

Mark-Up Rule and Exempted Securities

SEC Approves Amendment to Apply FINRA Rule Governing Mark-ups to Transactions in Exempted Securities That Are Government Securities

Implementation Date: December 14, 2015

Executive Summary

The SEC approved an amendment to FINRA Rule 0150 to codify the application of FINRA Rule 2121 and its Supplementary Material .01 and .02, which govern mark-ups and commissions, to transactions in exempted securities that are government securities. The amendment became effective upon SEC approval.

The amended rule text is available in the online FINRA Manual.

Questions regarding this *Notice* should be directed to:

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- ▶ Andrew Madar, Associate General Counsel, Office of General Counsel, at (202) 728-8056 or by email at Andrew.Madar@finra.org.

Background and Discussion

Rule 0150(c) (Application of Rules to Exempted Securities Except Municipal Securities) enumerates the FINRA and NASD rules that apply to transactions in, and business activities relating to, exempted securities, except municipal securities, that firms and associated persons conduct.¹ FINRA has historically taken the position that it could bring an action for excessive mark-ups in transactions in exempt securities (except municipal securities) under Rule 2010 (Standards of Commercial Honor and Principles of Trade), although Rule 0150(c) did not include Rule 2121, Supplementary Material .01, or Supplementary Material .02, which govern mark-ups and commissions (“mark-up rule”).

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Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Fixed Income
- ▶ Legal
- ▶ Operations
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Exempted Securities
- ▶ Mark-ups, Mark-downs and Commissions

Referenced Rules & Notices

- ▶ FINRA Rule 0150
- ▶ FINRA Rule 2121

The SEC approved an amendment to Rule 0150 to apply explicitly Rule 2121, along with Supplementary Material .01 and .02, to transactions in, and business activities relating to, exempted securities that are government securities, including U.S. Treasury securities.² FINRA believes that amending Rule 0150 to apply the mark-up rule to transactions and business activities relating to government securities clarifies that conduct relating to mark-ups and commissions in the market for government securities must comply with the mark-up rule, in addition to Rule 2010. FINRA also notes that the mark-up rule provides specific criteria by which firms should assess debt mark-ups and mark-downs.³ Amending Rule 0150 to apply these standards to transactions in government securities will provide clearer standards by which to measure the propriety of mark-ups, mark-downs and commissions in such transactions.

This amendment became effective upon SEC approval.

Endnotes

1. The terms exempted securities, government securities, and municipal securities are defined in Sections 3(a)(12), 3(a)(42), and 3(a)(29) of the Act, respectively.
2. See Securities Exchange Act Release No. 76639 (December 14, 2015) (SR-FINRA-2015-33).

FINRA Rule 6710(p) defines a U.S. Treasury Security as a “security issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.”
3. See Rule 2121, Supplementary Material .02 (Additional Mark-Up Policy For Transactions in Debt Securities, Except Municipal Securities).