

Alert | Securities Litigation



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SEC Seeks to Expand ‘Dealer’ or ‘Government Securities Dealer’ Definition to Require Additional Firms to Register with Agency and Comply with Federal Securities Regulations

On March 28, 2022, the Securities Exchange Commission (SEC) issued a [press release](#) regarding two proposed rules, Rules 3a5-4 and 3a44-2 under the Securities Exchange Act of 1934 (the Act). These proposed rules intend to further define the phrase “as part of a regular business” to identify certain activities that would cause a firm to be considered a “dealer” or a “government securities dealer.” Any firm considered as such, absent exemption, is subject to the registration requirements of Sections 15 and 15C of the Act, and would be required to register with the SEC as well as to become a member of a self-regulatory organization (SRO) such as the Financial Industry Regulatory Authority (FINRA). The firm would then be required to comply with all federal securities laws, as well as applicable SEC, SRO, and Treasury rules and requirements.

The proposed rules focus on activity rather than label or status, and if adopted as proposed will have both quantitative and qualitative standards to identify firms that should be considered a “dealer” or a “government securities dealer.” Qualitatively, the proposed rules define activities that seek to identify firms where liquidity provision is not incidental to trading activities and where firms are in the business of buying and selling securities for their own accounts, and also provide liquidity “as a part of regular business.” Quantitatively, proposed Rule 3a44-2 would establish a bright-line test under which a firm

engaged in certain specified levels of activity would be deemed to be buying or selling government securities “as part of a regular business.” If any of the quantitative or qualitative standards are met, the firm would be considered a “dealer” and subject to registration.

The press release states that the rule is chiefly aimed at trading firms who act as liquidity providers in the markets. The SEC believes these proposed rules will primarily require registration by principal and/or proprietary trading firms and private funds, though some investment advisors may also be included. The proposed rule could require many hedge funds and high frequency traders to register as broker-dealers. The SEC’s concern is that, as currently defined under the Exchange Act Sections 3(a)(5) and 3(a)(44), these firms that may have a significant share of market volume are not required to be registered, so investors and markets lack the protections that result from registration and regulation. SEC Chair Gary Gensler noted: “[R]equiring all firms that regularly make markets, or otherwise perform important liquidity-providing roles, to register as dealers or government securities dealers also could help level the playing field among firms and enhance the resiliency of our markets.”

The public comment period ends on May 27, 2022. Once the comment period closes, the SEC will consider the public’s input on the proposed rules as it determines whether to adopt the rules or to make additional adjustments.

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