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NON-U.S. BROKER-DEALERS

RULE 15A-6: BACKGROUND & CURRENT ISSUES

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Introduction and Agenda

- Increased demand for foreign investments by U.S. investors
- internationalization and interconnection among local securities markets and market intermediaries
- Issue: The ability of U.S. investors to deal directly with foreign financial service professionals is limited by the U.S. legal and regulatory structure.

The U.S. Territorial Approach

- The U.S. Securities and Exchange Commission uses a territorial approach in applying the broker-dealer registration requirements to the international brokerage operations of financial institutions.
- Under this approach, financial institutions located outside the United States that induce or attempt to induce securities transactions (“foreign broker-dealers”) with persons in the United States are required to register with the SEC, unless an exemption applies.^{1/}

^{1/} See generally Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013 (July 18, 1989); and Exchange Act Release No. 25801 (June 14, 1988), 53 FR 23645 (June 23, 1988).

Registration Requirement

- Section 15(a) of the Securities Exchange Act of 1934 provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the SEC.
- Section 3(a)(4) of the Exchange Act generally defines a “broker” as “any person engaged in the business of effecting transactions in securities for the account of others,” (exceptions for certain bank activities).
- Section 3(a)(5) of the Exchange Act generally defines a “dealer” as “any person engaged in the business of buying and selling securities for his own account,” (exceptions for certain bank activities.)

Exemption under Rule 15a-6

- Exchange Act Rule 15a-6 provides conditional exemptions from broker-dealer registration for foreign broker-dealers dealing with U.S. investors.
- While the rule has provided a useful framework for U.S. investors to access foreign broker-dealers for almost two decades, ever increasing market globalization has strained the original framework, and today the rule requires careful analysis of SEC Staff guidance.

Rule 15a-6

- Paragraph (a)(1) – Unsolicited Trades
- Paragraph (a)(2) – Research Reports
- Paragraph (a)(3) – Chaperoning
- Paragraph (a)(4) – Transactions with Registered Broker-Dealers and Certain Others
- Guidance
 - No Action Letter dated April 9, 1997
 - No Action Letter dated January 30, 1996

Amendment to Exchange Act Rule 15a-6

- Clarifying amendment to Exchange Act Rule 15a6(a)(4)(i) to conform to GLBA.
- The “broker” and “dealer” definitions completely excluded banks prior to GLBA, now they provide that banks engaging in the activities permitted by the conditional exceptions in those definitions “shall not be considered to be” brokers or dealers.
- Paragraph (a)(4)(i) of Rule 15a-6 permits a foreign broker-dealer to engage in certain securities activities with “a bank acting pursuant to an exception or exemption from the definition of ‘broker’ or ‘dealer’ in sections 3(a)(4)(B), 3(a)(4)(E) or 3(a)(5)(C) of the Act . . . or the rules thereunder.”

2008 Proposed Amendment

- On June 27, 2008, the Commission proposed amendments to Exchange Act Rule 15a-6, aimed to significantly enhance the ability of U.S. investors to access non-U.S. securities markets and promote the efficient functioning of the international securities markets while preserving investor safeguards and protections.

CLE Code

Rule 15a-6 and Related No-action Letters

PROVISION	SECURITY	FOREIGN BD's COUNTER-PARTY	TRANSACTION REQUIREMENTS
Rule 15a-6(a)(1)	Any security	Any U.S. person (including retail customers)	No solicitation (solicitation is broadly defined and includes general advertising and attempts to induce even a single transaction)
Rule 15a-6(a)(2)	Any security	Major U.S. institutional investor	<p>Research reports permitted, but reports cannot recommend use of the foreign BD to effect trades</p> <p>The foreign BD cannot initiate other contact with, or otherwise solicit the Major U.S. institutional investor</p> <p>If foreign BD has a 15a-6(a)(3) relationship with a registered BD, then the transactions need to be effected through the registered BD</p> <p>Research cannot be provided to U.S. persons pursuant to any expressed or implied understanding that U.S. persons will direct commission income to the foreign BD</p>

Rule 15a-6 and Related No-action Letters *(Cont.)*

PROVISION	SECURITY	FOREIGN BD's COUNTER-PARTY	TRANSACTION REQUIREMENTS
Rule 15a-6(a)(3) & 1997 Cleary No-Action Letter	Any security	U.S. institutional investor (Note: transaction requirements under Rule 15a-6(a)(3) & 1997 Cleary No-Action Letter are the same for U.S. institutional investor and major U.S. institutional investor except with respect to chaperoning requirements)	<ul style="list-style-type: none"> • Solicitation permitted • Foreign BD must effect transaction through registered BD • Foreign BD agrees to provide the Commission with any requested document/information (as legally permitted by applicable foreign law) • Registered BD obtains certain records and makes certain determinations related to foreign associated persons, including that it is not subject to statutory disqualification or foreign equivalent • Registered BD issues all required confirmations and statements • Registered BD is responsible for extending or arranging for extension of credit • Registered BD must comply with recordkeeping requirements, net capital requirements and customer protection (reserves and custody of securities) requirements for transaction • Foreign BD provides consent to service of process <p>Chaperoning requirements for U.S. institutional investors:</p> <ul style="list-style-type: none"> (i) Communications during in-person U.S. visits (ii) Any other communications:

Rule 15a-6 and Related No-action Letters (Cont.)

PROVISION	SECURITY	FOREIGN BD's COUNTER-PARTY	TRANSACTION REQUIREMENTS
Rule 15a-6(a)(3) & 1997 Cleary No-Action Letter	Any security	<p>Major U.S. institutional investor</p> <p>(Note: transaction requirements under Rule 15a-6(a)(3) & 1997 Cleary No-Action Letter are the same for U.S. institutional investor and major U.S. institutional investor except with respect to chaperoning requirements)</p>	<ul style="list-style-type: none"> • Solicitation permitted • Foreign BD must effect transaction through registered BD • Foreign BD agrees to provide the Commission with any requested document/information (as legally permitted by applicable foreign law) • Registered BD obtains certain records and makes certain determinations related to foreign associated persons, including that it is not subject to statutory disqualification or foreign equivalent • Registered BD issues all required confirmations and statements • Registered BD is responsible for extending or arranging for the extension of any credit • Registered BD must comply with recordkeeping requirements, net capital requirements and customer protection requirements for transaction • Foreign BD provides consent to service of process <p>Chaperoning requirements for major U.S. institutional investors:</p> <ul style="list-style-type: none"> (i) Communications during in-person U.S. visits (ii) Any other communications

Rule 15a-6 and Related No-action Letters *(Cont.)*

PROVISION	SECURITY	FOREIGN BD's COUNTER-PARTY	TRANSACTION REQUIREMENTS
Rule 15a-6(a)(3) & 1997 Cleary No-Action Letter	Foreign Security or U.S. Government securities	Major U.S. institutional investor or U.S. institutional investor	All requirements above for any security transaction pursuant to 15a-6(a)(3) for a major U.S. institutional investor or U.S. institutional investor apply, except that: clearance and settlement may occur through direct transfer of funds and securities between a foreign BD and U.S. investor, where the foreign BD is not acting as a custodian of funds or securities
1996 Cleary No-Action Letter	Foreign Security	U.S. resident fiduciaries for offshore client	Obtain written assurance from the U.S. resident fiduciary that the account is managed for an offshore client
Rule 15a-6(a)(4)(i)	Any security	(a) Registered broker-dealer: as principal or as agent for others; and (b) bank acting in broker-dealer capacity	None (solicitation is permitted)
Rule 15a-6(a)(4)(ii)	Any security	African/Asian/Inter-American Development Bank, International Bank for Reconstruction and Development, IMF, UN	None (solicitation is permitted)

Rule 15a-6 and Related No-action Letters *(Cont.)*

PROVISION	SECURITY	FOREIGN BD's COUNTER-PARTY	TRANSACTION REQUIREMENTS
Rule 15a-6(a)(4)(iii)	Any security	foreign person temporarily in U.S. w/ pre-existing relationship	None (solicitation is permitted)
Rule 15a-6(a)(4)(iv)	Any security	agency or branch of U.S. person permanently located outside U.S.	Solicitation is permitted Transaction must occur outside U.S.
Rule 15a-6(a)(4)(v)	Any security	U.S. citizens resident outside U.S.	Targeted solicitation is not permitted (e.g., solicitation targeted at overseas military personnel) Transaction must occur outside U.S.



Current Issues

- SEC FAQs
- Continued reliance on SEC Staff Guidance/FAQs
- Enforcement

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