2021 KEY REGULATIONS SUMMARY

FOR BROKERS

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Introduction

In this guide, we put together a summary of 2021 key regulatory issues—divided into approved, proposed and need to keep watch of—to help you navigate the changing regulatory environment.

APPROVED REGULATIONS	RULE SUMMARY
Universal Proxy	In contested votes for corporate directors, the company and the proponent of the alternate director candidates both must use proxy cards which list all the candidates – those put forth by the company and by the challenger. This is a concept that was under consideration for several years and finally approved by the SEC in November 2021. The rule will become effective with annual meetings held after August 31, 2022. Now shareholders voting by proxy will have the same opportunity that has previously been available only to those who actually attend and vote at the shareholder meeting – to have all the candidates on the same ballot and be able to pick and choose among the various candidates. **What this means for you:** Brokers will want to be knowledgeable about the new format to be able to respond to account holders' questions, particularly in early days before stockholders become accustomed to the new approach. This is also of interest to public companies and to activist investors who start contests for representation on a corporate board. Mediant is developing system changes in support of the new requirements, which will be ready for when the rule becomes effective on August 31, 2022.
NYSE Rule 451A/FINRA Rule 2251 – "Gifted Shares" Rule	The stock exchanges and FINRA have rules that specify the rates at which companies must reimburse brokers for distributing proxy materials to shareholders. Some brokers have begun "gifting" shares to customers in connection with certain marketing programs, and issuers objected to reimbursing brokers for distributing proxy materials to shareholders who owned only shares of the company that they had received for free. The NYSE amended its rules to provide that the specified fees would not apply to distributions to such shareholders, and FINRA followed its lead. The NYSE rule was approved by the SEC in August 2021, and the FINRA analog was approved in December 2021. Note that the new rule does *not* apply if the shareholder account includes shares of a company purchased by the holder in addition to shares received for free. **What this means for you:** Invoicing issuers for proxy distributions by brokers is handled by the broker's proxy agent, such as Mediant. We have processes to accommodate this rule change when preparing impacted issuer invoices. Brokers will have to maintain and provide us records specifying which accounts will be affected by the new rule via the new record layouts we have provided to them.

Shareholder Rights Directive (SRD II)	This European Union directive is intended to strengthen the position of shareholders, reduce short termism, and curb excessive risk-taking in companies traded on EU-regulated markets. At this point, the only country remaining to finish their adoption of the directive is Iceland. Brexit's impact on the UK eliminated the SRD II requirement for UK security intermediaries to notify the underlying shareholder. In practice, however, the intermediary may be required under the contract between itself and its clients to pass on the notices of general meetings. **What this means for you:** U.S. brokers that trade on EEA and EU markets and hold these positions directly or through a custodian must address shareholder identification, information sharing and proxy capture. This last item requires shareholders to receive a "receipt of voting" for all electronic voting campaigns and after the meeting, issuers will confirm that the shareholder's vote has been counted in an accurate and timely manner. Mediant takes on the entire technological burden of SRD II. Our solution assists with receiving the requests for shareholder disclosure through ISO20022 or whatever means the custodian is using.

PROPOSED REGULATIONS	RULE SUMMARY
Tailored Shareholder Reports	This SEC proposal to modernize the disclosure framework for open-end funds features concise and visually engaging shareholder reports. They would serve as the central source of disclosure, thereby eliminating the need to send prospectus updates. The proposal would also provide investors with simpler, easier-to-understand information about a fund's fees and expenses and principal risks, and amend the SEC's rules on fund advertising, to achieve the same goals. **What this means for you:** The proposed rules have their primary impact on fund companies and their investors. The SEC reports that this is in the "final stage" of rulemaking, with an estimated date for final action of October 2022. Mediant is monitoring this rule proposal closely and will react to any disclosure change that would result from the rule when finalized.
NYSE proposal to make permanent the existing market-wide circuit breakers	These rules are aimed at preventing a market free fall and were initially adopted in 1988 following the October 1987 market crash. The current versions halt trading for 15 minutes after a drop of 7% from the prior day's close of the S&P 500, for a further 15 minutes if there is a drop of 13%, and for the rest of the trading day if there is a drop of 20%. Previously in force on a temporary basis, in July of 2021, the NYSE proposed that the rule be made permanent. The SEC in September 2021 instituted proceedings to determine whether to disapprove the proposal, as it is concerned that provisions should be in place regarding ongoing assessment and continued testing of the rules. The SEC must either approve or disapprove the proposal by March 19, 2022. The existing rules will continue to be in effect on a temporary basis, and presumably can be further extended if necessary.

	What this means for you: The circuit breakers are important to market participants, including both exchanges and brokers. The SEC is focused on how to ensure the circuit breakers are kept up to date and effective as the markets evolve.
FINRA proposed amendment to Rule 2231 (Customer Account Statements)	This September 2021 FINRA filing is its latest attempt to amend its rules relating to customer account statements. The proposal adds supplementary material on carrying agreements, transmission of statements to other persons, the use of e-delivery, on holding customer mail, and incorporates certain provisions from the legacy NYSE rule on customer statements. Several comments have been made, including from SIFMA, seeking clarification on certain elements in the newly consolidated rule. Early this January, FINRA filed a letter addressing the comments, making one slight language clarification but noting that it has determined not to further amend the proposal. FINRA also noted that it intended to give firms sufficient lead time for compliance, but pointed only to the statement in the proposal that the effective date will be no later than 365 days following publication of a FINRA notice announcing SEC approval of the rule change. Also this January, the SEC determined to solicit additional comments from interested parties, which were due January 31, 2022, and if any were submitted, rebuttal comments would have been due February 14, 2022. As of February 4, 2022, no additional comments had been submitted. **What this means for you:** FINRA is integrating existing NYSE requirements into its rules. NYSE members are incorporating them into their account statement processing and non-NYSE members should be aware of the potential new requirements.
SEC proposed rules requiring enhanced reporting of proxy votes by funds and of executive comp votes by institutional investment managers	In September 2021, the SEC proposed amendments to Form N-PX to enhance the information mutual funds, exchange-traded funds (ETFs), and certain other funds report about their proxy votes. The proposed rulemaking would require funds to tie the description of each voting matter to the issuer's form of proxy and to categorize each matter by type to help investors identify votes of interest and compare voting records. The proposal also would prescribe how funds organize their reports and require them to use a structured data language to make the filings easier to analyze. In addition, funds would be required to disclose how their securities lending activity impacted their voting. Additionally, the proposal would require institutional investment managers to disclose how they voted on executive compensation, or so-called "say-on-pay" matters, which would fulfill one of the remaining rulemaking mandates under the Dodd-Frank Act. In general, managers would be subject to the same Form N-PX reporting requirements as funds with respect to their say-on-pay votes. Since 2003, funds have been required to file Form N-PX reports disclosing how they voted on proxy proposals relating to investments they hold, but according to the SEC, investors may face difficulties analyzing these reports. Staff indicated their belief that the proposal would make funds' proxy voting records more usable and easier to analyze, thereby improving investors' ability to monitor how their funds vote and compare different funds' voting records.

	The proposal has generated extensive comment. Concerns have been raised regarding the practicality of dictating reporting categories, as well as whether the proposal regarding stock loan is practical or useful.
SEC proposed amendments to the electronic recordkeeping requirements for broker-dealers	This November 2021 proposal would amend the electronic record preservation and prompt production of records requirements of Rule 17a-4, which requires broker-dealers to preserve electronic records exclusively in a non-rewriteable, non-erasable format (known as write once, read many). The proposed amendments would add an audit-trail alternative under which electronic records could be preserved in a manner that permits the recreation of an original record if it is altered, over-written or erased. The audit-trail alternative is designed to provide broker-dealers with greater flexibility in configuring their electronic recordkeeping systems, allowing them to align with current technologies and practices more closely while also protecting the authenticity and reliability of original records. Additionally, the amendments to Rule 17a-4 would eliminate the third-party access and undertakings requirements and replace them with a requirement that a senior officer of the broker-dealer provide the access and undertakings. The amendments also would require broker-dealers to produce electronic records to securities regulators in a reasonably usable electronic format that is compatible with commonly used systems for accessing and reading, not in a proprietary electronic format. Other minor and technical amendments are also proposed. While commenters appreciate the SEC's effort to modernize these requirements, concerns were shared about the impact of certain of the proposals and suggestions for clarifications and improvements.
SEC proposed amendments to rules governing proxy voting advice	This proposal would rescind elements of two rules that were adopted by the SEC in 2020 following lengthy consideration. They are the provisions that require firms like ISS and Glass Lewis to make available to issuers the advice they provide to their clients on how to vote on matters in the issuer's proxy statement, and to make their clients aware of any comments the issuers make on that advice, as well as a provision that provided examples of material misstatements or omissions related to proxy voting advice. This proposal has been controversial and drawn extensive comment, with a clear divide between those opposed (typically issuers) and those in favor (typically those who utilize the proxy voting advice). This proposal impacts issuers and institutional investors, rather than brokers, but it is nonetheless an important and meaningful proposal that has stirred significant interest.
SEC proposal to require reporting of stock loan transactions	In November 2021, the SEC proposed new Rule 10c-1 which would for the first time require all lenders of securities to provide identifying data and material negotiated terms of securities lending transactions to a registered national securities association – likely FINRA – for public dissemination. The rule would require reporting of certain information within 15 minutes of finalizing the securities loan transaction. It would also apply to loans of debt securities as well as stock.

	The SEC views this rule as serving a dual purpose – providing market participants with timely information regarding securities lending and providing regulators with data that can be used to enhance surveillance of the markets. **What this means for you:** The proposed rule raises many questions concerning the scope of information required to be reported and will impose significant operational and compliance burdens on market participants, most notably brokers. Presumably industry participants will have to be involved with FINRA in working out the elements of the reporting system.

ITEMS TO WATCH	RULE SUMMARY
SEC Staff Report	In October 2021, the SEC published a Staff Report on Equity and Options Market Structure Conditions. This report focuses on the January 2021 trading activity of GameStop Corp. (GME), which the SEC described as the most famous of the "meme stocks". SEC Chair Gary Gensler said that the January events gave the SEC an opportunity to consider how to make the equity markets as fair, orderly and efficient as possible. **What this means for you:** In the report, the staff identified several areas for potential study and additional consideration, including forces that may cause a brokerage to restrict trading, digital engagement practices and payment for order flow, trading in dark pools, and the market dynamics of short selling. In fact, some weeks prior to the above Report, the SEC requested information and public comment on the use of digital engagement practices by brokers and investment advisers. These practices include behavioral prompts, differential marketing, game-like features (gamification) and other design elements or features designed to engage with retail investors on digital platforms.
SEC Investigations	In December 2021, the SEC issued a Litigation Release reporting on an SEC case against JPMorgan for use of personal devices to discuss business matters (so that no record was made). The press release announcing the case (Release 2021-262) stated that as a result of this case the SEC has commenced additional investigations of record preservation practices at financial firms.
Shortening the Settlement Cycle to T+1	The securities industry is expected to implement this change in the coming years. Following a white paper by DTCC published in February 2021, an industry steering committee developed a consensus in favor of this step, and is reflected in a SIFMA Report (with ICI and DTCC) issued in December. That report recommends migration to T+1 in early 2024 to give time to assess firm-level required changes and allocate resources and budgets, including the creation of an early 2023 comprehensive testing plan. This must first start with an update to the SEC's rules, which came on February 9. The SEC proposed modifications to facilitate this change, contemplating a switch to T+1 effective March 31, 2024. Mediant will provide a discussion of these proposed rules as well as the questions posed.

NYSE proposal to abdicate its historical role as arbiter of the proxy fee rules	For decades the NYSE had been the source of the proxy fee rules. Historically it was involved with public companies because they were listed on the exchange, and with regulating brokers because they were members of the exchange. Later, FINRA (or its predecessor, the NASD) would adopt the NYSE proxy fee rules so that it was clear that it applied as well to brokers that were not members of the NYSE. Over a decade ago, however, the NYSE gave up its role as a regulator of brokers who served street name holders, and regulation of such brokers was consolidated at FINRA. Given this change, the NYSE has become unwilling to maintain its historical role as arbiter of the proxy fees. In late 2020, the NYSE proposed to delete the specific fees from its rules, and instead do as most of the other exchanges have done and provide that the reasonable proxy fees would be those specified by FINRA. FINRA objected to the idea. Some commentators suggested that it would be most appropriate for the SEC to assume this responsibility. The SEC staff, after lengthy consideration, disapproved the NYSE proposal in August 2021. The NYSE, however, has appealed this action to the full commission, so as yet, no ultimate disposition has been made. **What this means for you:** Ultimately, brokers will be responsible for managing the process by which changes are made to the proxy fees. We can expect that the rules that specify those fees only will be changed by a process that involves at least some level of industry input, and an ultimate decision by the SEC, which has in its power to accept or reject any proposed changes. Mediant has and will continue to participate in industry discussions regarding proxy fees.

Conclusion

Mediant is actively engaged in the entire lifecycle of regulatory change management, from advocacy to implementation. A key partner in achieving clients' regulatory and operational objectives, we continually build and provide our clients with tools that enhance and support their compliance needs.

Please contact your relationship manager with any questions or for additional information.