

Exemption from National Securities Association Membership



The Securities and Exchange Commission adopted amendments to an exemption from Section 15(b)(8) of the Securities Exchange Act of 1934 (“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. The Financial Industry Regulatory Authority, Inc. (“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 amendments to Rule 15b9-1 set forth narrower exemptions to enhance FINRA oversight of firms that trade securities proprietarily across markets.

Why This Matters

The Commission adopted the proprietary trading exemption under Rule 15b9-1 so that an exchange member’s limited off-member-exchange proprietary trading activity ancillary to its exchange activity – which, at that time, typically was a floor business conducted on a single national securities exchange – would not necessitate association membership in addition to exchange membership.

In the decades since that adoption, the securities markets have undergone a substantial transformation. Proprietary trading broker-dealer firms have emerged that engage in significant, computer-based or algorithmic securities trading activity for their own account across the full range of exchange and off-exchange venues, often at lightning speeds. Rule 15b9-1 has remained static, however, as these types of firms have emerged and off-member-exchange securities trading has proliferated. Several of these firms are exchange members but are not FINRA members, presumably in reliance on Rule 15b9-1. FINRA does not have direct membership-based jurisdiction over these firms. This provides for a less stable and consistent regulatory regime for covered off-member-exchange securities trading activity. Further, since these firms are not FINRA members, they are not required to report their U.S. Treasury securities transactions to FINRA’s Trade Reporting and Compliance Engine.

How This Rule Applies

As a result of these rule amendments, a Commission-registered broker or dealer will be required to join FINRA pursuant to Section 15(b)(8) if it effects securities transactions other than on an exchange where 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.
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What's Next

The rule amendments will become effective 60 days after the date of publication of the adopting release in the Federal Register. The compliance date will be 365 days from the date of publication of the adopting release in the Federal Register.