

## Foreign Equity Securities

### Revised SEC No-Action Guidance Expanding the Definition of “Ready Market” for Certain Foreign Equity Securities

#### Summary

The staff of the Division of Trading and Markets of the Securities and Exchange Commission (SEC staff) has issued a revised no-action letter (the February 2016 letter)<sup>1</sup> setting forth conditions under which broker-dealers may treat certain foreign equity securities as having a “ready market” under SEA Rule 15c3-1(c)(11)(i) and subject to the haircuts under SEA Rule 15c3-1(c)(2)(vi)(I). The February 2016 letter replaces the previous SEC staff no-action letter, issued in November 2012, that addressed this subject matter (the November 2012 letter).<sup>2</sup>

The February 2016 letter is available on the [SEC’s website](#).

Questions concerning this *Notice* should be directed to:

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- ▶ Yui Chan, Managing Director, ROOR, at (646) 315-8426 or [Yui.Chan@finra.org](mailto:Yui.Chan@finra.org).

#### Background & Discussion

In the November 2012 letter, the SEC staff set forth conditions under which broker-dealers may treat certain foreign equity securities as having a “ready market” under SEA Rule 15c3-1(c)(11)(i) and subject to the haircuts under SEA Rule 15c3-1(c)(2)(vi)(I), thereby expanding the definition of “ready market” regarding foreign equity securities, and therefore the number of foreign securities eligible as foreign margin stock under Regulation T of the Board of Governors of the Federal Reserve System.<sup>3</sup>

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#### Notice Type

- ▶ Guidance

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Margin Department
- ▶ Operations
- ▶ Regulatory Reporting
- ▶ Risk Management
- ▶ Senior Management

#### Key Topics

- ▶ Foreign Equity Securities
- ▶ Foreign Margin Stock
- ▶ Net Capital
- ▶ “Ready Market”

#### Referenced Rules & Notices

- ▶ FINRA Rule 4210
- ▶ Regulation T
- ▶ Regulatory Notice 12-58
- ▶ SEA Rule 15c3-1

In the February 2016 letter, the SEC staff noted that they have been monitoring the operation of the November 2012 letter in the intervening period since it was issued and have learned that one of the conditions set forth in the November 2012 letter warrants modification. More specifically, the November 2012 letter required among other things that the median daily trading volume (calculated over the preceding 20 business day period) of the foreign equity security on the foreign securities exchange on which the security is traded is either at least 100,000 shares or \$500,000. Footnote 5 in the November 2012 letter stated that the shares purchased by the computing broker-dealer during the preceding 20 business day period are to be excluded when determining the median trading volume. In the February 2016 letter, the SEC staff stated that footnote 5 is not necessary to ensuring the liquidity of foreign equity securities treated as having a “ready market” under the November 2012 letter. The SEC staff stated that they have learned that footnote 5 creates operational burdens on the computing broker-dealers.

Accordingly, the SEC staff has withdrawn the November 2012 letter and has issued the February 2016 letter in its place. The SEC staff stated that the only change between the February 2016 letter and the November 2012 letter is to modify the text that appeared in footnote 5 of the November 2012 letter to read as follows:

“Trading volume calculations must be based upon bona fide transactions.”

FINRA reminds member firms that the February 2016 letter, like the November 2012 letter that it replaces, addresses foreign equity securities. As FINRA noted in [Regulatory Notice 12-58](#), member firms should be aware that options on such securities remain subject to the initial and maintenance margin requirements as set forth in FINRA Rule 4210(f)(2)(E)(iii).

## Endnotes

1. See letter from Michael A. Macchiaroli, Associate Director, Division of Trading and Markets, Securities and Exchange Commission, to William Wollman, Executive Vice President, Member Regulation, FINRA (February 9, 2016).
2. See letter from Michael A. Macchiaroli, Associate Director, Division of Trading and Markets, Securities and Exchange Commission, to Grace B. Vogel, Executive Vice President, Member Regulation, FINRA (November 28, 2012). See also *Regulatory Notice 12-58* (December 2012) (summarizing the November 2012 letter).
3. Federal Reserve Regulation T (17 CFR 220.2) defines a foreign margin stock as a “foreign security that is an equity security that: (1) [a]ppears on the Board’s periodically published List of Foreign Margin Stocks; or (2) [i]s deemed to have a ‘ready market’ under [SEA] Rule 15c3-1 . . . or a ‘no-action’ position issued thereunder.”