

SEC Rule 15c2-11: Broker-Quote Requirements

Without Narrow but Necessary SEC Guidance Soon -
Adverse Impact on Bond Market Liquidity & Valuations,
and Corporate and Consumer Borrowing Costs

Requirements for broker-dealers to provide quotations now scopes in the fixed income market bringing with it unintended consequences that could destabilize a large segment of the 144A market

Impact of Current No Action Letter: Reduced Liquidity & Value of a Segment of Existing 144A Bonds, and Increased Borrowing Costs for Corporate Issuers

Without narrow but critical SEC guidance, broker-dealers' ability to quote many 144A market securities in the manner they do today could be seriously impaired – ultimately to the detriment of the very investors the SEC is intending to protect.

- **Since the establishment and adoption of Rule 144A** that provides a safe harbor from Securities Act Registration for resales of securities to qualified institutional buyers (“QIBs”), **a liquid market has successfully been created for previously restricted securities, as intended.**
 - **Rule 144A offerings are a key part of the capital markets**, providing increased liquid investment opportunities for institutional investors and expanded financing options for issuers seeking to raise capital where the registered market may otherwise be too costly, operationally difficult, infeasible, and/or time-consuming.
 - **In the last 5 years, 73% of issuance for structured products have been 144A**, including residential mortgage-backed securities, commercial mortgage-backed securities, and collateralized loan obligations (CLOs) which issue exclusively in the 144A market.
- **Under a December 2021 No Action Letter, the SEC requires certain investor disclosure to be made publicly available starting in January 2023 in order for broker-dealers to continue to quote 144A bonds as they do today.**
- **This requirement would effectively make 144A bond issuance an unworkable pathway for many securitization and corporate issuers to raise capital and finance debt which creates negative consequences for everyday consumers whose loans to purchase homes, autos and other credit card goods are financed via the securitization market.**
 - 144A securities are not saleable publicly.
 - Requiring the information to be publicly available exceeds the standard set under Rule 144A and also creates a division between what is required of security issuers versus security quotation providers.

- This requirement further has negative implications for issuers who must carefully manage the type of information they make publicly available, such as “nonpublic personal information” (NPI) of consumers and commercially-sensitive proprietary information.
 - This is especially acute for the many securitization issuers who provide monthly loan-level information on the underlying consumer and business loans collateral of the securities.
 - Developing the infrastructure to comply with the requirement to make such information publicly available would increase the cost of capital raising in a significant manner.
- Without removing the requirement to make 144A information publicly available, broker-dealers may not be able to quote a meaningful segment of the 144A securities as they do today.
 - In such case, we are seriously concerned that the Amended Rule could undermine critical liquidity in segments of the 144A market, thereby reducing the valuation of those associated investments and increasing the borrowing costs for a large segment of issuer.
 - In contrast, as qualified investors already have ready access to this information, SFA investor members find that the potential benefit of requiring “public” disclosures as contemplated by the Amended Rule is limited, and far outweighed by the potential loss of liquidity to the market and the additional infrastructure costs to broker-dealers and issuers.
- Simply put, investors will not gain access to additional information as a result, but will suffer reduced liquidity and, as a consequence, reduced valuation of their clients investment portfolios including pension plans, 401k accounts and other savings accounts.

Targeted SEC Guidance Can Remove these Adverse Market Consequences

SFA is in active, constructive dialogue with the SEC regarding these concerns and we believe our below recommended narrow modifications to SEC guidance will maintain the SEC’s stated goals while eliminating the severe unintended consequences on investor portfolios, corporate borrowing costs and consumer borrowing costs.

- SFA believes these adverse market consequences can be addressed by certain targeted modification to the conditions under which 144A securities qualify for alternative treatment available under the SEC’s December 2021 No-Action Letter.
- Specifically, we requested that the Commission staff modify the December 2021 No-Action Letter to confirm that:
 - a broker-dealer publishing a quotation for a 144A security satisfies the information availability mandate of the Amended Rule if that broker-dealer reasonably believes that the required issuer disclosure is readily accessible to qualified investors; and
 - a broker-dealer may publish or submit a quotation for such a 144A security without including a website link as required in the December 2021 No-Action Letter.

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Appendix: Background

The Amended Rule, initially issued decades ago, regulates the publication of quotations in Over-the-Counter (OTC) markets.

- **Since its introduction, the SEC has only applied the Rule to equity securities, with no record of application to fixed income or structured products.**
 - Following the finalization and public release of the amendment to 15c2-11, the SEC issued a no-action letter (NAL) stating that “[s]ince its original adoption in 1971, the Rule has applied to all securities including fixed income securities except for “exempt securities” – effectively applying the Rule to fixed income including structured products, retroactively.
 - In fact, in a [statement](#) following the amendments’ finalization and public release, SEC Commissioner Peirce acknowledged the Rule was focused on the OTC equity market and expressed a failure by the SEC to adequately solicit comments on the rule’s broader application.
- After this discovery, SFA and many other trades requested that the SEC open a comment period for fixed income market participants – including investors, issuers and broker-dealers – to provide comments on its applicability or impacts. The SEC did not.
- In December of 2021, the SEC issued a second letter, establishing a prescriptive, phased-in compliance regime, with an updated compliance date beginning January 3, 2023, that firms must follow for fixed income securities, including securitizations.