

Securities and Exchange Commission
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Chris Barnard

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- **17 CFR Part 240**
- **Release No. 34-74581**
- **File No. S7-05-15**
- **Exemption for Certain Exchange Members**

Dear Sir.

Thank you for giving us the opportunity to comment on your Proposed rule on Exemption for Certain Exchange Members.

You are proposing to amend Rule 15b9-1 (Rule) under the Securities Exchange Act of 1934 (Act or Exchange Act), which exempts certain brokers or dealers from membership in a registered national securities association (Association). The proposed amendments would replace the current gross income allowance in the Rule with a narrower exemption from Association membership for a broker or dealer that carries no customer accounts and effects transactions on a national securities exchange. The proposed amendments would create an exemption for a dealer that effects transactions off the exchange of which it is a member solely for the purpose of hedging the risks of its floor-based activity, or a broker or dealer that effects transactions off the exchange resulting from orders that are routed by a national securities exchange of which it is a member, to prevent trade-throughs consistent with the provisions of Rule 611 of Regulation NMS.

I support this proposed rule, which will: improve the consistency and effectiveness of regulatory supervision; reduce the existing differential regulatory burden of Member Firms and Non-Member Firms; and promote firms to compete more equitably to supply liquidity both on exchanges and off-exchange. The proposed exemptions are proportional and necessary, but the hedging exemption should be clarified and strengthened.

Floor member hedging exemption

I support an objective, meaningful hedging exemption. You are proposing to add the following language to Rule 15b9-1: “and, (c) Effects transactions solely on a national securities exchange of which it is a member, except that . . . (1) A dealer that conducts business on the floor of a national securities exchange may effect transactions, for the dealer’s own account with or through another registered broker or dealer, that are solely for the purpose of hedging the risks of its floor-based activities, by reducing or otherwise mitigating the risks thereof.” The wording here is far too ambiguous and subjective. I would amend this proposed wording to make the hedging intention clearer. For example, hedging should achieve an “unbiased” result and achieve more than just “accidental offsetting”. This would tighten the exemption to those cases where hedging is used as a genuine risk management tool.

Yours faithfully

C.R.B.

Chris Barnard