



**NELSON
MULLINS**

FinTech University
Qualified Matching Services
April 9, 2024



Agenda

- Introduction
- Publicly Traded Partnership Interests
- Secondary Trading of Partnership Interests
- Qualified Matching Services
- QMS Requirements
- QMS Private Letter Ruling
- Sample QMS Private Letter Ruling
- Conclusions



Publicly Traded Partnerships

- Section 7704(a) provides that a publicly traded partnership shall be treated as a corporation.
- Section 7704(b) provides that for purposes of § 7704, the term “publicly traded partnership” means any partnership if — (1) interests in such partnership are traded on an established securities market, or (2) interests in such partnerships are readily tradable on a secondary market (or the substantial equivalent thereof).
- Section 1.7704-1(b) provides, in part, that for purposes of § 7704(b) and § 1.7704-1, an established securities market includes —
 - A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (“1934 Act”);
 - A national securities exchange exempt from registration under section 6 of the 1934 Act because of the limited volume of transactions;
 - A foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements under the 1934 Act;
 - A regional or local exchange;
 - An inter-dealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.



Secondary Trading

- Section 1.7704-1(c)(1) provides that for purposes of § 7704(b) and § 1.7704-1, interests in a partnership that are not traded on an established securities market (within the meaning of § 7704(b) and § 1.7704-1(b)) are readily tradable on a secondary market or the substantial equivalent thereof if, taking into account all of the facts and circumstances, the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to trading on an established securities market.
- Section 1.7704-1(c)(2) further clarifies that, for purposes of § 1.7704-1(c)(1), interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof if —
 - Interests in the partnership are regularly quoted by any person, such as a broker or dealer, making a market in the interests;
 - Any person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to interests in the partnership and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others;
 - The holder of an interest in the partnership has a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange the interests in the partnership; or
 - Prospective buyers and sellers otherwise have the opportunity to buy, sell, or exchange interests in the partnership in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of § 1.7704-1(c)(2).



Qualified Matching Service

- Section 1.7704-1 allows certain types of transfers of partnership interests to be disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.
- However, these safe harbors do not apply to any transfers of partnership interests on an established securities market.
- One of these safe harbors is a QMS under § 1.7704-1(g).
- Section 1.7704-1(g)(1) provides that for purposes of § 7704(b) and § 1.7704-1, the transfer of an interest in a partnership through a QMS is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.

QMS Requirements

- Section 1.7704-1(g)(2) provides that a matching service is a QMS only if —
 - The matching service consists of a computerized or printed listing system that lists customers' bid and/or ask quotes in order to match partners who want to sell their interests in a partnership (the selling partner) with persons who want to buy those interests;
 - Matching occurs either by matching the list of interested buyers with the list of interested sellers or through a bid and ask process that allows interested buyers to bid on the listed interest;
 - The selling partner cannot enter into a binding agreement to sell the interest until the 15th calendar day after the date information regarding the offering of the interest for sale is made available to potential buyers and such time-period is evidenced by contemporaneous records ordinarily maintained by the operator at a central location;



QMS Requirements

- The closing of the sale effected by virtue of the matching service does not occur prior to the 45th calendar day after the date information regarding the offering of the interest for sale is made available to potential buyers and such time period is evidenced by contemporaneous records ordinarily maintained by the operator at a central location;
- The matching service displays only quotes that do not commit any person to buy or sell a partnership interest at the quoted price (non-firm price quotes) or quotes that express interest in partnership interest without an accompanying price (non-binding indications of interest) and does not display quotes at which any person is committed to buy or sell a partnership interest at the quoted price (firm quotes);
- The selling partner's information is removed from the matching service within 120 calendar days after the date information regarding the offering of the interest for sale is made available to potential buyers and, following any removal (other than removal by reason of a sale of any part of such interest) of the selling partner's information from the matching service, no offer to sell an interest in the partnership is entered into the matching service by the selling partner for at least 60 calendar days; and
- The sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in private transfers described in § 1.7704-1(e)) does not exceed 10 percent of the total interests in partnership capital or profits.

QMS Requirements

- Section 1.7704-1(g)(4) provides that a QMS may be sponsored or operated by a partner of the partnership (either formally or informally), the underwriter that handled the issuance of the partnership interests, or an unrelated third party.

- In addition, a QMS may offer the following features —
 - The matching service may provide prior pricing information, including information regarding resales of interests and actual prices paid for interests; a description of the business of the partnership; financial and reporting information from the partnership's financial statements and reports; and information regarding material events involving the partnership, including special distributions, capital distributions, and refinancings or sales of significant portions of partnership assets;

 - The operator may assist with the transfer documentation necessary to transfer the partnership interest;

 - The operator may receive and deliver funds for completed transactions; and

 - The operator's fee may consist of a flat fee for use of the service, a fee or commission based on completed transactions, or any combination thereof.



QMS Private Letter Ruling

- According to the information submitted, X is a State limited liability company.
- X is a registered broker-dealer which proposes to operate two separate matching services - the Qualifying Service and the Non-Qualifying Service (collectively “Services”) - that facilitate the buying and selling of non-publicly traded limited partnership interests.
- Listings on the Qualifying Service are separate from listings on the Non-Qualifying Service.
- The same interests in a partnership will not be simultaneously listed on both the Qualifying Service and the Non-Qualifying Service.
- The Qualifying Service operates in a manner designed to satisfy the QMS requirements set forth in § 1.7704-1(g) of the Income Tax Regulations.
- The Non-Qualifying Service fails to satisfy one or more of the requirements in § 1.7704-1(g)(2).
- The Services are not available to the public.
- Prospective buyers and sellers must complete a New Account Application and, if approved, execute a Subscriber Agreement.



QMS PLR

- As required under applicable FINRA rules and the U.S.A. Patriot Act, X will perform a background check to ensure that a prospective subscriber is qualified to do business with X, that the interest being listed is a valid limited partnership, and that the potential buyer is an accredited investor (as defined under Rule 501 of Regulation D of the Securities Act of 1933), an entity regulated by a Federal functional regulatory authority, or an entity regulated by a comparable foreign financial regulatory authority.
- X will operate both Services through a password protected website and software application (Platform). X's clients will use third party software to connect to X's Services in order to see the limited partnership interests listed by X.
- X represents that neither of the Services is:
 - A national securities exchange registered under section 6 of the 1934 Act (15 U.S.C. § 78f) (the '34 Act);
 - A national securities exchange exempt from registration under section 6 of the 1934 Act because of the limited volume of transactions;
 - A foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements under the 1934 Act;
 - A regional or local exchange; or
 - An inter-dealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.



Description of the QMS

- A partner of a partnership may request that the Qualifying Service serve as a QMS under § 1.7704-1(g) for transfers of partnership interests.
- The seller may list the interest on X's Qualifying Service via the Platform.
- X verifies interests are eligible for sale prior to listing them.
- The Qualifying Service displays only quotes that do not commit any person to buy or sell an interest at a quoted price (non-firm price quotes) or quotes that express an indication of interest in an interest without an accompanying price (non-binding indications of interest), and does not display quotes at which any person is committed to buy or sell a partnership interest at the quoted price (firm quotes).
- No binding contract may be entered into until after the 15th calendar day after the date information regarding an offering of a partnership interest is made available to potential buyers (the “15-day period”).
- For listings on the Qualifying Service, X also enters into its records the 45th day after the date of the initial entry, which is the earliest date that the closing for the sale of interests through the Qualifying Service will occur.



Description of the QMS

- During the 15-day period, members of X have the opportunity to view the interests on the Qualifying Service, together with a non-binding “asking price,” through X’s website. Interested buyers can post an Indication of Interest (“IOI”) in purchasing a partnership interest with or without specifying a purchase price for the interest. In addition, during this 15-day period, sellers may view buyers’ non-binding IOI.
- Following the 15-day period, if any non-binding IOIs have been received, the highest IOI will become binding provided that such IOI is equal or greater than the minimum non-firm price initially listed by the seller.
- If the seller does not receive any non-binding IOIs during the 15-day period that are equal to or greater than the minimum non-firm price, then sellers may contact any persons that submitted an IOI to negotiate a price for the sale of the partnership interest.
- In no case will parties be permitted to enter into a binding agreement until after the 15-day period.
- If a buyer and seller are matched, X will provide the parties with a buyer and seller agreement in addition to an assignment agreement so that the parties may complete the transfer of the limited partnership interest.
- If no match is found for a listing on the Qualifying Service, the Qualifying Service will remove such interest on the 120th day after the listing date of the interest.
- X will notify the partners of the partnership selling limited partnership interests so that those partners can ensure that, in the aggregate, no more than 10% of the limited partnership interests are sold within the selling partnership’s taxable year.
- This 10% includes interests sold both through the Qualifying Service and any other venues the partnership uses to sell limited partnership interests.



Rulings Requested

- The Qualifying Service and the NonQualifying Service are not established securities markets for the purpose of § 7704 and § 1.7704-1(b).
- The Qualifying Service meets the requirements to be a QMS under § 1.7704-1(g).
- A partnership whose interests are displayed or offered for purchase or sale on the Services will not be considered to be publicly traded for purposes of § 7704(b) solely by reason of being offered for purchase or sale and/or sold through the Services.
- Other matching services which otherwise qualify as a QMS will not be disqualified as a QMS solely by listing interests on the Non-Qualifying Service as long as all of the requirements for a QMS continue to be satisfied by and through that QMS.



QMS PLR Conclusions

- Based solely on the facts submitted and the representations made, the IRS concludes as follows:
 - The Qualifying Service and the Non-Qualifying Service are not established securities markets under § 1.7704-1(b).
 - The Qualifying Service meets the requirements to be a QMS under § 1.7704-1(g).
 - A partnership whose interests are displayed or offered for purchase or sale on the Services will not be considered to be publicly traded solely by reason of being offered for purchase or sale and/or sold through the Services and may rely on this ruling provided (a) it is not revoked, (b) with respect to the Qualifying Service, that the sum of the partnership interests transferred during the taxable year of the partnership (other than through private transfers described in § 1.7704-1(e)) does not exceed 10 percent of the total interests in partnership capital or profits determined as provided in § 1.7704-1(k), and (c) the Services continue to operate in a manner consistent with the facts as represented.
 - Maintenance of information required to permit a partnership to make the calculations, and the actual making of the calculations, relating to qualification for any applicable safe harbor in § 1.7704-1 will be the sole responsibility of the partnerships whose interests are traded and not the responsibility of X.



QMS PLR Conclusions

- Although the Non-Qualifying Service does not meet the requirements to be a QMS under § 1.7704-1(g), other matching services eligible for participation in the Non-Qualifying Service may utilize it to list non-firm prices and unpriced indications of interest without disqualifying themselves as a QMS, provided they otherwise meet all requirements for a QMS under § 1.7704-1(g).
- Compliance with the requirements for a QMS will be the sole responsibility of the matching service.
- Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of this transaction under any other provisions of the Code.
- This ruling is directed only to the taxpayer requesting it.
- Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.



Presenter Biographies

TIMOTHY WAGNER

Timothy advises clients on federal, state, and international aspects of business transactions including mergers, acquisitions, reorganizations, capital raises, entity formation, venture capital and private equity transactions. With a background as a certified public accountant and experience in public accounting, Timothy is adept in managing all tax aspects of sophisticated business transactions as well as general tax planning and advice. Timothy also represents clients in all aspects of tax controversy including federal and state tax audits, tax litigation, and federal and state tax collection matters. He advises and provides counsel on both foreign and domestic tax compliance, voluntary disclosure matters, excise tax issues, tax fraud, and other white-collar cases.

BOBBY WENNER

Bobby counsels financial services and technology firms on financial services regulatory and corporate matters. He focuses on the representation of financial technology companies working with blockchain, tokenization, digital assets, and cryptocurrencies, including broker-dealers, alternative trading systems (ATS), digital asset and currency trading platforms, digital asset issuers and custodians, securities exchanges, and derivatives trading platforms including swap execution facilities. Bobby represents these clients before Congress, the Securities Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), the Commodity Futures Trading Commission (CFTC), and state financial services regulators. He also represents banks, money services businesses, and payment processors before the federal banking regulators, including the Office of the Comptroller of the Currency, the Financial Crimes Enforcement Network (FinCEN), and state banking regulators.

Before joining Nelson Mullins, Bobby served as the Chief Legal Officer of a FINRA-member broker-dealer and ATS designed for trading digital asset securities, as well as the Associate General Counsel of the holding company, and the company's digital asset trading and issuance ecosystem. In these roles, Bobby led various state and federal financial services licensure applications, interfaced with regulators, provided counsel on a wide range of securities, commodities, and derivatives product development efforts, and helped develop a regulatory compliant business model and launch strategy. Prior to his positions in-house, Bobby was an associate in the FinTech and Regulation practice of a national law firm.



Moderator Biography

RICHARD B. LEVIN

Richard is chair of the FinTech and Regulation Practice and was one of the first lawyers to focus on the regulation of blockchain and digital assets. He is considered a thought leader in the FinTech space. Richard brings his experience as a senior legal and compliance officer on Wall Street and in London to bear in advising clients on corporate, FinTech, securities, and regulatory issues. A problem-solver by nature, he has been advising FinTech clients on legal and regulatory issues since the start of electronic trading in the late 1990s. His practice focuses on helping financial services and technology clients identify and address regulatory issues as they build their businesses.

Richard's practice focuses on the representation of early stage and publicly traded companies in the FinTech space, including investment banks, broker-dealers, investment advisers, peer-to-peer lending platforms, digital currency trading platforms, alternative trading systems (ATs), exchanges, and custodians. He represents these firms before the U.S. Securities and Exchange Commission (SEC), the U.S. Commodity Futures Trading Commission (CFTC), the Financial Industry Regulatory Authority (FINRA), the U.S. Department of the Treasury, Office of the Comptroller of the Currency (OCC), state regulators, and Congress. Richard has represented clients before regulators in Australia, Canada, France, Germany, Hong Kong, Ireland, Japan, Singapore, South Korea, and the United Kingdom. His current and past clients include leading national financial institutions, multinational financial services holding companies, leading firms in the FinTech space, and institutions engaging in global investment banking, investment management, securities, and other financial services with institutional clients.

Richard has been identified by Chambers and Partners as one of the leading lawyers in the Blockchain and Cryptocurrencies category since the inception of the category. He has been recognized by Chambers for his knowledge on regulatory matters, great relationships with regulators, for helping clients push the boundaries of the FinTech sector, and for his advice on matters such as broker-dealer licensing and alternative trading systems. Richard is routinely quoted by leading publications including Bloomberg, the New York Times, Reuters, and the Wall Street Journal and is a frequent speaker at conferences around the world on the regulation of FinTech, blockchain, and digital assets.



Contact Details

To learn more about our FinTech and Regulation practice, or to contact a member of our team, click [here](#) or visit our website at nelsonmullins.com.

To learn more about this presentation, please call:

Richard B. Levin
1400 Wewatta Street
Suite 500
Denver, CO 80202
Tel. 303.583.9929
richard.levin@nelsonmullins.com

Bobby Wenner
1400 Wewatta Street
Suite 500
Denver, CO 80202
Tel. 303.583.9929
bobby.wenner@nelsonmullins.com

Timothy Wagner
100 S. Charles Street
Suite 1600
Baltimore, MD 21201
Tel. [443.392.9409](tel:443.392.9409)
timothy.wagner@nelsonmullins.com



About This Publication

- Nelson Mullins provides this material for informational purposes only.
- The material provided herein is general and is not intended to be legal advice.
- Nothing herein should be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, rules and regulations and other legal issues.
- Receipt of this material does not establish an attorney-client relationship.
- Nelson Mullins is very proud of the results we obtain for our clients, but you should know that past results do not guarantee future results; that every case is different and must be judged on its own merits; and that the choice of a lawyer is an important decision and should not be based solely upon advertisements.