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SEC Extends Phased-in Approach for Application of Rule 15c2-11 for Certain Fixed Income Securities, Including Most Notably Securities Being Sold Pursuant to Resales under Rule 144A

Client Alert | December 1, 2022

As discussed in our November 21 Client Alert, following a recent interpretation by the SEC Staff regarding the application of Exchange Act Rule 15c2-11 to fixed income securities initially offered and sold by private companies, such issuers will be required to publicly disclose specified current financial and other information if they wish to allow US broker-dealers to publish quotations on their securities. Based on a December 2021 no action letter (referenced in our client alert), this interpretation was scheduled to be phased in over time, with "Phase Two" taking effect as of January 3, 2023, which would have affected trading in securities offered by non-reporting issuers in Rule 144A offerings.

On November 30, 2022, however, the SEC issued a no-action letter that delayed implementation of Phase Two until January 4, 2025 to provide non-reporting issuers and US broker-dealers more time to implement compliance systems to meet the demands of the rule. While various industry groups are expected to continue to engage with the Commission on the application of the Rule to fixed income securities, a further change in Commission policy remains uncertain.

The following Gibson Dunn lawyers prepared this client update: Alan Bannister and James Moloney.

Gibson, Dunn & Crutcher's lawyers are available to assist in addressing any questions you may have about these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any of the following leaders and members of the firm's Capital Markets or Securities Regulation and Corporate Governance practice groups:

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