

## OTC Quotations in Foreign Private Issues

### FINRA Reminds Firms of Their Obligations Under SEC Rule 15c2-11(a)(4)

#### Summary

In consultation with the staff of the Securities and Exchange Commission (SEC staff), FINRA is issuing this *Notice* to remind firms of their obligations under Securities Exchange Act (SEA) Rule 15c2-11 and FINRA Rule 6432 (Compliance with the Information Requirements of Rule 15c2-11) regarding quotations in the securities of foreign private issuers that rely on SEA Rule 12g3-2(b). Specifically, we are reminding firms that Rule 15c2-11(a)(4) requires that they make paragraph (a)(4) information reasonably available upon request to any person expressing an interest in a transaction involving the security, such as by providing the requesting person with appropriate instructions regarding how to obtain the information electronically. Firms cannot comply with this requirement by directing customers to an issuer's website if, by its terms, the website restricts access by U.S. persons to the paragraph (a)(4) information.

Questions regarding this *Notice* should be directed to:

- ▶ Yvonne Huber, Vice President, Market Regulation (MR), at (240) 386-5034 or [yvonne.huber@finra.org](mailto:yvonne.huber@finra.org);
- ▶ Sewall Lee, Director, MR, at (240) 386-6054 or [sewall.lee@finra.org](mailto:sewall.lee@finra.org); or
- ▶ for legal and interpretive questions, Racquel Russell, Associate General Counsel, Office of General Counsel, at (202) 728-8363 or [racquel.russell@finra.org](mailto:racquel.russell@finra.org).

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#### Notice Type

- ▶ Guidance

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives
- ▶ Systems
- ▶ Trading
- ▶ Training

#### Key Topics

- ▶ Foreign Private Issuers
- ▶ Form 211
- ▶ OTC Equity Securities
- ▶ Quoting
- ▶ Trading

#### Referenced Rules

- ▶ FINRA Rule 6432
- ▶ Securities Exchange Act Rule 12g3-2(b)
- ▶ Securities Exchange Act Rule 15c2-11

## Background and Discussion

Rule 15c2-11<sup>1</sup> generally prohibits a broker-dealer from publishing (or submitting for publication) a quotation<sup>2</sup> in an unlisted security on a quotation medium<sup>3</sup> unless it has obtained and reviewed current information about the issuer. The specific information required under Rule 15c2-11 differs depending upon the circumstances surrounding the issuer and security to be quoted. A broker-dealer must have a reasonable basis for believing that the information, when considered along with any supplemental information, is accurate and from a reliable source.

With respect to quotations in the security of a foreign private issuer, paragraph (a)(4) of Rule 15c2-11 requires a broker-dealer to review and make reasonably available upon request the information the issuer published pursuant to Rule 12g3-2(b) since the beginning of its last fiscal year.<sup>4</sup> The broker-dealer can make paragraph (a)(4) information available by providing instructions to investors on how to obtain the information electronically, such as from the issuer's website.<sup>5</sup> However, some foreign private issuers may prohibit persons not domiciled in their jurisdiction from accessing paragraph (a)(4) information. For example, the issuer's website may require the investor to confirm or attest they are a resident of, or domiciled in, the non-U.S. jurisdiction prior to being permitted to access the page that contains the paragraph (a)(4) information. SEC staff has advised that paragraph (a)(4) information on such a website would not be considered "reasonably available" to U.S. persons and, therefore, may not be used by a broker-dealer to fulfill its obligations under Rule 15c2-11(a)(4). Similarly, firms cannot rely on a website that restricts access by U.S. persons to the paragraph (a)(4) information to comply with FINRA Rule 6432.<sup>6</sup>

## Endnotes

1. 17 CFR 240.15c2-11(a).
2. Rule 15c2-11(e)(3) provides that, except as otherwise specified in Rule 15c2-11, the term “quotation” means “any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that he wishes to advertise his general interest in buying or selling a particular security.” See 17 CFR 240.15c2-11(e)(3).
3. Rule 15c2-11(e)(1) provides that the term “quotation medium” means any “‘interdealer quotation system’ or any publication or electronic communications network or other device which is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.” See 17 CFR 240.15c2-11(e)(1). Rule 15c2-11(e)(2) provides that the term “interdealer quotation system” means “any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.” 17 CFR 240.15c2-11(e)(2).
4. See 17 CFR 240.15c2-11(a)(4); see also 17 CFR 240.12g3-2.
5. See Securities Exchange Act Release No. 58465 (Exemption From Registration Under Section 12(G) of the Securities Exchange Act of 1934 for Foreign Private Issuers).
6. To demonstrate compliance with Rule 15c2-11, FINRA Rule 6432 requires, among other things, that firms submit a Form 211 to FINRA prior to initiating or resuming a quotation in a non-exchange-listed security. In the case of a Form 211 for a foreign private issuer under Rule 15c2-11(a)(4), Form 211 requires that firms provide the: (i) foreign exchange(s) on which the subject class of securities is listed that, either singly or together with the trading of the same class of the issuer’s securities in another foreign jurisdiction, constitutes the primary trading market for the securities; (ii) the symbol(s) of the security(ies) that trade on the foreign exchange(s); and (iii) the location of the internet website or electronic information delivery system that the firm would provide upon request to any person to direct them to the information that the issuer published electronically pursuant to Rule 12g3-2(b). FINRA is advising firms that, with respect to item (iii) above, a firm may not provide a website address on a Form 211 where U.S. persons are restricted from accessing the paragraph (a)(4) information.