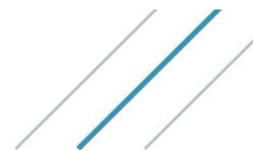

SECURITIES OPERATIONS

REGULATORY UPDATE

September 1, 2020

For more information please contact info@mediantonline.com

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Take Action Now

SEC's September 2020 Virtual Open Meeting to Consider Changes to Shareholder Proposal Process

On August 14, 2020, the U.S. Securities and Exchange Commission ("SEC" or "Commission") announced that it would host a virtual open meeting on September 16, 2020. At the meeting, the Commission is expected to consider whether to modify the shareholder proposal process by adopting amendments to certain procedural requirements for the submission of shareholder proposals and the provision relating to resubmitted proposals under Rule 14a-8. The amendments being considered seek to modernize the current regime, which has been in place for over 35 years. The meeting will begin at 10:00 a.m. EDT and be open to the public via audio webcast only on the Commission's website.

Information about the SEC's Virtual Open Meeting:

- Event Date/Time: September 16, 2020, 10:00 a.m. EDT
- SEC Website: www.sec.gov

Further information, including whether any meeting agenda items have been added, deleted or postponed, can be obtained from Vanessa Countryman in the SEC's Office of the Secretary at (202) 551-5400.

Meeting Notice: https://www.sec.gov/news/openmeetings/2020/ssamtg091620.htm

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ISS REACTIVATES LAWSUIT AGAINST NEW SEC PROXY ADVISOR RULE

On August 13, 2020, Reuters reported that Institutional Shareholder Services ("ISS") was pushing ahead with its lawsuit against the SEC regarding the SEC's new rule that would govern the activities of proxy advisors. As previously reported, ISS originally filed the lawsuit in October 2019, then paused the lawsuit in January 2020. Reuters quoted ISS's Chief Executive Officer as saying, with respect to its clients, "we remain concerned that the rule will be used or interpreted in a way that could hamper our ability to continue to deliver to you the timely and independent advice that you rely on to help you make decisions with regard to the governance of your portfolio companies." The SEC's new rule would be in effect during the 2022 proxy season and would require proxy advisers to provide a copy of their reports to corporations at the same time they release them to clients. They would also have to inform clients if corporations plan to rebut the reports.

Reuters Article: https://www.reuters.com/article/us-iss-sec/proxy-adviser-iss-to-push-ahead-with-lawsuit-against-sec-over-new-rule-idUSKCN25934B

SEC PROPOSES TO MODERNIZE FUND SHAREHOLDER REPORTS AND DISCLOSURES

On August 5, 2020, the SEC published for comment its proposal to comprehensively modify the mutual fund and exchange-traded fund disclosure framework, with the goal to better serve the needs of retail investors. The proposed disclosure framework would feature concise and visually engaging shareholder reports that would highlight information that is particularly important for retail investors to assess and monitor their fund investments. Specifically, the proposal would: 1) require streamlined reports to shareholders that would include, among other things, fund expenses, performance, illustrations of holdings, and material fund changes; 2) significantly revise the content of these items to better align disclosures with developments in the markets and investor expectations; 3) encourage funds to use graphic or text features—such as tables, bullet lists, and question-and-answer formats—to promote effective communication; and 4) promote a layered and comprehensive disclosure framework by continuing to make available online certain information that is currently required in shareholder reports but may be less relevant to retail shareholders generally. According to the SEC, the proposal is a central component of its investor experience initiative and responds to feedback received from a 2018 request for comment on retail investors' experience with fund disclosure.

Comments Due: 60 days after publication in the Federal Register
Proposed Rule: https://www.sec.gov/rules/proposed/2020/33-10814.pdf
Press Release: https://www.sec.gov/news/press-release/2020-172

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SEC PROPOSES DATA SECURITY ENHANCEMENTS TO THE CAT NMS PLAN

On August 21, 2020, the SEC published for comment its proposed amendments to the National Market System Plan ("NMS Plan") governing the Consolidated Audit Trail ("CAT NMS Plan") aimed at strengthening the CAT's data security. Prior to the proposed modification, the CAT NMS Plan had already set forth several requirements regarding the security and confidentiality of CAT data. The SEC's proposal represents its latest action to limit the scope of sensitive information required to be collected by the CAT and enhance the security of CAT data. Among several other proposed changes, the amendments would no longer require industry members to report social security numbers, individual taxpayer identification numbers, and account numbers for natural person customers, and would replace the requirement that the date of birth for a natural person customer be reported with the requirement that the year of birth for a natural person customer be reported. This proposed modification is in accordance with the exemptive order previously issued by the Commission on March 17, 2020.

Comments Due: 45 days after publication in the Federal Register
Proposed Rule: https://www.sec.gov/rules/proposed/2020/34-89632.pdf
Press Release: https://www.sec.gov/news/press-release/2020-189

FINRA TO AMEND CAT NMS PLAN COMPLIANCE RULE

On July 31, 2020, the SEC published for comment a proposed rule amendment, effective on filing, by the Financial Industry Regulatory Authority ("FINRA") to amend its Rule 6800 Series, FINRA's compliance rule governing the CAT NMS Plan. FINRA would amend the definition of "Firm Designated ID" in FINRA Rule 6810 to reflect the changes contained in an amendment to the CAT NMS Plan that was previously approved by the SEC on July 24, 2020. The amendment to the CAT NMS Plan approved by the SEC on July 24, 2020 modified the requirements for Firm Designated IDs in four ways: 1) to prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; 2) to require that the Firm Designated ID for a trading account be persistent over time for each industry member so that a single account may be tracked across time within a single industry member; 3) to permit the use of relationship identifiers as Firm Designated IDs in certain circumstances; and 4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances. In separate filings, The Nasdaq Stock Market LLC ("Nasdaq") and New York Stock Exchange ("NYSE") proposed parallel amendments to their respective rulebooks.

Proposed Rule: https://www.sec.gov/rules/sro/finra/2020/34-89441.pdf

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SEC ADOPTS REQUIREMENTS TO ENSURE PUBLIC INPUT PRIOR TO IMPLEMENATION OF NMS PLAN FEES

On August 19, 2020, the SEC announced that it had voted to rescind a rule exception that allowed a proposed NMS Plan fee amendment to become effective upon filing, prior to review and comment by investors and other market participants. The fee exception contained in SEC Rule 608(b)(3)(i) allowed a fee amendment to become effective immediately upon filing with the SEC, and an NMS Plan could begin charging the new fee prior to an opportunity for public comment and without SEC action. Rule 608 also did not include specific timelines for public notice and SEC action on NMS Plan proposals filed with the SEC. The new procedures require public notice of any proposed NMS Plan fee amendment, an opportunity for public comment, and SEC approval by order before a new or changed fee can be charged. In addition, the SEC procedures for review of all proposed NMS Plans and NMS Plan amendments, including fee amendments, will now specify timelines for SEC action for each step of the process.

Final Rule: https://www.sec.gov/rules/final/2020/34-89618.pdf
Press Release: https://www.sec.gov/news/press-release/2020-188

SEC ADOPTS RULE UPDATING ACCREDITED INVESTOR DEFINITION

On August 26, 2020, the SEC announced that it had adopted amendments to the "accredited investor" definition, one of the principal tests for determining who is eligible to make investments in the private capital markets. Historically, individual investors who do not meet specific income or net worth tests, regardless of their financial sophistication, have been denied the opportunity to invest in private markets. The amendments update and improve the definition to more effectively identify institutional and individual investors who have the knowledge and expertise to participate in those markets. Among many other categories now included in the definition, natural persons holding the Series 7, Series 65 and Series 82 licenses in good standing will qualify as accredited investors. The amendments also add a "spousal equivalent" so that spouses or spousal equivalents can pool their assets for the purpose of qualifying as accredited investors.

Final Rule: https://www.sec.gov/rules/final/2020/33-10824.pdf
Press Release: https://www.sec.gov/news/press-release/2020-191

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SEC MODERNIZES CERTAIN REGULATION S-K DISCLOSURE REQUIREMENTS

On August 26, 2020, the SEC announced that it had adopted amendments to modernize the description of business (Item 101), legal proceedings (Item 103), and risk factor disclosures (Item 105) that registrants are required to make pursuant to Regulation S-K. Specifically, the final amendments will, among other things: 1) make business-related disclosures in Item 101 largely principles-based, requiring disclosure of information that is material to an understanding of the general development of the business and allowing for more incorporation by reference of past filings; 2) allow for more hyperlinking or cross-referencing for disclosures related to legal proceedings in Item 103 in order to reduce duplicative disclosure; and 3) with respect to risk factor disclosures in Item 105, require summary risk factor disclosure of no more than two pages if the risk factor section exceeds 15 pages. The Commission stated that its adoption of the amendments reflects the many changes in the capital markets and the domestic and global economy since these rules had last undergone significant revision more than 30 years ago.

Final Rule: https://www.sec.gov/rules/final/2020/33-10825.pdf
Press Release: https://www.sec.gov/news/press-release/2020-192

SEC GRANTS TEMPORARY EXEMPTIVE RELIEF FROM REGULATION SHO

On August 25, 2020, the Commission announced that it is providing certain exemptive relief from the "locate" and close-out requirements of Regulation SHO for sales of owned physical securities. The exemptive relief comes in response to the intermittent suspension by the Depository Trust Company ("DTC") of physical securities processing services due to ongoing concerns related to the effects of the COVID-19 pandemic. While DTC has resumed limited services for new physical securities transactions, the SEC expects that there are likely to be delays in settlement for the sales of equity securities that the seller is "deemed to own" pursuant to Rule 200(b) of Regulation SHO, and for which settlement is dependent on the delivery of physical certificates, which may result in extended failures to deliver and have resulting implications for compliance with Regulation SHO. The Securities Industry and Financial Markets Association ("SIFMA") requested the relief be granted under the SEC's exemptive order on behalf of its member firms.

SEC Exemptive Order: https://www.sec.gov/rules/exorders/2020/34-89659.pdf

PEIRCE AND CRENSHAW SWORN IN AS SEC COMMISSIONERS

On August 17, 2020, the SEC announced that Hester M. Peirce and Caroline A. Crenshaw have been sworn into office as SEC Commissioners. Peirce and Crenshaw were unanimously confirmed by the U.S. Senate on August 6, 2020. In addition to serving on the Commission, Commissioner Crenshaw is a captain in the United States Army Reserve, Judge Advocate General's Corps, and had previously served in various positions at the SEC. Crenshaw's term expires in June 2024. Commissioner Peirce first was sworn in as a Commissioner in 2018 to complete the remainder of a five-year term which expired in June 2020. Prior to rejoining the SEC in 2018, Peirce was a Senior Counsel on the U.S. Senate Committee on Banking, Housing, and Urban Affairs. Prior to that, Peirce held multiple roles at the SEC, was an associate at WilmerHale and clerked for Judge Roger Andewelt on the Court of Federal Claims. Peirce's term expires in June 2025.

Press Release: https://www.sec.gov/news/press-release/2020-184

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SEC TO RAMP UP ADMINISTRATIVE CAPABILITIES FOR EDGAR

On August 21, 2020, the SEC published for comment a proposed new rule under Regulation S-T that would enhance the SEC's administrative capabilities with respect to its Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"). Specifically, the proposed rule would authorize the SEC to take action to promote the integrity and reliability of the information contained within EDGAR. These actions would include: 1) redacting, removing, or preventing the dissemination of sensitive personally identifiable information that, if released, could result in financial or personal harm; 2) preventing submissions that pose a cybersecurity threat; 3) correcting system or SEC staff errors; 4) removing or preventing dissemination of submissions made under an incorrect EDGAR identifier; 5) preventing the ability to make submissions when there are disputes over the authority to use EDGAR access codes; 6) preventing acceptance or dissemination of an attempted submission that the Commission has reason to believe may be misleading or manipulative while evaluating the circumstances surrounding the submission, and allowing acceptance or dissemination if its concerns are satisfactorily addressed; 7) preventing an unauthorized submission or otherwise removing related access; and 8) resolving similar administrative issues relating to submissions. The proposed rule would also set forth a process for the SEC to notify filers and other relevant persons of its actions under the proposed rule as soon as reasonably practicable.

Comments Due: 30 days after publication in the Federal Register
Proposed Rule: https://www.sec.gov/rules/proposed/2020/33-10821.pdf

SEC NAMES BEST AS DIRECTOR OF NEW YORK OFFICE

On August 19, 2020, the SEC announced that Richard R. Best had been named Director of the SEC's New York Regional Office. Best is to succeed Marc Berger, who was named Deputy Director of the SEC's Division of Enforcement as announced in a separate SEC press release dated August 19, 2020. Best joined the SEC in June 2015 as the Regional Director of the SEC's Salt Lake Office, and in 2018 he was named Regional Director of the SEC's Atlanta Office. In the New York Office, Best will lead a team of approximately 400 staff, including enforcement attorneys, accountants, and investigators and examiners who perform compliance inspections in the New York region. According to the press release, the SEC's New York Office is responsible for the largest concentration of SEC-registered financial institutions, including more than 4,000 investment banks, investment advisers, broker-dealers, mutual funds, and hedge funds.

Best Press Release: https://www.sec.gov/news/press-release/2020-187
Berger Press Release: https://www.sec.gov/news/press-release/2020-186

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SEC CO-DIRECTOR OF ENFORCEMENT PEIKIN TO DEPART

On August 5, 2020, the SEC announced that Steven Peikin, Co-Director of the SEC's Division of Enforcement, would leave the Commission effective August 14, 2020. Peikin served as Co-Director of SEC Enforcement for three years along with Co-Director Stephanie Avakian, the latter of whom remains as Director after Peikin's departure. "Steve has been a strong, unwavering leader for the Division. By using his considerable expertise and impeccable judgment for the public good, he has been an example for all of us," said Avakian. Prior to joining the SEC in June 2017, Peikin was Managing Partner of Sullivan & Cromwell LLP's Criminal Defense and Investigations Group. From 1996 to 2004, Peikin served as an Assistant U.S. Attorney in the Southern District of New York, where he was Chief of the Office's Securities and Commodities Fraud Task Force.

Press Release: https://www.sec.gov/news/press-release/2020-174

FINRA SHARES FIRM PRACTICES IN PREPARING FOR LIBOR PHASE-OUT

On August 5, 2020, FINRA published Regulatory Notice 20-26 to remind firms to evaluate their respective exposure to the London Interbank Offered Rate ("LIBOR") and review their preparedness to manage LIBOR's phase-out. In addition, FINRA included results from its survey of a representative cross-section of member firms, including some with significant trading volume or positions in LIBOR-linked securities, which assessed those firms' preparedness for the phase-out and the scope of their efforts to develop and implement programs to address risks related to the phase-out. There are an estimated $35 trillion of U.S. Dollar ("USD") LIBOR-based contracts that extend past the phase-out date of December 31, 2021, which may create significant implications for broker-dealers, their customers and counterparties, including an increase in compliance risk exposure, adverse financial and accounting issues, disruptions in business operations, and related litigation. In general, FINRA's survey found that while some large firms had implemented extensive programs to prepare for the phase-out, others had made only limited efforts.

FINRA Regulatory Notice 20-26: https://www.finra.org/sites/default/files/2020-08/Regulatory-Notice-20-26.pdf

FINRA REQUESTS COMMENT ON PENNYING IN THE CORPORATE BOND MARKET

On August 17, 2020, FINRA published Regulatory Notice 20-29 to request comment on the practice of "pennying," which has been commonly used to describe the internalization of customer trades in the corporate bond market after obtaining auction responses. In particular, pennying involves a dealer, after receiving a customer order, initiating a bid or offer auction process on behalf of a customer, reviewing the auction responses, and then executing the customer order itself at a price that either matches or slightly improves the best priced auction response. FINRA performed a review of corporate bond auctions conducted by retail firms on electronic trading platforms and found that firms internalized executions at varying rates after initiating auctions, and that these internalized executions offered varying amounts of price improvement. FINRA is interested in determining when such executions reflect a practice of pennying, how pennying impacts market quality and whether further regulatory action would be appropriate.

FINRA Regulatory Notice 20-29: https://www.finra.org/sites/default/files/2020-08/Regulatory-Notice-20-29.pdf

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NASDAQ TO AMEND OPTIONS RULE GOVERNING CERTAIN TRANSFERS OF POSITIONS

On August 17, 2020, the SEC published for comment a Nasdaq proposal, effective on filing, to amend its rule Options 6, Section 5 ("Transfer of Positions Rule"). The Transfer of Positions Rule permits participants to move positions from one account to another without first exposure of the transaction on Nasdaq, provided certain exceptions are met. Specifically, the Transfer of Positions Rule provides that transfers of positions are permissible from one account to another account when no change in ownership is involved, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. These transfers are subject to, among other things, the requirement to submit prior written notice of the transfers to Nasdaq and the restriction on effecting these transfers repeatedly or routinely. The proposed rule change would accept transfers of positions effected pursuant to the Transfer of Positions Rule from the requirement to submit prior written notice and the restriction on repeated or routine use. In its filing, Nasdaq indicated that it considers the restrictions to be unnecessary given that there is no change in ownership for any such transfer.

Comments Due: September 11, 2020
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89574.pdf

NASDAQ WITHDRAWS PROPOSAL TO ADOPT "EARLY MARKET ON CLOSE" ORDER TYPE

On August 14, 2020, Nasdaq withdrew its proposal to adopt a new "Early Market On Close" order type. The SEC published a notice on August 18, 2020 that Nasdaq had withdrawn the proposal. As previously reported, the SEC published Nasdaq's proposal for comment on July 16, 2020. The proposed new order type would have given market participants who wished to buy or sell Nasdaq-listed securities as part of the Nasdaq closing auction ("Nasdaq Closing Cross"), and obtain matched executions at the Nasdaq Closing Cross price, the ability to do so at an earlier time than possible through an ordinary Market On Close order.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89605.pdf

NASDAQ TO MODIFY UTILIZATION OF DATA FEEDS

On August 18, 2020, the SEC published for comment a Nasdaq proposal, effective on filing, to update and amend the data feeds table in Nasdaq Rule 4759, which sets forth on a market-by-market basis the specific proprietary and network processor feeds that Nasdaq utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the table would be amended to reflect that Nasdaq will receive a direct feed from NYSE National, Inc., NYSE Chicago, Inc. and Investors Exchange LLC as its primary quotation data source and CQS/UQDF would become its secondary data source for the handling, routing and execution of orders and for performing regulatory compliance processes related to each of those functions. In its filing, Nasdaq stated that the change to the primary sources reflects Nasdaq's effort to include an additional source in the event the primary source is unable to provide data. Nasdaq would implement the proposed rule change no later than 90 days following the effective date of the proposed rule change.

Comments Due: September 14, 2020
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89594.pdf

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NYSE MODIFICATION OF SETTER PRIORITY APPROVED BY SEC

On August 6, 2020, the SEC issued an order approving an NYSE proposal to modify the current operation of the NYSE's "setter priority" by changing: 1) the definition of orders eligible for setter priority; and 2) the allocation of contra-side aggressing orders that orders setting priority receive. An aggressing order is a buy (sell) order that is or becomes marketable against a sell (buy) interest on the NYSE. Under current NYSE rules, an order may be assigned setter priority by either setting a new Best Bid or Offer ("BBO") on the NYSE, or joining or setting the National Best Bid or Offer ("NBBO"), provided that such an order would not be eligible for setter priority if there is an odd-lot sized order with setter priority at that price. In addition, an order with setter priority equal to the BBO is eligible under current NYSE rules for a 15% allocation of an aggressing order, rounded up to the next round lot size, or the full quantity of the aggressing order. The NYSE's proposed amendment would provide that an order with setter priority equal to the BBO would be eligible to trade 100% with the contra-side aggressing order.

Approval Order: https://www.sec.gov/rules/sro/nyse/2020/34-89499.pdf

NYSE TO AMEND PRICE LIST REGARDING PORT FEES

On August 18, 2020, the SEC published for comment an NYSE proposal, effective on filing, to amend its price list to: 1) extend the transition period for member organizations to transition to the utilization of ports that connect to the NYSE using "Pillar" technology; (2) extend the decommission period that begins once the transition period ends; and (3) extend the effective date that the NYSE would prorate the monthly fee for ports activated on or after July 1, 2019. The NYSE stated in its filing that the proposal is not intended to raise any port fees and is instead intended to provide additional time for member organizations to transition from older to newer and more efficient Pillar technology. NYSE also clarified that it is not proposing to adjust the fees it charges to offset its continuing costs of supporting legacy ports, which will remain at the current level for all market participants.

Comments Due: September 14, 2020
Notice Release: https://www.sec.gov/rules/sro/nyse/2020/34-89591.pdf

NYSE TO EXTEND THE "HOT HANDS" FEE WAIVER AGAIN

On August 25, 2020, the SEC published for comment an NYSE proposal, effective on filing, to further extend the temporary fee waiver related to its "hot hands" co-location service until the reopening of the Mahwah, New Jersey data center. As previously reported, the waiver of the hot hands fee, implemented in response to the COVID-19 pandemic, was originally set to expire on March 29, 2020, which was extended through May 15, 2020 and extended again through August 31, 2020. The hot hands fee allows remote users of the Mahwah, New Jersey data center to utilize on-site personnel to maintain user equipment, support network troubleshooting, rack and stack a server in a user's cabinet, power recycling, and install and document the fitting of cable in a user's cabinet. The hot hands fee is $100 per half hour.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/nyse/2020/34-89655.pdf

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OCC TO ENHANCE STOCK LOAN CLOSE-OUT PROCESS

On August 10, 2020, the SEC published for comment an advanced notice prepared by the Options Clearing Corporation ("OCC") of proposed changes to OCC rules concerning certain close-out procedures involving the stock-loan positions of defaulting clearing members. As proposed, the OCC would require lending clearing members and/or borrowing clearing members not in default to execute buy-in or sell-out transactions at the OCC's instruction and provide notice to the OCC of such action by the settlement time for a clearing member's obligation to the OCC on the business day after the OCC gives the instruction. In addition, the OCC's proposal provides that if a non-defaulting clearing member so instructed does not execute the trades and provide notice by that time, the OCC would terminate the stock loan and effect settlement based upon the marking price at the close of business on the day that OCC provided the instruction. The OCC expects to implement the proposed changes within 30 days after it receives all necessary regulatory approvals.

Notice Release: https://www.sec.gov/rules/sro/occ-an/2020/34-89515.pdf

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Notable Enforcement Actions

This month featured significant enforcement actions covering a broad range of regulatory and securities law violations.

A firm was censured and fined $38 million for repeatedly failing to file Suspicious Activity Reports ("SARs") for U.S. microcap securities trades that it executed on behalf of its customers. The findings state that over a one-year period, the firm failed to file more than 150 SARs to flag potential manipulation of microcap securities in its customers' accounts, some of the trading accounting for a significant portion of the daily volume in certain of the microcap issuers. The findings also state that the firm failed to recognize red flags concerning these transactions, failed to properly investigate suspicious activity as required by its written supervisory procedures, and failed to file SARs in a timely fashion even when suspicious transactions were flagged by compliance personnel. In addition, the firm violated the financial recordkeeping and reporting provisions of the federal securities laws and a related SEC rule. (**SEC File #3-19907**)

https://www.sec.gov/litigation/admin/2020/34-89510.pdf

Two affiliated firms agreed to pay a combined total of $1 million in penalties to settle SEC charges that they made material misrepresentations to clients about compensation one of the affiliated firms received in an institutional payment for order flow arrangement for routing client orders to certain brokerage firms for execution. The two affiliated firms served as advisers to a series of mutual funds and exchange-traded funds, among other clients. The order finds that one of the affiliated firms, which also served as the other affiliated firm's primary introducing broker, agreed to route client orders to certain brokerage firms that agreed to pay amounts they characterized as "payments for order flow." According to the order, the payments to the introducing broker were $0.0125 to $0.0150 per share. The order further finds that, in general and over time, the brokerage firms executing the firms' client trades adjusted the execution prices by $0.02 to $0.03 per share higher for client buy orders and lower for client sell orders. According to the order, there was a mutual understanding between the affiliated firms and the executing brokers that the adjusted execution prices allowed the executing brokers to recoup their payments to the affiliated firms and generate profits. The order finds, however, that on at least three occasions, the affiliated firms falsely assured the boards of the mutual funds and the ETFs that these institutional payment for order flow arrangements did not adversely affect the funds' execution prices. (**SEC File #3-19904**)

https://www.sec.gov/litigation/admin/2020/34-89481.pdf

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A firm was fined $403,000, expelled from FINRA membership, and ordered to pay $853,617.04, plus prejudgment interest, in restitution to customers for excessively trading in customer accounts and failing to supervise representatives engaging in the activity. The fines and expulsion from FINRA came after an SEC decision became final that sustained the findings and sanctions imposed by the National Adjudicatory Counsel ("NAC"). The findings state that the representatives exercised de facto control over the customer accounts and that none of the representatives' customers indicated investment objectives that would support high levels of trading. The customers at issue were retail customers that had limited investment experience who generally sought to invest with minimal risk, and none sought to invest in high-risk investments, to speculate, or to trade at the quantity and pace that their representatives did. Several customers were also older and at or near retirement. The findings also state that the firm, acting through the representatives, churned customer accounts in violation of the Securities Exchange Act of 1934 Section 10(b), Rule 10b-5 thereunder and FINRA Rule 2020. The findings also include that the firm, acting through its representatives, made qualitatively unsuitable recommendations regarding certain exchange-traded products. The firm failed to reasonably supervise the trading of its representatives even though it was aware of red flags surrounding its representatives' trading. The firm received exception reports from its clearing firms showing that the trading in the representatives' customer accounts repeatedly exceeded specified thresholds. The firm's Chief Compliance Officer testified that he knew about the representatives' excessive trading and the firm's failure to respond. (**FINRA Case #2012030564701**)

https://www.finra.org/sites/default/files/fda_documents/2012030564701%20Admin%20Proc%20File%20No%203-18555%20Newport%20Coast%20Securities%2C%20Inc.%20CRD%2016944%20SEC%20Decision%20sl%20%282020-1588810771405%29.pdf

A firm was censured, fined $325,000 and ordered to pay $333,619.34, plus interest, in restitution to customers for failing to establish and maintain a supervisory system reasonably designed to achieve compliance with its obligations under the applicable rules in connection with its sale of volatility-linked exchange-traded products ("ETPs"). The findings state that although the firm was aware of the unique characteristics of volatility ETPs, it made these products available for solicited purchases without having a reasonable system in place to ensure that its brokers and customers understood the nature and characteristics of these products or the risks inherent in holding them for long-term periods. Certain of the firm's customers, including those without high risk tolerances or aggressive investment objectives, purchased volatility ETPs on a solicited basis, held them for lengthy periods of time and sustained losses. The firm did not provide any training or guidance to its brokers or supervisors specifically regarding volatility ETPs, nor did it identify the risks associated with volatility ETPs in its written supervisory procedures ("WSPs"). In addition, the firm did not conduct reasonable post-approval review of the products' performance and risk profile or take other reasonable steps to supervise solicited sales of the products to customers.

(**FINRA Case #2018057508101**)

https://www.finra.org/sites/default/files/fda_documents/2018057508101%20J.P.%20Morgan%20Securities%20LLC%20CRD%2079%20AWC%20va%20%282020-1595636368979%29.pdf

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A firm agreed to a censure, a civil penalty of $200,000, and disgorgement and prejudgment interest totaling $567,192 to settle SEC charges that it selected mutual funds and cash sweep money market funds for clients that provided undisclosed revenue to the firm's affiliated broker-dealer and were more expensive than other available options for the same funds. The settlement includes a distribution of money to harmed clients. The order also found that the firm purchased or recommended for advisory clients certain money market funds for which the firm's affiliated broker-dealer received revenue-sharing payments from its clearing broker, without disclosing receipt of this compensation to clients. As a result, some of the firm's clients received lower performance on these investments than they would have otherwise received. The firm failed to disclose these practices or related conflicts of interest to its clients and failed to adopt and implement policies and procedures designed to prevent violations of federal securities laws regarding its mutual fund and money market sweep fund share class selection practices. The firm also violated its duty to seek best execution, and it did not self-report to the SEC pursuant to the Division of Enforcement's Share Class Selection Disclosure Initiative, even though it was eligible to do so. (**SEC File #3-19912**) https://www.sec.gov/litigation/admin/2020/ia-5560.pdf

A firm was censured and fined $450,000 for failing to satisfy its customer protection requirements for its customer and proprietary business, including hindsight deficiencies. The findings state that when calculating reserves in customer and proprietary accounts of broker-dealers, the firm failed to make required reductions to certain debit balances. This caused the firm's customer and proprietary accounts of broker-dealers' reserve accounts to be underfunded, resulting in hindsight deficiencies of $19.3 million and $23 million in the customer reserve account and $46.8 million and $12.8 million in the proprietary accounts of broker-dealers reserve account. The firm failed to timely notify the SEC and FINRA of these deficiencies. In addition, the firm improperly overstated debits in its customer reserve calculations when it included an amount that was doubtful of collection. The findings also state that the firm made unsecured advances to its parent company totaling approximately $1 million, an amount that exceeded 10% of the firm's excess net capital for that period, without obtaining written permission from FINRA prior to doing so. The findings also include that the firm failed to comply with recordkeeping rules requiring the creation and maintenance of certain business records. The firm did not maintain an index of electronic records, store electronic records in the proper format, maintain an audit system for electronic records, or provide required notices and undertakings regarding its electronic records. Separately, the firm did not comply with recordkeeping requirements regarding payments made to its affiliated entities. The firm maintained an expense-sharing agreement with the parent, but that agreement did not specify, and the firm did not maintain records showing, how the affiliates were indirectly compensated through the parent. The firm also failed to establish and maintain a supervisory system reasonably designed to achieve compliance with securities laws and FINRA rules. The firm relied on proprietary electronic systems to help it calculate reserves, track margin calls, generate customer statements and maintain position reconciliations. Although the firm was aware of deficiencies in its electronic systems, it failed to replace or improve them.
(**FINRA Case #2017054054101**)
https://www.finra.org/sites/default/files/fda_documents/2017054054101%20%20Electronic%20Transaction%20Clearing%2C%20Inc.%20CRD%20146122%20AWC%20%20jlg%20%282020-1593994768802%29.pdf

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A firm was censured and fined $225,000 for executing certain short sale transactions without borrowing, or entering into a bona-fide arrangement to borrow the securities, or having reasonable grounds to believe they could be borrowed, by the delivery date of such securities contrary to the requirements of Rule 203(b)(1) of Regulation SHO pursuant to the Securities Exchange Act of 1934 (the "locate requirement"). The findings state that the firm self-reported to FINRA that it had discovered certain system issues impacting its calculation of available securities for purposes of complying with the locate requirement. The first system issue caused the short and long positions related to the firm's legacy market-making strategy to be omitted from net position computations of its market-making aggregation unit. As a result, in certain instances, the firm miscalculated the market-making aggregation unit's overall net position as long in its system. The second system issue resulted from inadvertent failures to distinguish between threshold and non-threshold securities in certain trade strategies for locate compliance purposes. As a result of coding errors, certain trade strategies re-applied locates from earlier short sales to subsequent intra-day short sales in threshold securities. This occurred when the trade strategy covered the earlier short sale with a purchase. The findings state that the firm's supervisory system was not reasonably designed to achieve compliance with the locate requirement. The firm failed to reasonably test the quality and accuracy of the systems that were the primary tool that it relied on for achieving compliance with the locate requirement. In addition, the firm lacked supervisory reviews that were reasonably designed to ensure that the data its surveillance reports relied upon for supervising locate compliance was accurate. The findings also include that the firm lacked WSPs concerning its system changes, updates and checks for regulatory compliance. While the firm had a quality control process for systems updates, such review was not reflected in its WSPs. The firm's WSPs did not reflect reasonable supervisory reviews to validate whether the firm's quality control process for reviewing and approving systems changes, including documentation of the approval process, was being followed. Further, the procedures did not make clear that the designated supervisor's responsibilities encompassed reviews designed to confirm whether systems changes were reasonable for achieving compliance with applicable securities laws and rules. Finally, the firm's WSPs did not provide complete descriptions of the nature, scope and use of the firm's locate requirement surveillance reports. (**FINRA Case #2016050929001**)
https://www.finra.org/sites/default/files/fda_documents/2016050929001%20Two%20Sigma%20Securities%2C%20LLC%20CRD%20148960%20va.pdf

A firm was censured and fined $150,000 for overstating its trading volume in numerous securities that it had advertised through a private subscription-based provider of market data. The overstatement of volume was the result of system-related issues connected to the firm's third-party order management system. The findings stated that a flaw in the firm's order management system utilized by its ETF desk identified and advertised internal booking entries that reflected shares the firm had delivered and received in connection with the monthly expiration of single stock futures, as actual executed trades. In each of the instances, the firm had not executed any corresponding trades on the trade date in question. Separately, a flaw in the firm's order management system utilized by its Japan broker-dealer desk caused duplicate advertisements of the trading volumes of multiple customer orders in the same symbol that the firm had combined into a single manual order and executed at a single average price. The findings also state that for two of its trading desks, the firm failed to establish and maintain a supervisory system and WSPs that were reasonably designed

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to achieve compliance with the regulatory requirements that govern the accuracy of advertised trading volumes. The firm failed to monitor or supervise the Japan broker-dealer desk's trading personnel, or review multi-order, average-priced transactions, to determine whether allocated volumes from the Japan desk were properly suppressed. The firm's testing did not detect the order management system flaws that caused the over-advertisements on the Japan broker-dealer desk and the ETF desk. After creating a daily advertisement report to capture discrepancies between its executed and advertised trading volume, the firm's ETF desk and Japan broker-dealer desk never utilized the report as required by the firm's supervisory system, and as a result, the relevant desk supervisors did not review the accuracy of the firm's executed and advertised trading volume. (**FINRA Case #2016051884601**)
https://www.finra.org/sites/default/files/fda_documents/2016051884601%20Mizuho%20Securities%20USA%20Inc.%2C%20CRD%2019647%20%20AWC%20va%20%282020-1593649171301%29.pdf

A firm was censured and fined $85,000 for failing to immediately execute, route or display customer limit orders in over-the-counter ("OTC") equity securities when the price and the full size of each customer limit order would have improved the firm's bid or offer in such a security. The findings state that the firm's failures to immediately display these limit orders primarily resulted from delays caused by the manual handling of orders, or the firm's misunderstanding of its responsibilities when only a portion of a customer limit order was executed within 30 seconds of its receipt. The findings also state that the firm failed to establish and maintain a supervisory system and WSPs reasonably designed to achieve compliance with FINRA rules relating to the display of customer limit orders. The firm's system of supervision relating to limit order display obligations required that firm personnel review samples of exceptions that appeared on the firm's surveillance reports, which were designed to detect orders that might not have been handled in accordance with the limit order display rule. However, in certain instances, the firm's review mistakenly concluded that because there was at least a partial execution within 30 seconds of initial receipt of a customer limit order and additional partial executions and/or efforts to execute it continuously thereafter, there was no violation. The firm's review of the exceptions was based upon a misunderstanding of available interpretative guidance. Therefore, the firm did not recognize limit order display rule violations in such circumstances that were brought to its attention. (**FINRA Case #2017052741001**)
https://www.finra.org/sites/default/files/fda_documents/2017052741001%20%20Cantor%20Fitzgerald%20%26%20Co.%20CRD%20134%20AWC%20jlg%20%282020-1593994785854%29.pdf

A firm was censured and fined $20,000 for failing to report to the Trade Reporting and Compliance Engine ("TRACE") transactions in TRACE-eligible agency debt securities within the time required, constituting a pattern or practice of late reporting without exceptional circumstances. The findings state that the firm's violations were the result of human errors by traders or administrative staff to correct, among other things, settlement dates, execution times and changes to price and volume that were not completed within 15 minutes of execution.
(**FINRA Case #2018060923801**)
https://www.finra.org/sites/default/files/fda_documents/2018060923801%20D.A.%20Davidson%20%26%20Co.%20CRD%20199%20AWC%20va%20%282020-1594858771232%29.pdf

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