counsel, FINRA, at (202) 728-8363 (racquel.russell@finra.org).

Very truly yours,



Marcia E. Asquith
Executive Vice President,
Board and External Relations