



asset management group

November 21, 2024

By Electronic Transmission

The Honorable Gary Gensler
Chair, Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Re: Request to Extend Rule 15c2-11 Compliance Relief for Fixed Income Securities

Dear Chair Gensler:

The Investment Company Institute¹ and the Asset Management Group of the Securities Industry and Financial Markets Association² are writing to reiterate our shared concerns about applying Rule 15c2-11 under the Exchange Act (the “rule”) to fixed income securities.³ Market participants historically have not understood the rule as applicable to fixed income securities, and its provisions are not well-suited for them. Applying the rule to this class of securities starting in early January—when the current SEC staff no-action relief⁴ will expire—is more likely to harm

¹ The [Investment Company Institute](http://www.ici.org) (ICI) is the leading association representing the asset management industry in service of individual investors. ICI’s members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$37.8 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional \$8.7 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

² SIFMA’s Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms that manage more than 50% of global AUM. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit <http://www.sifma.org/amg>.

³ We first expressed these concerns in a joint comment letter ([Letter from ICI, SIFMA AMG, IAA, MFA, and CCMC to SEC Chair Gary Gensler](#) (Sept. 23, 2021)). ICI then sent a follow-up letter focused on the dangers of the rule’s application to Rule 144A debt securities ([ICI Letter to SEC Chair Gary Gensler](#) (Oct. 25, 2022)).

⁴ [Letter from Josephine Tao, Assistant Director, Office of Trading Practices, Division of Trading and Markets to FINRA](#) (Nov. 30, 2022) (“2022 No-Action Letter”). This Letter states that the Division of Trading and Markets will

than protect retail investors. To avoid this outcome, the SEC or staff should extend indefinitely the 2022 No-Action Letter's relief, and leave such relief in place unless and until the SEC adopts any fixed income-specific rule amendments after engaging in a robust notice-and-comment rulemaking process.

The Rule's Relevant Background

The SEC adopted the rule in 1971 and last amended it in 2020. The rule governs the publication or submission of quotations for securities by broker-dealers in a quotation medium other than a national securities exchange i.e., over-the-counter (OTC) securities. More specifically, it requires broker-dealers to collect, record, and review for currency, accuracy, reliability and "public availability" certain information related to issuers and their securities before publishing or submitting quotations on a quotation medium.

Market participants had long understood the rule's intent to protect retail investors from fraud in the OTC equity markets. In 2021, however, the SEC staff stated that the rule has applied to "all securities including fixed income securities except for 'exempt securities'..." since its 1971 adoption.⁵ As Commissioner Peirce acknowledged at that time, however, "there appears to have been limited, if any, application of the rule to fixed income markets prior to the Commission's 2020 adopting release" and "we are now grappling for the first time with whether the application of the amended rule to fixed-income securities could undermine transparency, rather than enhance it as it is expected to do for equities."⁶

Our Concerns with Applying the Rule to Fixed Income Securities

Following this 2021 staff statement, we appreciate the related relief that the SEC⁷ and its staff⁸ have provided to ameliorate its practical impact. However, the 2022 No-Action Letter expires on January 4, 2025, and we are not confident that market participants (including brokers, dealers, vendors, and others) are well-positioned to fully comply with the rule (as applied to fixed income

not recommend enforcement action to the SEC under the rule for brokers or dealers that publish or submit quotations for fixed income securities if the broker or dealer has determined that the fixed income security or its issuer meets one of the criteria in Appendix A of the letter, or that there is current and publicly available financial information about the issuer. Appendix A sets forth several broad categories of fixed income securities.

⁵ See [Letter from Josephine Tao, Assistant Director, Office of Trading Practices, Division of Trading and Markets to FINRA](#) (Sept. 24, 2021).

⁶ [Statement on Staff No-Action Letter Regarding Amended Rule 15c2-11 in Relation to Fixed Income Securities](#), Commissioner Hester M. Peirce (Sept. 24, 2021).

⁷ See [Order Granting Broker-Dealers Exemptive Relief, Pursuant to Section 36\(a\) and Rule 15c2-11\(g\) under the Securities Exchange Act of 1934, from Rule 15c2-11 for Fixed-Income Securities Sold in Compliance with the Safe Harbor of Rule 144A under the Securities Act of 1933](#), SEC Release No. 34-98819 (Oct. 30, 2023), 88 Fed. Reg. 75343 (Nov. 2, 2023).

⁸ See, e.g., *supra*, note 4.

securities) without disrupting the fixed income markets. Far from being only a “sell-side” compliance issue, any resulting withdrawal of brokers and dealers from the fixed income space—or any cost increases borne by trading clients—will likely harm investors. We also would note that the fixed income securities for which this 2022 No-Action Letter provides relief, and which are not covered by the Commission’s exemption for securities sold using the Rule 144A safe harbor,⁹ have publicly available information that market participants can access.

As outlined in our prior comment letters, we are skeptical of the benefits of applying the rule to fixed income securities. Then-Chairman Clayton described the 2020 rule amendments as “retail investor-focused improvements...enabling investors to make better-informed investment decisions, reducing fraud in these markets where retail presence is significant and, unfortunately, pump-and-dump and other frauds are too common.”¹⁰ These concerns are not present in the fixed income markets, where traders are overwhelmingly institutional investors.

Worse, we believe applying the rule to fixed income securities could harm registered investment companies (“funds”) and their investors, among others. The rule’s provisions are not well-suited for fixed income securities (e.g., the rule’s exchange-listed securities exclusion is inapt for fixed income securities). If, due to compliance burdens, confusion, or concerns about liability, dealers reduce their activity—quoting activity, trading activity, or both—funds and their investors would be harmed in at least four ways:

- ***Fewer available indications of interest or quotes will impair price discovery and transparency for existing securities, which could create valuation challenges.*** Funds and pricing services rely on dealer quotes to inform their valuation estimates and determinations, and a well-functioning valuation process is critically important to funds and their shareholders.¹¹
- ***Certain fixed income securities could become less liquid,*** a particular concern for open-end funds that must promptly meet redemption requests. If broker-dealers reduce their market-making activity for these securities, their liquidity will be diminished.
- ***Advisers’ ability to achieve best execution on behalf of their clients (including funds) would be compromised.*** Advisers use information from trading platforms, dealer runs, and other activity in their best execution determinations. If dealers reduce their quoting

⁹ See *supra*, note 7.

¹⁰ [SEC Adopts Amendments to Enhance Retail Investor Protections and Modernize the Rule Governing Quotations for Over-the-Counter Securities](#), SEC Press Release (Sept. 16, 2020). The then-Director of the SEC’s Enforcement Division added, “The amended rule represents another important step in our tireless and proactive efforts to protect retail investors from being victimized by microcap fraud.”

¹¹ “Proper valuation, among other things, promotes the purchase and sale of fund shares at fair prices, and helps to avoid dilution of shareholder interests. Improper valuation can cause investors to pay fees that are too high or to base their investment decisions on inaccurate information.” [Good Faith Determinations of Fair Value](#), SEC Release No. IC-34128, 86 Fed. Reg. 748, 749 (Jan. 6, 2021).

and/or trading activity, then it will become more difficult for an adviser to assess its execution quality. And to the extent that funds buy and sell these securities, they may do so at sub-optimal prices, adversely impacting their investors.

- ***Advisers' ability to see more complete pricing information before executing trades would become more limited.*** A robust set of streamed prices supports pre-trade transparency and real-time price discovery. In addition to providing the benefits discussed above, these streamed prices help advisers identify attractive investment opportunities for their clients, especially when advisers are able to buy or sell securities at more favorable prices.

Given the importance of investor protection generally and valuation, liquidity risk management, and best execution specifically,¹² the SEC cannot simply hope that dealers will be able to comply with these new requirements in six weeks without any harm to investors.

Our Recommendation

We therefore recommend that the SEC or its staff extend indefinitely the 2022 No-Action Letter's relief, and leave such relief in place unless and until the SEC adopts any fixed income-specific rule amendments.¹³ If the SEC believes that the rule should apply in some way to fixed income securities—we are not convinced that it should—then it should begin a formal notice-and-comment rulemaking process that considers the costs and benefits of doing so; allows market participants to provide meaningful comment; and results in final rule text and guidance appropriately tailored to fixed income securities, setting forth clear and reasonable compliance expectations. If the SEC does *not* believe that this rulemaking is warranted, then an updated no-action letter with no time limitation or a Commission exemptive order would provide reasonable clarity and certainty to market participants.

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¹² See generally [Registered Investment Companies: Review of Certain Core Focus Areas and Associated Documents Requested](#), Risk Alert, SEC Division of Examinations (Nov. 4, 2024).

¹³ Were the SEC to adopt such rule amendments, our requested relief should stay in place until the amendments' compliance date.

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We appreciate the opportunity to express our views. If you have questions, please contact us at paul.cellupica@ici.org or keljo@sifma.org.

Sincerely,

/s/ Paul Cellupica
General Counsel, Investment Company Institute

/s/ Lindsey Weber Keljo, Esq.
Head – Asset Management Group
Securities Industry and Financial Markets
Association

cc: The Honorable Commissioner Hester M. Peirce
The Honorable Caroline A. Crenshaw
The Honorable Mark T. Uyeda
The Honorable Jaime Lizárraga
Natasha Vij Greiner, Director, Division of Investment Management
Haoxiang Zhu, Director, Division of Trading and Markets