

Transcript:

## Research and Follow-Up Contact under SEC Rule 15a-6

---

**Speakers:** **Kathy H. Rocklen – Partner, Broker-Dealer & Investment Management Regulation Co-Head**

**Benjamin J. Catalano – Partner, Broker-Dealer & Investment Management Regulation Co-Head**

**Kathy:** At Proskauer, one area our broker-dealer group concentrates on is cross-border regulation. And for foreign broker-dealers conducting U.S. brokerage activities, Rule 15a-6 is the guidepost. The Rule was adopted in 1989, and although the street has long viewed some of its requirements as cumbersome and outdated, a proposal to modernize the Rule has languished since 2008.

**Ben:** Rule 15a-6 exempts foreign broker-dealers from registration in the U.S. provided they operate within the rule. Rule 15a-6(a)(2) allows a foreign broker-dealer to furnish research reports to major U.S. institutional investors – institutions with more than \$100 million in assets under management – and to effect transactions in the securities discussed in the reports, provided the foreign firm does not initiate follow-up contact with those institutions. Rule 15a-6(a)(3) allows a foreign broker-dealer to solicit transactional business from U.S. institutional investors and major institutional investors if the foreign broker-dealer effects any resulting transactions through a U.S. registered broker-dealer.

**Kathy:** Because of the prohibition on initiating follow-up contact under paragraph (a)(2), firms continue to ask whether the exemptions in paragraphs (a)(2) and (a)(3) are mutually exclusive. They are not. Although the Rule doesn't explicitly address the intersection of these two exemptions, the SEC staff has clarified that paragraph (a)(2) does not prohibit a foreign broker-dealer from initiating follow-up solicitations, so long as it's done in accordance with paragraph (a)(3).

**Ben:** So, provided the foreign broker-dealer and the U.S. broker-dealer meet their respective obligations under Rule 15a-6, the foreign firm can furnish major U.S. institutional investors with research and follow-up with them to solicit transactional business.

**Kathy:** The relationship between a foreign broker-dealer and a U.S. broker-dealer is typically outlined in a 15a-6 agreement. The agreement should require the foreign broker-dealer to furnish the U.S. broker-dealer with the consents and other information that the U.S. firm must maintain under the Rule. It should also address the parties' respective responsibilities regarding the

provision of research, due diligence and chaperoning requirements under the Rule and the role of each firm in effecting transactions.

**Ben:** The U.S. broker-dealer distributing the foreign broker-dealer's research will likely have additional disclosure obligations under FINRA rules and may be required to include the certifications specified in Regulation AC. Our website page contains more information on issues that arise under Rule 15a-6, including the required research disclosures and the proposed amendments to 15a-6.