

NASD Notice to Members 99-58

SEC Grants Exemption From Rule 15c2-11 For Securities Being Removed From The OTCBB Pursuant To The NASD Eligibility Rule

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Continuing Education
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Executive Summary

The Securities and Exchange Commission (SEC) issued a letter on June 3, 1999, granting an exemption from SEC Rule 15c2-11 under the Securities Exchange Act of 1934 (Exchange Act) for securities that were quoted on the OTC Bulletin Board® (OTCBB) on or before January 4, 1999, that will no longer be eligible to be quoted on the OTCBB due to the phase-in implementation of National Association of Securities Dealers, Inc. (NASD®) Rule 6530 (the Eligibility Rule).¹ A copy of the SEC's letter is attached to this *Notice*.

Questions regarding this *Notice* may be directed to the OTC Compliance Unit at (301) 208-2802.

Discussion

On January 4, 1999, the SEC approved amendments to NASD Rules 6530 and 6540 (Rules) to limit quotations on the OTCBB to the securities of companies that report their current financial information to the SEC, banking, or insurance regulators.² The new Rules are intended to ensure that investors in OTCBB securities have access to reliable and current information about the issuers of these securities.

The new Eligibility Rule was effective immediately for securities not quoted on the OTCBB on January 4, 1999. Issuers whose securities were quoted on the OTCBB as of January 4, 1999, and have continued to be quoted will be required to comply with the Eligibility Rule according to a phase-in schedule starting in July 1999 and continuing through June 2000 (see *Notice to Members 99-43* to view the phase-in schedule). The delayed effectiveness of the Rule is designed to enable broker/dealers, investors, and issuers to take appropriate action.

The Eligibility Rule provides that, in order for a domestic issuer to continue being quoted on the OTCBB, the issuer must be required to make periodic filings with the SEC, or with banking or insurance regulators, and be current with those filings. The NASD will affix a modifier "E" on the security symbol of any security issuer that does not meet the requirements of the Eligibility Rule. The addition of the modifier will be publicly reported on the OTCBB Daily List, which is available on the OTCBB Web Site at www.otcbb.com. The "E" also will be evident to the quoting broker/dealers when they access the security on the Nasdaq Workstation II®.

Once an issuer is deemed not to be in compliance with the Eligibility Rule, the security may continue to be quoted on the OTCBB for a 30- or 60-calendar day grace period from date the "E" modifier was appended on the security symbol, depending on the type of issuer.³ After the grace period, quotations in non-compliant securities will not be permitted on the OTCBB, and member firms will be prohibited from quoting the issuer's security on the OTCBB. The NASD announced approval of the OTCBB Eligibility Rule and the phase-in schedule in *Notice to Members 99-15*, and announced a modified phase-in schedule in *Notice to Members 99-43*.

The exemption granted by the SEC from Rule 15c2-11 will permit broker/dealers to publish or submit quotations in other quotation media, including the National Quotation Bureau's Pink Sheets, for securities being removed from the OTCBB pursuant to NASD Rule 6530 subject to the following conditions:

1. A broker or dealer must have in its records the information specified in paragraphs (a)(5)(i), (a)(5)(ii), and (a)(5)(viii) of Rule 15c2-11;

2. The security was quoted in the OTCBB from January 4, 1999, until the date of its removal⁴;
3. The NASD has appended the covered security's symbol to indicate that it is not compliant with Rule 6530; and
4. A broker or dealer must have published quotations in the covered security in the OTCBB on at least 12 business days during the preceding 30 calendar days, with no more than four consecutive business days without quotations.

The exemption will expire when the implementation of the Eligibility Rule is complete.⁵

To publish or submit quotations for a security pursuant to this exemption, a broker/dealer must comply with NASD Rule 6740 and, during the 30- or 60-day period that the security's symbol reflected on the OTCBB is appended with the "E" modifier, complete and mail the Exemption Form to:

OTC Compliance Unit
NASD Regulation, Inc.
9513 Key West Avenue
Rockville, MD 20850
or fax it to (301) 208-2806

A copy of the Exemption Form is attached to this *Notice* and is also available on the OTCBB Web Site.

The form must be received by the OTC Compliance Unit during the 30- or 60-calendar day grace

period commencing after the "E" is appended on the security symbol.

15c2-11 Exemption Request Form - Eligibility Rule

The information that must be provided on this form includes:

- The issuer's name and the issuer's predecessor in the event of a merger or reorganization within the previous 12 months;
- The issuer's address;
- A contact name and telephone number for the issuer;
- The nature of the issuer's business;
- The symbol(s) for the security(ies); and
- The security's CUSIP number (if applicable).
- If a broker/dealer is initiating a quotation with a priced entry, the firm must specify the basis for determining the price and the factors considered in making that determination.
- If the broker/dealer's initial quotation does not include a priced entry, the firm must supplement its filing before inserting a priced entry.
- The form must be signed by a principal of the member firm.

Endnotes

¹Letter from Larry E. Bergmann, Senior Associate Director, SEC, to Alden S. Adkins, General Counsel, NASD Regulation, Inc., dated June 3, 1999.

²See Release No. 34-40878 (January 4, 1999), 64 FR 1255 (January 8, 1999) (File No. SR-NASD-98-51).

³Issuers that file with the SEC will have a 30-day grace period before they can no longer be quoted on the OTCBB; issuers that file with other regulators will have a 60-day grace period.

⁴Therefore, if the SEC suspends trading in the security pursuant to Section 12(k) under the Exchange Act, this exemption does not apply to that security.

⁵After that time, broker/dealers that wish to publish a quotation in another quotation medium in an OTCBB security that becomes ineligible for the OTCBB system will be required to comply with Rule 15c2-11. The SEC has recently repropounded amendments to Rule 15c2-11. See Release No. 34-41110 (February 25, 1999), 64 FR 11124 (March 8, 1999). Broker/dealers would be required to comply with any new provisions of Rule 15c2-11, and this exemption may be modified or revoked upon adoption of any amendments.

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DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

June 3, 1999

Mr. Alden S. Adkins
Executive Vice President and General Counsel
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

Re: Exemption Request from Rule 15c2-11
File No. 99-162

Dear Mr. Adkins:

In your letter dated June 3, 1999, as supplemented by conversations with the staff, you request an exemption from Rule 15c2-11 (Rule 15c2-11 or Rule) under the Securities Exchange Act of 1934 (Exchange Act) to permit brokers or dealers to publish quotations in other quotation mediums¹ for securities that are no longer eligible to be quoted on the Over-the-Counter Bulletin Board (OTCBB) due to the implementation of National Association of Securities Dealers, Inc. (NASD) Rule 6530 (Eligibility Rule) without complying with certain provisions of Rule 15c2-11. This response is attached to the enclosed photocopy of your correspondence.

On January 4, 1999, the Commission approved amendments to NASD Rule 6530 to limit the securities that a member can quote on the OTCBB, operated by the NASD, to the securities of issuers that are registered under Section 12 of the Exchange Act, certain insurance companies, banks, savings associations, and registered closed-end investment companies, but only if they are current in their reporting obligations.² The Commission also approved amendments to NASD Rule 6540 to prohibit a member from quoting a security on the OTCBB unless the security is eligible under Rule 6530 and the issuer is current in its reporting obligations.³ The new Eligibility Rule was effective immediately for securities not quoted on the OTCBB on January 4, 1999. Issuers whose securities were quoted on the OTCBB on January 4, 1999, and have continued to be quoted, will be required to comply with the Eligibility Rule according to a phase-in schedule starting on July 1, 1999 and continuing through June 2000. Thus, starting on July 1, 1999, a potentially large number of securities will no longer be eligible for quotation on the OTCBB.

¹ Rule 15c2-11 governs the publication of quotations for securities in a quotation medium other than a national securities exchange or Nasdaq. Quotation medium is defined in section (e)(1) of the current Rule. Quotation mediums include the Over-the-Counter Bulletin Board (OTCBB) and the Pink Sheets operated by the National Quotation Bureau L.L.C.

² See Release No. 34-40878 (Jan. 4, 1999).

³ Id.

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June 3, 1999
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You request a limited exemption for brokers or dealers that are quoting the securities of companies that would have remained eligible to be quoted on the OTCBB if Rule 6530 had not been adopted. The exemption would permit brokers or dealers that have been quoting these securities on the OTCBB to quote these securities in other quotation mediums without interruption immediately following removal from the OTCBB.

Response:

Rule 15c2-11 prohibits a broker or dealer from publishing any quotation for an OTC security (covered security), or from submitting any such quotation for publication, in any quotation medium, unless such broker or dealer has in its records and reviews the information specified in the Rule regarding the security and its issuer, or unless an exception or exemption from the Rule's requirement is available. Paragraph (d) of the Rule requires the broker or dealer submitting a quotation to an interdealer quotation system for any security of an issuer included in paragraph (a)(5) of Rule 15c2-11 to furnish the information described in paragraph (a)(5) to the interdealer quotation system, in the form prescribed by that system, at least three business days before the quotation is published or submitted.

Based upon your representations and the facts presented, the Commission, except as stated below, hereby grants an exemption from Rule 15c2-11, pursuant to paragraph (h), to permit broker-dealers to publish or submit quotations in other quotation mediums for covered securities being removed from the OTCBB pursuant to Rule 6530. This exemption is subject to the following conditions:

1. Each broker or dealer relying upon this exemption must have in its records information specified in paragraphs (a)(5)(i), (a)(5)(ii), and (a)(5)(viii) of Rule 15c2-11;
2. The security was quoted in the OTCBB from January 4, 1999, until the date of its removal;⁴
3. The NASD has appended the covered security's symbol to indicate that it is not compliant with Rule 6530;

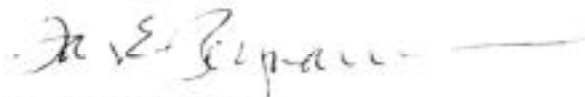
⁴ Therefore, if the Commission suspends trading in a covered security pursuant to Section 12(k) under the Exchange Act, this exemption does not apply to that security.

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4. Each broker or dealer relying upon this exemption must have published quotations in the covered security in the OTCBB on at least 12 business days during the 30 calendar days preceding its removal from the OTCBB, with no more than four consecutive business days without quotations; and
5. This exemption will expire when the implementation of the Eligibility Rule is complete.⁵

This exemption from Rule 15c2-11 is based solely on the facts and circumstances described above and is strictly limited to the application of Rule 15c2-11 to the quotations described above. The publications or submission of quotations by a broker or dealer in a quotation medium for a security based upon the foregoing exemption should be discontinued if any material change occurs concerning any of those facts or representations. In addition, brokers or dealers are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 10(b) and 15(c) and Rules 10b-5 and 15c1-2 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the brokers or dealers. We express no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the applicability of any other federal or state laws to the proposed transactions.

For the Commission, by the
Division of Market Regulation,
pursuant to delegated authority,


Larry E. Bergmann
Senior Associate Director

⁵ After that time, broker or dealers that wish to publish a quotation in another quotation medium in an OTCBB security that becomes ineligible for the OTCBB system will be required to comply with Rule 15c2-11. The Commission has recently repropose amendments to Rule 15c2-11. See Securities Exchange Act Release No. 34-41110 (March 8, 1999). Broker-dealers would be required to comply with the provisions of Rule 15c2-11 in effect at that time, and this exemption may be modified or revoked upon adoption of any amendments.