

Form 211 Information Repository

FINRA Requests Comment on a Proposal to Establish a Publicly Accessible Online Repository of Form 211 Information

Comment Period Expires: September 2, 2014

Executive Summary

FINRA is soliciting comment on a proposal to make publicly available through FINRA's website a repository of Form 211 information. Firms are required to complete FINRA's Form 211 to demonstrate compliance with the specific information review requirements under SEA Rule 15c2-11 prior to initiating a quotation in a non-exchange-listed security.

The proposed rule text is attached as Appendix A. A copy of the Form 211 is attached as Appendix B.

Questions regarding this *Notice* should be directed to Racquel Russell, Associate General Counsel, Office of General Counsel, at (202) 728-8363 or by [email](#).

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by September 2, 2014.

Member firms and other interested parties can submit their comments using the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

July 2014

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Systems
- ▶ Trading and Market Making
- ▶ Training

Key Topics

- ▶ Form 211
- ▶ Market Making
- ▶ Rule 15c2-11 under the Securities Exchange Act of 1934 (SEA)

Referenced Rules

- ▶ FINRA Rule 6432
- ▶ SEA Rule 15c2-11

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this Notice will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.¹

Before becoming effective, the proposed rule change must be filed with the Securities and Exchange Commission (SEC) pursuant to Section 19(b) of the SEA.²

Background and Discussion

SEA Rule 15c2-11 generally prohibits a firm from publishing a quotation for a non-exchange-listed security unless the firm has reviewed certain information about the issuer whose security is the subject of the quotation and believes this information to be accurate and obtained from a reliable source. The specific information requirements of SEA Rule 15c2-11 differ depending upon the characteristics of the issuer and the security being quoted. Under FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2-11), a firm must demonstrate compliance with SEA Rule 15c2-11 by completing and filing a Form 211 with FINRA at least three business days before the firm's quotation is published or displayed in the quotation medium.

The information requirements of FINRA's Form 211 track the requirements of SEA Rule 15c2-11. Specifically, Form 211 is a five-part form. Part 1, Issuer and Security Information, requests basic information regarding the security and the issuer, such as the name and contact information for the issuer and the total number of shares outstanding. Part 1 also asks the filing firm to provide the initial price (if any) for the quotation sought to be entered, the basis upon which the price was determined and the factors considered in making this determination.

Part 2, Required Issuer Information, requires firms to select which information requirements apply to the issuer and the security based upon paragraph (a) of SEA Rule 15c2-11. Thus, firms must select either subparagraph (a)(1) for recent offerings pursuant to Section 10(a) of the Securities Act of 1933; (a)(2) for recent Regulation A offerings; (a)(3) for reporting companies; (a)(4) for foreign private issuers; or (a)(5) for non-reporting (and all other) issuers.³ Depending upon the subparagraph selected, the Form 211 further requires firms to respond to specific questions and attach or reference additional materials (see Appendix B).

Part 3, Supplemental Information, requests information surrounding the firm's submission of the Form 211, including the identity of any person(s) for whom the quotation is being submitted and any information provided to the firm by such person(s), asks whether there has been a recent trading suspension, and requires disclosure of any material information of which the firm is aware or possesses regarding the issuer, including adverse information. Part 4, Regulatory Filings, requests specified information relating to issuers that file financial reports with the SEC or another regulatory authority. Part 5, Certification, requires the responsible employee of the firm to, among other things, attest that there is a reasonable basis for believing that the information accompanying the Form 211 is accurate in all material respects and that the sources of information are reliable.

FINRA cleared more than 800 Form 211s in 2013, resulting in the initiation or resumption of quotations in the subject non-exchange-listed securities.⁴ However, at present, there is no process by which investors, firms, issuers or other parties may request from FINRA copies of a cleared Form 211. Thus, FINRA proposes to establish a public website repository to provide access to information provided on the form by the filing firm. Importantly, the repository would include Form 211 information for those issuers that are not reporting companies for which there may be very little public information available to investors.⁵ FINRA believes that access to the information included on Form 211 will assist the public in understanding the range and sources of information that may be available for a particular issuer and serve as a useful supplementary research tool.

SEA Rule 15c2-11 provides several exceptions that, if met, also relieve a quoting firm of its obligations under FINRA Rule 6432 to submit a Form 211 to FINRA.⁶ The exceptions include relief for instances in which a firm is quoting a security that represents unsolicited customer interest;⁷ has been the subject of regular and continuous quotations for the past 30 days;⁸ or is a municipal security.⁹ In addition, SEA Rule 15c2-11(h) provides the SEC with exemptive authority with respect to Rule 15c2-11.¹⁰ Thus, where a firm is able to rely upon an exception to or exemption from SEA Rule 15c2-11, a Form 211 filing with FINRA is not required. Due to the existence of these exceptions and exemptions, the website repository may not include recent (or any) information regarding a non-exchange-listed security currently being quoted over-the-counter. Therefore, as stated below, FINRA specifically requests comment regarding any concerns around the reliability and usefulness of information contained on Form 211.

FINRA is working to update the Form 211 process to provide for electronic filing of Form 211, which currently is received from firms through mail and fax. FINRA believes that moving to electronic filing would facilitate the process of establishing and maintaining a Form 211 information repository.

Request for Comment

FINRA requests comment on all aspects of the proposed repository, including any impact on investors, issuers of non-exchange-listed securities or market makers. FINRA specifically requests comment concerning the following issues.

- ▶ Who or what entities would be interested in Form 211 information? What is the level of interest in Form 211 information?
- ▶ What are the benefits of making Form 211 information publicly available? FINRA welcomes estimates on the number of investors who are anticipated to access and use Form 211 information.
- ▶ What are the potential uses of Form 211 information to investors and other market participants? FINRA seeks comment on the format (*e.g.*, Form 211 scans, downloadable data files) in which Form 211 information should be made accessible through the repository.
- ▶ Are there specific concerns by firms, issuers, investors or other parties regarding FINRA providing public access to Form 211 information?
- ▶ Should all Form 211 information be provided in the repository or certain parts omitted or redacted? If the latter, which parts should be omitted or redacted and why?
- ▶ Should any attachments (or links to the attachments, where available) that accompany a Form 211 also be made accessible through the repository?
- ▶ Should a firm's supplemental submissions in connection with a Form 211 filing be included as part of the Form 211 information repository? For example, a firm may submit additional documentation subsequent to its initial Form 211 filing in response to FINRA staff comments or to change its request for clearance to quote from an unpriced quotation to a priced quotation.¹¹
- ▶ Are there risks associated with making non-current information available to investors through the repository? If so, should there be prominent disclosure to investors and other potential users of the website that the Form 211 information may be stale and, therefore, users should conduct further research on the issuer and security to assess whether additional and more current information is available?
- ▶ Should the Form 211 be removed from the repository after a certain period of time or flagged to highlight that the information contained may be stale (*e.g.*, after six months from the date of clearance)?
- ▶ Should FINRA consider adopting a requirement that firms file periodic updates to Form 211 information? If so, at what intervals should updating be required? In addition, should all of the applicable original Form 211 items of information be subject to the updating requirement?

- ▶ If FINRA were to adopt an updating requirement, should the original filing firm be required to fulfill the requirement? If the original filing firm no longer quotes the security, who should be required to update the Form 211 information?
- ▶ Are there firm or customer privacy concerns regarding making public any of the items of information contained on Form 211?
- ▶ Are there firm liability concerns regarding making public any of the items of information contained on Form 211?
- ▶ Should FINRA include in the repository Form 211 relating to both reporting and non-reporting companies (based upon the issuer's status at the time of the filing of the Form 211)?
- ▶ How many years' worth of historic data should the repository cover initially (e.g., one year of historic Form 211 information)?
- ▶ Are there alternative methods for FINRA to achieve the objectives of the proposed rule? If so, what are these alternatives and why are they better suited than the proposed rule?

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.
2. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Certain limited types of proposed rule changes; however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
3. Due to the possibility that there is limited information publicly available on non-reporting companies, which are companies that do not file audited periodic financials with a regulatory body, SEA Rule 15c2-11(a)(5) (and Form 211) requires that, when seeking to initiate or resume quotations in the securities of non-reporting companies, firms must, among other things, provide to FINRA the issuer's most recent balance sheet, profit and loss and retained earnings statements, and equivalent financial information for the two prior fiscal years for the company (or any predecessor company). To facilitate the accessibility of this information to potential investors, SEA Rule 15c2-11 and Form 211 require that firms make the paragraph (a)(5) information reasonably available upon request to any person expressing an interest in a proposed transaction in the subject security.

© 2014 FINRA. All rights reserved. FINRA and other trademarks of the Financial Industry Regulatory Authority, Inc. may not be used without permission. *Regulatory Notices* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

4. FINRA Rule 6432(e) provides that, for purposes of the rule, “non-exchange-listed security” means any equity security, other than a restricted equity security, that is not traded on any national securities exchange.
5. As described in note 3, non-reporting companies are neither registered under Section 12 of the SEA, file reports under Section 15(d) of the SEA or satisfy certain other specified reporting requirements. FINRA received 990 Form 211 applications in 2013, of which 821 have been cleared. Of the cleared Form 211 applications, 59 were for non-reporting companies.
6. FINRA Rule 6432 provides that the Form 211 requirements apply, except as provided for in SEA Rules 15c2-11(f)(1), (2), (3) and (5) and 15c2-11(h).
7. See SEA Rule 15c2-11(f)(2).
8. See SEA Rule 15c2-11(f)(3) (*i.e.*, the “piggyback exception”). The piggyback exception of paragraph (f)(3) of SEA Rule 15c2-11 generally is available to a firm where the quoted security has been the subject of a quotation on the inter-dealer quotation system on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without a quotation. Therefore, it is possible that the Form 211 filing relating to a security that is continuously quoted was submitted by a firm who no longer quotes the security months or years prior to current quotations.
9. See SEA Rule 15c2-11(f)(4).
10. SEA Rule 15c2-11(h) sets forth the SEC’s exemptive authority with respect to the requirements of SEA Rule 15c2-11 and provides that SEA Rule 15c2-11 shall not prohibit any publication or submission of any quotation if the SEC, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of the rule.
11. FINRA Rule 6432(c) provides that, if a firm’s initial or resumed quotation does not include a priced entry, the firm must supplement its prior filing before inserting a priced entry for the affected non-exchange-listed security in a quotation medium. The supplemental filing must specify the basis upon which the proposed priced entry was determined and the factors considered in making that determination. The supplemental filing must be received by FINRA at least three business days before the firm’s priced entry first appears in a quotation medium.

APPENDIX A

Below is the text of the proposed rule change. Proposed new language is underlined. The proposed rule text may be revised in response to comments received on this Notice.

* * * * *

6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

* * * * *

6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

* * * * *

6430. OTC Equity Quotation Requirements

* * * * *

6432. Compliance with the Information Requirements of SEA Rule 15c2-11

(a) through (e) No Change.

• • • Supplementary Material: -----

01. No Change.

02. Information filed with FINRA to demonstrate compliance with SEA Rule 15c2-11 pursuant to this Rule, including copies of the completed applicable FINRA form(s), accompanying documents, and subsequent submissions will be made publicly available by FINRA.

* * * * *

APPENDIX B

This version of the Form 211 becomes effective on July 7, 2014.

FORM 211

General Instructions

Complete this form to initiate or resume quotations in a quotation medium, as defined in Rule 15c2-11(e)(i) under the Securities Exchange Act of 1934 (1934 Act) including, but not limited to, the OTC Bulletin Board™ or OTC Link® ATS. By completing this form, your firm is representing that it has satisfied all applicable requirements of Rule 15c2-11 and the filing and information requirements of FINRA Rule 6432. **It is not necessary to file this application if a member qualifies for an exception or exemption provided by paragraphs (f)(1)-(5) or (h) of Rule 15c2-11.**

Send the completed form and a copy of the required Issuer information to FINRA, OTC Compliance Unit, 9509 Key West Avenue, Rockville, MD 20850-3329. **If you have any questions, call the OTC Compliance Unit at (240) 386-5100.**

Check the applicable quotation medium(s):

- OTC Bulletin Board™
- OTC Link® ATS
- Other (name of quotation medium)

Part 1 – Issuer and Security Information

Provide the information requested below:

1. Exact name of Issuer and predecessor (if any) _____
2. Address of principal executive offices

3. Telephone number of principal executive offices _____
4. Type of security (check one) Domestic Security Foreign Security DPP
 Sponsored ADR Unsponsored ADR _____
5. State of incorporation _____ Country of incorporation _____
6. Complete title and class of security to be quoted _____
7. Symbol of security (if assigned) _____ CUSIP _____
8. Par or stated value of security _____
9. Total securities outstanding at the end of the Issuer's most recent fiscal year

10. Name and address of transfer agent

11. List any restrictions on the transfer of the security

12. Price of initial quotation entry _____ Bid _____ Ask _____
 No price at this time _____

If you are requesting to enter a bid and/or ask price, you must also provide a clear statement of the following information:

The basis upon which the priced entry was determined: _____

The factors considered in making that determination: _____

Part 2 – Required Issuer Information

Check the applicable box (select only one) that corresponds to the category of Issuer information accompanying this application. To determine the applicable category, carefully review paragraphs (a)(1)-(5) of Rule 15c2-11 and paragraph (g), which defines “reasonably current” information for purposes of paragraph (a)(5).

Provide one copy of all required information (except for EDGAR documents) along with this completed form.

RECENT OFFERINGS

- (a)(1) Provide the prospectus that became effective less than 90 calendar days prior to filing this Form 211, as specified by Section 10(a) of the Securities Act of 1933 (1933 Act).

SEC Effective Date:

Date Security(ies) Issued:

- (a)(2) Provide the offering circular that became effective less than 40 calendar days prior to filing this Form 211, as provided for under Regulation A under the 1933 Act.

SEC Effective Date:

Date Security(ies) Issued:

REPORTING COMPANIES

- (a)(3) Provide the Issuer’s most recent annual report filed pursuant to Section 13 or 15(d) of the 1934 Act or the annual statement referred to in Section 12(g)(2)(G)(i) of the 1934 Act. Provide quarterly and other current reports filed after the Issuer’s most recent annual report or statement. List below each report or statement and applicable amendments filed by the Issuer through EDGAR that your firm has in its possession that meets the requirements of this section.

Name of Report or Statement

Report or Statement Date

EDGAR Filed Date

FOREIGN PRIVATE ISSUERS

- (a)(4) Provide the following information regarding the Issuer’s reliance upon Rule 12g3-2(b) of the 1934 Act.

The 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 those securities.

The symbol(s) of the security(ies) that trade on the foreign exchange(s).

The location of the Internet Web site or electronic information delivery system that the member 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).

NON-REPORTING AND ALL OTHER COMPANIES

(a)(5) The applicant must make the Issuer information filed in conjunction with section (a)(5) of this form available upon request to any person expressing an interest in a proposed transaction with the subject security filed. Provide the Issuer’s most recent balance sheet, profit and loss and retained earnings statements, equivalent financial information for the two prior fiscal years for the Issuer or any predecessor company, and the documents that support the information provided in this form.

a. Describe the Issuer’s business.

b. Describe the products or services offered by the Issuer.

c. Describe the Issuer’s facilities.

d. List the name(s) of the current Chief Executive Officer(s) and members of the Board of Directors of the Issuer.

e. Is the firm that is submitting this form, or any person associated with it, affiliated directly or indirectly with the Issuer?

Yes No If yes, what is the affiliation?

f. Is the quotation being published or submitted on behalf of any other broker-dealer?

Yes No If yes, what is the name of the broker or dealer?

g. Is the quotation being published or submitted directly or indirectly on behalf of the Issuer or any director, officer or any person who is directly or indirectly the beneficial owner of more than 10% of the outstanding units or shares of any equity security of the Issuer?

Yes No If yes, what is the name of the person, and what is the basis for any exemption under the federal securities laws for any sales of such securities on behalf of this person?

Part 3 – Supplemental Information

Please review paragraphs (b)(1)-(3) of Rule 15c2-11 and provide the information requested below.

- (b)(1) Describe the circumstances surrounding the submission of this application. Include the identity of any person(s) for whom the quotation is being submitted and any information provided to your firm by such person(s).

- (b)(2) Has the Issuer or its predecessor (if any) been subject to a trading suspension order issued by the SEC during the past 12 months? If a trading suspension order has been issued, provide a copy of the order or of the SEC's public release announcing the trading suspension order.

Check the appropriate box: Trading suspension order or release enclosed. Not applicable.

- (b)(3) Provide any material information, including adverse information regarding the Issuer, that your firm is aware of or has in its possession. (Do not list information already provided in Part 2.) If your firm does not possess such information, state "None" below.

Identify any applicable information by name and date.

Part 4 – Regulatory Filings

Fiscal Year End Date (MM/DD)

Date of Incorporation (MM/DD/YYYY)

Standard Industrial Classification (SIC) Code

(a) Complete if the Issuer files periodic reports through the SEC’s EDGAR system.

- Provide the 10-digit Central Index Key (CIK) number. (The CIK is a unique identifier assigned by the SEC to all companies and people who file disclosure documents through EDGAR with the SEC.)
-

(b) Complete if the non-EDGAR filing Issuer is an insurance company or files periodic reports with a federal banking agency or state supervisor.

- Name of regulatory authority where the Issuer files periodic financial reports:
-

- Telephone number of the regulatory authority:
-

- The Issuer’s filing cycle. (Check one)

Quarterly

Semi-Annually

Annually

Other (Describe the filing cycle) _____

- List the required reports filed by the Issuer for the current fiscal year.

Name of Report or Statement

Report or Statement Date

Filed Date

Part 5 – Certification

The undersigned must have a reasonable basis for believing that the information accompanying this form is accurate in all material respects and that the source of the information is reliable.

By signing this document:

- I acknowledge and certify that my firm has a reasonable basis for believing that the information accompanying this form (including required EDGAR filed documents not provided) is accurate in all material respects and that the sources of information are reliable (“affirmative review obligation”) as required by Rule 15c2-11 and FINRA Rule 6432;
- I understand and acknowledge that this affirmative review obligation applies to all subsequent submissions made in connection with this Form 211 application;
- I certify that I have examined this form and, to the best of my knowledge and belief, it is true, correct, and complete;
- I certify that neither _____ [member name] nor persons associated with _____ [member name] 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 this Form 211; and
- I understand and acknowledge that copies of this form, accompanying documents, and subsequent submissions made in connection with this Form 211 application may be provided to the Securities and Exchange Commission, other regulatory agencies, or to the quotation medium(s) on which the security is or will be quoted.

Name, title and signature of firm employee to contact regarding information contained in this Form 211 application.

Name	Title
Signature	Date
Phone	Fax

Name, title, and signature of the registered principal of the firm responsible for this Form 211 application, and all subsequent submissions made in connection with this application.

Name	Title
Signature	Date
Firm Name	

(Firm must be an OTC Link subscriber if application is for the OTC Link.)

Address		
City	State	Zip
Firm CRD#	Market Participant Identifier	

Investor protection. Market integrity.

9509 Key West Ave.
Rockville, MD 20850
www.finra.org

© 2014. FINRA. All rights reserved.
14_0167.1 – 06/14