

## Alert | Corporate



June 2023

### **SEC Adopts Amendments to Remove References to Credit Ratings from Regulation M**

On June 7, 2023, the Securities and Exchange Commission (SEC) **adopted rule changes** (the “Amendments”) to remove references to credit ratings from existing exceptions under Regulation M, a set of rules enacted to prohibit market manipulation of offered securities, replacing such references with alternative standards of creditworthiness. The amendments are intended to reduce reliance on credit ratings by establishing uniform standards of creditworthiness pursuant to requirements set forth in Section 939A(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Additionally, the SEC adopted a record preservation requirement for broker-dealers utilizing the new exceptions for nonconvertible securities.

The final rules will become effective 60 days following publication in the Federal Registrar. Once effective, the changes will remove and substitute existing rule exceptions that reference credit ratings for nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities.

#### **Existing Exceptions in Rule 101 and 102 for Investment Grade Securities**

Rules 101(c) and 102(d) of Regulation M (collectively, the “Investment Grade Exceptions”) set forth exceptions to the prohibition of certain activities of persons with a financial interest in a securities offering, such as restricting distribution participants, issuers, selling security holders, and their affiliated purchasers, from engaging in activities such as bidding or purchasing covered securities during a

designated “restricted period.” The Investment Grade Exceptions specifically apply to investment grade nonconvertible securities and asset-backed securities.

### **Changes to the Existing Investment Grade Exceptions**

Under the Amendments, exceptions based on alternative measures of creditworthiness will replace Rule 101 and Rule 102 references to credit ratings in the Investment Grade Exceptions. Following the SEC’s determination that the Amendments are appropriate substitutes for references to credit ratings, the Investment Grade Exceptions will be replaced with the exceptions described below.

#### *Nonconvertible Securities*

With respect to (i) distribution participants and their affiliate purchasers and (ii) issuers, selling securities holders, and their affiliate purchasers relying on an Investment Grade Exception for distributions of nonconvertible securities, the SEC is replacing references to credit ratings with a determination by the distribution participant acting as the lead manager of an issuer’s probability of default derived from a structural credit risk model. The exception applies to nonconvertible securities of issuers for which the probability of default is 0.055% or less, estimated as of the sixth business day prior to the final determination of the offering price, over a 12-month horizon from such day as determined using the structural credit risk model. The SEC also requires that a broker-dealer relying on the foregoing exceptions preserve the written probability of default determination to assist the SEC staff’s examinations.

#### *Asset-Backed Securities*

With respect to distributions of asset-backed securities offered pursuant to an effective shelf registration statement on Form SF-3, the SEC has adopted identical exceptions described above for (i) distribution participants and their affiliate purchasers and (ii) issuers, selling security holders, and their affiliate purchasers.

## **Authors**

This GT Alert was prepared by:

- **Drew M. Altman** | +1 305.579.0589 | [altmand@gtlaw.com](mailto:altmand@gtlaw.com)
- **Laurie L. Green** | +1 954.768.8232 | [greenl@gtlaw.com](mailto:greenl@gtlaw.com)
- **Barbara A. Jones** | +1 310.586.7773 | [Barbara.Jones@gtlaw.com](mailto:Barbara.Jones@gtlaw.com)
- **Marc M. Rossell** | +1 212.801.6416 | [rossellm@gtlaw.com](mailto:rossellm@gtlaw.com)
- **Macy K. Nix** | +1 305.579.0562 | [nixm@gtlaw.com](mailto:nixm@gtlaw.com)
- **Ashelin Myus** <sup>~</sup> | Summer Associate | Miami

<sup>~</sup> *Not admitted to the practice of law.*

Albany. Amsterdam. Atlanta. Austin. Berlin. <sup>-</sup> Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Las Vegas. London. <sup>\*</sup> Long Island. Los Angeles. Mexico City. <sup>+</sup> Miami. Milan. <sup>»</sup> Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. Seoul. <sup>∞</sup> Shanghai. Silicon Valley. Singapore. <sup>=</sup> Tallahassee. Tampa. Tel Aviv. <sup>^</sup> Tokyo. <sup>»</sup> Warsaw. <sup>~</sup> Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ↯Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. \*Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ™Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ℞Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2023 Greenberg Traurig, LLP. All rights reserved.*