

SEC Plans Comprehensive Revision of Rule 15a-6

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The SEC has proposed a comprehensive revision of its Rule 15a-6, to make it easier and less expensive for foreign financial service firms to provide investment research and sell securities to certain U.S. investors. This now appears as Proposed Rule Release No. 34-58047 ("Exemption of Certain Foreign Broker and Dealers [from U.S. broker-dealer registration]") (June 27, 2008).

Currently, the rule allows foreign broker-dealers to provide research to U.S. institutional investors, but requires that the solicitation of orders be "chaperoned" by a U.S. broker-dealer. The proposed rule would substantially reduce the role of the U.S. broker-dealer, would retain several of the Rule's requirements and would modify others. Among other things, a foreign broker-dealer would be permitted to interact with U.S. institutional investors that invested \$25 million or more, or with natural persons that owned or controlled investments of more than \$25 million. Foreign broker-dealers are currently permitted to interact only with institutions having financial assets of over \$100 million.

In place of the current requirement that a U.S. broker-dealer "chaperone" most aspects of the transaction, the proposed Rule suggest two alternatives:

Alternative No. 1

The foreign broker-dealer could effect all aspects of the transaction, including the maintenance of custody over the funds and assets, provided the foreign broker-dealer made certain disclosures and conducted a "foreign business" (defined as the business of a foreign broker-dealer with qualified investors and foreign resident clients where at least 85 percent of the aggregate value of the securities purchased or sold in transactions conducted pursuant to the proposed rule by the foreign broker-dealer is derived from transactions in foreign securities). Under this approach, all books relating to the transactions would have to be maintained both by the foreign broker-dealer and by the U.S. broker-dealer.

Alternative No. 2

The foreign broker-dealer could effect all aspects of a transaction with a qualified investor in both U.S. and foreign securities, provided that a U.S. registered broker-dealer maintained custody of the qualified investor's funds and securities and maintained books and records reflecting such transactions. There would be no "foreign business test" under the second approach, and the foreign broker-dealer could effect all aspects of the transactions with a qualified investor in both U.S. and foreign securities, provided a U.S. registered broker-dealer maintained custody of the qualified investor's funds and securities in connection with the transactions, along with all related books and records.

The proposed rule contains many other provisions of significance, and the SEC has allotted a 60-day period for the receipt of comments (through August 27, 2008).