

SEC GRANTS EXEMPTIVE RELIEF FROM RULE 15C2-11 FOR RULE 144A FIXED-INCOME SECURITIES

On October 30, 2023, the Securities and Exchange Commission ("**SEC**") issued an order, [available here](#), that provides exemptive relief to brokers-dealers from the requirements of Rule 15c2-11 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") with respect to fixed-income securities that are sold in compliance with Rule 144A ("**Rule 144A fixed-income securities**"). Fixed-income securities are securities in which an investor provides funds to a corporation, securitization SPV, or a government in return for the payment of interest and the return of principal. Unlike the relief granted by prior SEC staff no-action letters related to the application of Rule 15c2-11, this exemptive relief is not time limited. It will be in effect unless and until the SEC modifies or revokes its exemptive order, or it is superseded by future SEC rulemaking.

Rule 15c2-11 implements Section 15(c)(2) of the Exchange Act, which prohibits a broker-dealer from engaging in certain fraudulent, deceptive or manipulative acts or practices. Specifically, this rule sets forth the circumstances under which a broker-dealer would be permitted to publish or submit quotations in a quotation medium for a security that is not listed on a U.S. national securities exchange. Since its initial adoption in 1971, Rule 15c2-11 was implemented and enforced by the SEC to target fraud in the largely retail, over-the-counter ("**OTC**") equity markets. In 2020, Rule 15c2-11 was amended to enhance disclosure and investor protection in the OTC market by generally prohibiting a broker-dealer from publishing quotations for an unlisted security when specified current information about the security's issuer is not publicly available. During 2021, market participants raised concerns with the SEC staff about the potentially significant negative effects of amendments to Rule 15c2-11 on trading in the fixed-income markets. This exemptive order comes after the National Association of Manufacturers ("**NAM**") and the Kentucky Association of Manufacturers ("**KAM**") filed a lawsuit against the SEC in September 2023 alleging violations of the Administrative Procedure Act. In November 2022, NAM and KAM had filed a

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petition with the SEC requesting that it to exercise its rulemaking or exemptive authority to exempt Rule 144A fixed-income securities from Rule 15c2-11.

In granting exemptive relief with respect to Rule 144A fixed-income securities, the SEC explained that the exemption is appropriate because it is limited to resales of securities to only qualified institutional buyers ("QIBs"), which constitute an investor base that:

- can be conclusively assumed to be sophisticated;
- is able to obtain certain basic financial information concerning the issuers' business; and
- has extensive experience in the private resale market for restricted securities.

The SEC recognized that while the information available to QIBs in Rule 144A transactions is not the current publicly available information required by Rule 15c2-11, it serves the same purpose of investor protection.

For fixed-income securities that are not listed on a U.S. national securities exchange and are outside the scope of this exemptive order (for example, debt securities sold by privately held companies to accredited investors in reliance on Regulation D or Section 4(a)(2) of the Securities Act), an SEC staff no-action letter dated November 30, 2022, [available here](#), provides conditional relief from Rule 15c2-11 that will expire on January 4, 2025. To the extent an issuer of any such securities qualifies for the relief provided by that no-action letter, transaction participants will want to consider whether to document eligibility for the relief in the representations and warranties section of the relevant transaction documents.

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