

Exemption from National Securities Association Membership



The Securities and Exchange Commission re-proposed amendments to an exemption from Section 15(b)(8) of the Securities Exchange Act. Section 15(b)(8) requires any broker or dealer registered with the Commission to become a member of a national securities association unless the broker or dealer effects transactions in securities solely on an exchange of which it is a member. FINRA currently is the only registered national securities association. Exchange Act Rule 15b9-1 provides an exemption from Section 15(b)(8) to certain proprietary trading dealers that effect securities transactions other than on an exchange where they are members.

The re-proposal would amend Rule 15b9-1 by replacing the proprietary trading exemption with more narrow exemptions from Section 15(b)(8). Under the re-proposal, a Commission-registered broker or dealer would be required to join FINRA if it effects securities transactions other than on an exchange of which it is a member unless:

- It is a member of a national securities exchange;
- It carries no customer accounts; and
- Such transactions (i) result solely from orders that are routed by a national securities exchange of which the broker or dealer is a member to comply with Rule 611 of Regulation NMS or the Options Order Protection and Locked/Crossed Market Plan; or (ii) are solely for the purpose of executing the stock leg of a stock-option order.

Why This Matters

The Commission adopted the proprietary trading exemption more than forty years ago to address the limited proprietary trading activities of regional, exchange-based specialists and floor brokers that were conducted off the (typically single) exchange of which they were a member and that were ancillary to their floor-based business. Since then, the securities markets have transformed from being floor-based to being mostly electronic, and Commission-registered dealers that engage in significant, proprietary, off-member-exchange securities trading electronically, including in the U.S. Treasury securities market, have emerged. Several of these firms are exchange members but are not FINRA members in reliance on Rule 15b9-1, and therefore they are not subject to FINRA's rules. As a result, self-regulatory organization oversight of their securities trading activity elsewhere than any exchange where they are a member is less certain and consistent than it would be if FINRA membership were mandated. Further, since these firms are not FINRA members, they are not required to report their U.S. Treasury securities transactions to FINRA's TRACE system.

How This Rule Applies

The re-proposed amendments would require a broker or dealer to join FINRA if it effects securities transactions other than on an exchange where it is a member, unless it can rely upon one of the amended rule's exemptions.

Additional Information:

The public comment period will remain open for 60 days following publication of the proposing release on the SEC's website or 30 days following publication of the proposing release in the Federal Register, whichever period is longer.