SECURITIES OPERATIONS

REGULATORY UPDATE

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IN THIS ISSUE

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SEC Adopts Amendments to Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, the Shareholder Proposal Rule

On September 23, 2020, the Securities and Exchange Commission ("SEC" or "Commission") adopted amendments to certain procedural requirements and the provision relating to resubmitted proposals under the shareholder-proposal rule in order to modernize and enhance the efficiency and integrity of the shareholder-proposal process for the benefit of all shareholders. The amendments to the procedural rules amend the current ownership requirements to incorporate a tiered approach that provides three options for demonstrating a sufficient ownership stake in a company—through a combination of amount of securities owned and length of time held—to be eligible to submit a proposal; require certain documentation to be provided when a proposal is submitted on behalf of a shareholder-proponent; require shareholder-proponents to identify specific dates and times they can meet with the company in person or via teleconference to engage with the company with respect to the proposal; and provide that a person may submit no more than one proposal, directly or indirectly, for the same shareholders meeting. The amendments to the resubmission thresholds revise the levels of shareholder support a proposal must receive to be eligible for resubmission at the same company's future shareholders' meetings from 3, 6, and 10 percent to 5, 15, and 25 percent, respectively.

Final amendments will apply to any proposal submitted for an annual or special meeting to be held on or after January 1, 2022. The final rules also provide for a transition period with respect to the ownership thresholds that will allow shareholders meeting specified conditions to rely on the $2,000/one-year ownership threshold for proposals submitted for an annual or special meeting to be held prior to January 1, 2023.

Effective Date: 60 days after publication in the federal register, except for amendatory instruction 2.b, which is effective 60 days after publication in the federal register through January 1, 2023
Final Rule: https://www.sec.gov/rules/final/2020/34-89964.pdf
Press Release: https://www.sec.gov/news/press-release/2020-220
Public Statement: https://www.sec.gov/news/public-statement/clayton-shareholder-proposal-2020-09-23

SEC AMENDS RULE GOVERNING PUBLICATION OR SUBMISSION OF QUOTATIONS FOR OTC SECURITIES

On September 16, 2020, the SEC adopted amendments to modernize Rule 15c2-11, the publication or submission of quotations by broker-dealers in a quotation medium other than a national securities exchange. Before a broker-dealer may initiate or resume quotations for a security in a quotation medium, the broker-dealer must review key, basic information about the issuer of the security. The Rule allows any qualified interdealer quotation system ("qualified IDQS") to conduct the required information review as well. The amendments are designed to modernize the Rule to (1) provide greater transparency to investors and other market participants by requiring that information about the issuer and its security be current and publicly available before a broker-dealer can begin quoting that security; (2) limit broker-dealers' reliance on certain of the Rule's exceptions when issuer information is not current and publicly available; and (3) provide exceptions to reduce unnecessary burdens on broker-dealers to quote certain over-the-counter ("OTC") securities that may be less susceptible to fraud and manipulation. The amendments facilitate transparency of OTC issuer information by: requiring to be current and publicly available certain specified documents and information regarding OTC issuers that a broker-dealer or qualified IDQS must obtain and review for the broker-dealer to commence a quoted market in an OTC issuer's security ("information review requirement"); updating the "piggyback" exception, which allows broker-dealers to rely on the quotations of another broker-dealer that initially complied with the information review requirement, to require, among other things, that issuer information, depending on the issuer's regulatory status, be current and publicly available, timely filed, or filed within 180 calendar days from a specified period; and requiring that issuer information be current and publicly available for a broker-dealer to rely on the unsolicited quotation exception to publish quotations on behalf of company insiders and affiliates of the issuer. The amendments provide greater investor protections when broker-dealers rely on the piggyback exception by: requiring at least a one-way priced quotation; prohibiting reliance on the exception during the first 60 calendar days following the termination of a Commission trading suspension under Section 12(k) of the Exchange Act; and providing a time-limited window of 18 months during which broker-dealers may quote the securities of "shell companies." The amendments reduce unnecessary burdens on broker-dealers by: allowing broker-dealers to initiate a quoted market for a security if a qualified IDQS complies with the information review requirement and makes a publicly available determination of such compliance; and providing new exceptions, without undermining the Rule's important investor protections, for broker-dealers to: quote actively traded securities of well-capitalized issuers; quote securities issued in an underwritten offering if the broker-dealer is named as an underwriter in the registration statement or offering statement for the underwritten offering, and the broker-dealer that is the named underwriter quotes the security; and rely on certain third-party publicly available determinations that the requirements of certain exceptions are met. The amendments also remove outdated provisions from the Rule and provide examples of red flags to compliance with the information review requirement.

Effective Date: 60 days after publication in the federal register
Proposed Rule: https://www.sec.gov/rules/final/2020/33-10842.pdf
Press Release: https://www.sec.gov/news/press-release/2020-212
Public Statement: https://www.sec.gov/news/public-statement/clayton-otc-2020-09-16

FINRA PROPOSES TO AMEND ARBITRATION PROCEDURE CODES RELATING TO CUSTOMER DISPUTE INFORMATION

On September 25, 2020, the SEC published for comment a Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to amend the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, "Codes") to modify the current process relating to the expungement of customer dispute information. Specifically, the proposed rule change would amend the Codes to: (1) impose requirements on expungement requests (a) filed during an investment-related, customer initiated arbitration ("customer arbitration") by an associated person, or by a party to the customer arbitration on-behalf-of an associated person ("on-behalf-of request"), or (b) filed by an associated person separate from a customer arbitration straight-in request; (2) establish a roster of arbitrators with enhanced training and experience from which a three-person panel would be randomly selected to decide straight-in requests; (3) establish procedural requirements for expungement hearings; and (4) codify and update the best practices of the Notice to Arbitrators and Parties on Expanded Expungement Guidance that arbitrators and parties must follow. The proposed rule change would also amend the Codes to establish requirements for notifying state securities regulators and customers of expungement requests.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/finra/2020/34-90000.pdf

FINRA PROPOSES CHANGE TO GRANULARITY OF TIMESTAMPS IN TRADE REPORTS SUBMITTED TO FINRA'S EQUITY TRADE REPORTING FACILITIES

On September 23, 2020, the SEC published for comment a FINRA proposal to require firms to report time fields in trade reports submitted to an equity trade reporting facility ("FINRA Facility") using the same timestamp granularity that firms use to report to the consolidated audit trail ("CAT"), in accordance with an SEC order granting exemptive relief from certain CAT National Market System ("CAT NMS") Plan requirements. Pursuant to Rule 6860 of FINRA's CAT Compliance Rule, industry members are required to report timestamps for Reportable Events, including trade executions, to the CAT's Central Repository in milliseconds, and if their system captures time in finer increments, to report in such finer increments up to nanoseconds (except as otherwise provided under Rule 6860 for Manual Order Events). Thus, currently there is a difference in the timestamp granularity requirements applicable to member firms reporting to the FINRA Facilities (up to milliseconds) and to the CAT (up to nanoseconds). FINRA is proposing to amend its equity trade reporting rules to require industry members with an obligation to report order execution events to the Central Repository pursuant to FINRA's CAT Compliance Rule to report time fields (including time of execution and time of cancellation, if applicable) in trade reports submitted to a FINRA Facility using the same timestamp granularity, as set forth in Rule 6860 (currently up to nanoseconds), that they use to report to the Central Repository.

Comments Due: 21 days after publication in the federal register
Notice Release: https://www.sec.gov/rules/sro/finra/2020/34-89973.pdf

FINRA TEMPORARILY PERMITS HEARINGS TO BE CONDUCTED BY VIDEO CONFERENCE

On September 2, 2020, the SEC published for comment a FINRA proposal, effective on filing, that temporarily amends FINRA Rules 1015, 9261, 9524 and 9830 to conduct hearings in connection with appeals of Membership Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. The temporary amendments will be in effect through December 31, 2020. In order to comply with the guidance of public health authorities and to ensure the safety and well-being of parties, counsel, adjudicators and FINRA personnel, FINRA administratively postponed in-person OHO and NAC hearings through October 2, 2020. The result is an expanding backlog of cases, which if left unchecked, will compromise FINRA's ability to provide timely adjudicatory processes and fulfill its statutory obligations to protect investors and maintain fair and orderly markets. In order to proactively address this backlog of cases, and mitigate the consequences of a stalled adjudicatory system, FINRA adopted this temporary rule change to grant OHO and the NAC the authority to conduct hearings by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. The rule change allows OHO and the NAC to order that a hearing proceed by video conference over the objection of a party.

Notice Release: https://www.sec.gov/rules/sro/finra/2020/34-89737.pdf

FINRA EXTENDS PERIOD FOR REGISTERED PERSONS TO FUNCTION AS PRINCIPALS AND OPERATIONS PROFESSIONALS

On September 1, 2020, the SEC published for comment a FINRA proposal, effective on filing, that adopts: (1) temporary Supplementary Material .12 ("Temporary Extension of the Limited Period for Registered Persons to Function as Principals") under FINRA Rule 1210 ("Registration Requirements"); and (2) temporary Supplementary Material .07 ("Temporary Extension of the Limited Period for Persons to Function as Operations Professionals") under FINRA Rule 1220 ("Registration Categories"). The rule change extends the 120-day period that certain individuals can function as a Principal or Operations Professional without having successfully passed an appropriate qualification examination through December 31, 2020. The rule change applies only to those individuals who were designated to function as a principal or Operations Professional prior to September 3, 2020. Any individuals designated to function as a principal or Operations Professional on or after September 3, 2020, will need to successfully pass an appropriate qualification examination within 120 days.

Notice Release: https://www.sec.gov/rules/sro/finra/2020/34-89732.pdf

NASDAQ ADOPTS LISTING RULE FOR COMPLIMENTARY GLOBAL TARGETING TOOL

On September 17, 2020, the SEC issued an order approving a Nasdaq Stock Market ("Nasdaq") proposal offering a complimentary global targeting tool to an acquisition company that has publicly announced entering into a binding agreement for a business combination. Nasdaq does not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies. However, in the case of a company whose business plan is to complete an initial public offering ("IPO") and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, Nasdaq permits the listing if the company meets all applicable initial listing requirements, as well as certain additional conditions described in Nasdaq Rule IM-5101-2 (Listing of Companies Whose Business Plan is to Complete One or More Acquisitions). Rule IM-5101-2 requires, among other things, that at least 90% of the gross proceeds from the IPO and any concurrent sale by the company of equity securities must be deposited in a "deposit account," as that term is defined in the rule, and that the company complete within 36 months, or a shorter period identified by the company, one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination. Nasdaq adopted Nasdaq IM 5900-8, to allow, through its affiliate Nasdaq Corporate Solutions, LLC, a company listed under IM-5101-2 ("Acquisition Company") a complimentary global targeting tool following the public announcement that the company entered into a binding agreement for the business combination intended to satisfy the conditions in IM-5101-2(b) until 60 days following the completion of the business combination or such time that the Acquisition Company publicly announces that such agreement is terminated. Nasdaq IM-5900-8 states that, through this global targeting tool, investor targeting specialists will help focus the Acquisition Company's investor relations efforts on appropriate investors, tailor messaging to their interests, and measure the company's impact on their holdings. The analyst team will help develop a detailed plan aligning the targeting efforts with the company's long-term ownership strategy.

Comments Due: October 14, 2020
Approval Order: https://www.sec.gov/rules/sro/nasdaq/2020/34-89915.pdf

NASDAQ SEEKS DEADLINE FOR LISTING RULES APPLICABLE TO SPACS

On September 16, 2020, the SEC published for comment a Nasdaq proposal to amend listing rules applicable to Special Purpose Acquisition Companies ("Acquisition Company"). Under the existing rules, "following each business combination" with an Acquisition Company, the resulting company must satisfy all initial listing requirements. The rule does not provide a timetable for the company to demonstrate that it satisfies those requirements. Accordingly, Nasdaq proposes to modify the rule to specify if the Acquisition Company demonstrates that it will satisfy all requirements except the applicable round lot shareholder requirement, then the company will receive 15 calendar days following the closing to demonstrate that it satisfied the applicable round lot shareholder requirement immediately following the transaction's closing.

Comments Due: October 13, 2020
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89897.pdf

NASDAQ PROPOSES QUALIFICATION REQUIREMENT FOR MANAGEMENT OF COMPANIES FROM RESTRICTIVE MARKETS

On September 9, 2020, the SEC published for comment and issued an order instituting proceedings, as amended by Amendment No. 1, a Nasdaq proposal to adopt a new initial listing standard. The proposal amends Nasdaq Listing Rule 5210(c) to require any company that principally administers its business in a jurisdiction that Nasdaq determines to have secrecy laws, blocking statutes, national security laws, or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction (a "Restrictive Market") to have, and certify that it will continue to have until the third anniversary of its listing date, at least one member of senior management or a director who has relevant past employment experience at a U.S.-listed public company or other experience, training, or background that results in the individual's general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws. In the absence of such an individual, the proposal would require a company that principally administers its business in a Restrictive Market ("Restrictive Market Company") to retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the company. In determining whether a Company's business is principally administered in a Restrictive Market, the proposed rule provides that Nasdaq may consider the geographic locations of the Company's: (a) principal business segments, operations, or assets; (b) board and shareholders' meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records. Nasdaq states that this definition would capture both foreign private issuers based in Restrictive Markets and companies based in the U.S. or another jurisdiction that principally administer their businesses in Restrictive Markets. In addition, Nasdaq is proposing to adopt new Nasdaq Listing Rule 5250(g) to require any Company that was subject to proposed Rule 5210(c) upon initial listing and that continues to be a Restrictive Market Company to meet these same requirements. Nasdaq is also proposing changes to Nasdaq Listing Rule 5810 (Notification of Deficiency by the Listing Qualifications Department) to allow a Restrictive Market Company subject to, but not in compliance with, proposed Rule 5250(g) to submit a plan to regain compliance pursuant to Nasdaq Listing Rule 5810(c)(2)(iii). The proposed rule changes would apply to Restrictive Market Companies that apply to list on Nasdaq after the date of effectiveness of the proposed rules and would not apply to companies already listed on Nasdaq.

Comments Due: October 6, 2020
Amendment: https://www.sec.gov/rules/sro/nasdaq/2020/34-89799.pdf
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89794.pdf

NASDAQ AMENDS TRANSACTION FEES

On September 8, 2020, the SEC published for comment a Nasdaq proposal, effective on filing, that amends its transaction fees to: (i) adjust the qualification requirements for certain Qualified Market Maker ("QMM") fees and rebates; and (ii) establishes new credits and fee tiers, and amends the qualification requirements for existing credit tiers at Equity 7, Section 118.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89781.pdf

NASDAQ AMENDS NOM PRICING SCHEDULE

On September 3, 2020, the SEC published for comment a Nasdaq proposal, effective on filing, that amends The NASDAQ Options Market LLC ("NOM") Pricing Schedule at Options 7, Section 2, "Nasdaq Options Market Fees and Rebates." Nasdaq also proposes to amend certain rule citations within Options 7, update other rule text within Options 7, Section 1, "Collection of Exchange Fees and Other Claims-Nasdaq Options Market," and Options 7, Section 5, "Nasdaq Options Regulatory Fee."

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89767.pdf

NYSE AND NYSE AMERICAN SPECIFY SOURCE OF DATA FEED FROM MIAX PEARL, LLC

On September 11, 2020, the SEC published for comment New York Stock Exchange LLC ("NYSE") and NYSE American LLC ("NYSE American") (together "NYSE Exchanges") proposals, effective on filing, to amend Rules 7.37 and 7.37E respectively, that state, for MIAX PEARL, LLC, the NYSE Exchanges will receive the SIP feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance. The NYSE Exchanges will not have a secondary source for data from MIAX PEARL.

Comments Due: October 8, 2020
NYSE Notice: https://www.sec.gov/rules/sro/nyse/2020/34-89832.pdf
NYSE American Notice: https://www.sec.gov/rules/sro/nyseamer/2020/34-89833.pdf

NYSE AMENDS PRICE LIST TO EXTEND WAIVER OF FLOOR-BASED FEES

On September 9, 2020, the SEC published for comment a NYSE proposal, effective on filing, that amends its Price List, to extend through September 2020, the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April through August 2020.

Comments Due: October 6, 2020
Notice Release: https://www.sec.gov/rules/sro/nyse/2020/34-89798.pdf

NYSE WAIVES INITIAL LISTING FEES AND FIRST PARTIAL YEAR ANNUAL LISTING FEES

On September 4, 2020, the SEC published for comment a NYSE proposal, effective on filing, that amends Section 902.02 of the NYSE Listed Company Manual to waive initial listing fees and the first partial year annual fee for any company not listed on a national securities exchange that is listing upon closing of its acquisition of a special purpose acquisition company ("SPAC") listed on the NYSE.

Notice Release: https://www.sec.gov/rules/sro/nyse/2020/34-89773.pdf

NYSE AMENDS PRICE LIST RELATED TO CREDITS, REBATES

On September 2, 2020, the SEC published for comment an NYSE proposal, effective on filing, that amends its price list. Specifically, the amendment (1) revises the Step Up Tier 1 Adding Credit; (2) revises the Step Up Tier 4 Adding Credit; (3) revises a requirement for the Incremental Rebate Per Share for Designated Market Makers ("DMM") in most active securities; (4) adopts a new National Best Bid and Offer ("NBBO") Setter pricing tier for DMMs; (5) adopts a new NBBO Setter pricing tier for Supplemental Liquidity Providers ("SLP"); and (6) extends through August 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April, May, June and July 2020, make Floor broker member organizations that had no March 2020 volumes eligible for both waivers, and provide a one-time credit of the equipment and related service charges and trading license fees for member organizations that became member organizations after April 1, 2020.

Notice Release: https://www.sec.gov/rules/sro/nyse/2020/34-89754.pdf

NYSE AMERICAN PROPOSES TO MODIFY CUBE AUCTION

On September 1, 2020, the SEC published for comment a NYSE American proposal to modify Rules 971.1NY and 971.2NY regarding its Customer Best Execution ("CUBE") Auction. NYSE American proposes to expand its electronic crossing mechanism -- the CUBE Auction, to provide optional all-or-none ("AON") functionality for ATP Holders to execute larger-sized orders (i.e., 500 or more contracts) in both the Single-Leg and Complex CUBE Auctions. As proposed, a CUBE Order would execute in full at the single stop price against the Contra Order, unless RFR Responses that provide price improvement to the CUBE Order or customer interest that is priced equal to the CUBE Order, or both, can in the aggregate, satisfy the full quantity of the CUBE Order, whereby the Contra Order would not receive an allocation.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2020/34-89723.pdf

DTC PROPOSES TO AMEND RULE 4

On September 22, 2020, the SEC published for comment a Depository Trust Company ("DTC") proposal to amend Rule 4 to expressly provide that the Participants Fund continues to be a liquidity resource that may be used by DTC to fund a settlement funding gap to complete settlement on a business day, whether the funding gap is the result of a Participant default or otherwise. In addition, the proposed rule change would make other technical and clarifying amendments to Rule 4 to provide enhanced transparency with respect to use of the Participants Fund and other resources to complete settlement on a business day.

Comments Due: October 19, 2020
Notice Release: https://www.sec.gov/rules/sro/dtc/2020/34-89952.pdf

CHANGE TO OCC'S STOCK LOAN CLOSE-OUT PROCESS APPROVED

On September 10, 2020, the SEC issued an order approving an Options Clearing Corporation ("OCC") proposal that requires clearing members that OCC instructs to buy-in or sell-out securities to execute such transactions and provide OCC notice of such action by the settlement time on the business day after OCC gives the instruction. The rule changes: (1) the time by which buy-in or sell-out transactions for defaulted open stock loan positions must be executed, and (2) the price at which OCC would terminate positions not closed out through the execution of buy-in or sell-out transactions. OCC moved up the time by which the transaction must be executed from the close of business to "settlement time," which OCC's current rules define as 9:00 a.m. Central Time. OCC also amended Rules 2211 and 2211A with regard to the price on which termination of stock loan positions would be based if a clearing member fails to execute buy-in or sell-out transactions within the required timeframes. Under the amended rule, OCC closes out such positions based on end-of-day prices from the same day on which OCC instructed the clearing member to execute buy-in or sell-out transactions (i.e., the day before the clearing member was obligated to execute the buy-in or sell-out transactions).

Comments Due: October 7, 2020
Approval Order: https://www.sec.gov/rules/sro/occ/2020/34-89809.pdf

Notable Enforcement Actions

This month's enforcement actions emphasize the importance of continually testing programing embedded in automated systems to ensure ongoing compliance with regulatory requirements and current firm practices.

A firm was fined $875,000 for submitting inaccurate blue sheets to the SEC and FINRA from 2014 through 2017, misreporting information on options transactions. The findings stated that FINRA first found a blue sheet submission indicating a customer closed his options position when in fact the purchase and sales transactions opened his options position. The firm determined that human error had caused these errors, which had been repeated in additional blue sheet submissions. Additionally, FINRA identified two computer coding issues that caused the firm to incorrectly report whether options transactions opened or closed positions. One coding error, related to the firm's money manager programs, had caused the firm's blue sheets to report all options trades as closing trades. Another coding error occurred because the firm's electronic blue sheet system obtained trade data from an internal data repository that sometimes had a blank in its symbol field. This error caused the firm's electronic blue sheet system sometimes to indicate that closing transactions were opening transactions. Because this error occurred intermittently, the number of affected blue sheet submissions or transactions is unknown. (**FINRA Case #2017052995901**)
https://www.finra.org/sites/default/files/fda_documents/2017052995901%20Morgan%20Stanley%20Smith%20Barney%20LLC%20CRD%20149777%20AWC%20sl%20%282020-1596845969038%29.pdf

A firm was fined $700,000, required to provide restitution to firm clients, and required to submit to FINRA a written certification that it had completed a review of its systems, policies and procedures regarding the display of OTC customer limit orders and that such systems, policies and procedures are reasonably designed to achieve compliance with FINRA rules and the federal securities laws and regulations applicable to the display of OTC customer limit orders. The findings stated that the firm sought to program its OTC desk trading systems to comply with trading ahead and limit order display rules by providing customer orders automated order protection, quote display, and execution. The OTC desk, however, implemented controls, settings and processes that removed hundreds of thousands of mostly larger customer orders from those logics. While those controls, settings and processes had multiple purposes, they shared a principal purpose of directing OTC customer orders for manual review and/or handling. Impacted orders were rendered inactive until the completion of a manual trader review. While OTC customer orders were inactive, the firm, in many instances, as part of its market making activities, traded for its own account on the same side of the market at prices that would have satisfied the orders, without immediately thereafter executing them up to the size and at the same or better price as it traded for its own account. The findings also stated that the firm failed to consistently apply its written methodology to certain OTC customer orders. For OTC customer orders rendered inactive by the controls, settings and processes, execution priority depended on when OTC desk traders manually reviewed and handled the orders, not just the price-time priority described in the firm's written methodology. The time it took OTC desk traders to manually handle customer orders ranged based on market factors and their various other responsibilities on the desk. The findings also included that the firm failed to display certain OTC customer limit orders. There were various circumstances

where OTC customer limit orders that required display were handled manually or were subject to delayed automated handling that in certain instances, resulted in the firm failing to handle the orders. FINRA found that the firm failed to establish a supervisory system, including WSPs, reasonably designed to achieve compliance with trading ahead and limit order display rules for OTC customer orders. Among other things, the firm did not establish written supervisory procedures ("WSPs") requiring supervisory reviews of OTC customer orders, nor did it establish any supervisory reports or other tools to allow supervisors to monitor whether OTC customer orders were handled in compliance with applicable rules. Furthermore, the reports the firm implemented with respect to the display of OTC customer limit orders were not reasonably designed to achieve compliance with FINRA Rule 6460. (**FINRA Case #2014041859401**)
https://www.finra.org/sites/default/files/fda_documents/2014041859401%20Citadel%20Securities%20LLC%20CRD%20116797%20AWC%20sl%20%282020-1597623569895%29.pdf

A firm was fined $650,000 and required to certify to FINRA that it reviewed its financial risk management controls and supervisory procedures and that those controls and procedures are reasonably designed to achieve compliance with SEC Rule 15c3-5(c)(1)(i) and (ii) relating to the firm's market access business activity and generally preventing the entry of orders that exceed appropriate pre-set credit or capital thresholds and the entry of erroneous orders, respectively. The firm was found to have been aware of potential gaps in its financial risk management controls for years but failed to fix the controls. Specifically, the findings stated that the firm did not establish aggregate credit thresholds for market access customers and its written procedures did not reasonably guide supervisors in determining appropriate credit thresholds for customers. The findings also stated that the firm generally set a single-order quantity limit and single-order notional value limit for each customer at such high levels that the controls were not reasonably designed to prevent erroneous orders, absent additional reasonably designed controls, such as an average daily trading volume control. The firm's price away and duplicative order controls were also considered to not be reasonably designed. Additionally, the firm did not have any control to prevent an unintended volume of orders arising from malfunctioning algorithms, software programs, or trading systems, such as a throttle control. The firm also did not establish and maintain a supervisory system, including WSPs, that was reasonably designed to promptly address issues identified as a result of its quarterly and annual reviews. Accordingly, the firm failed to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to achieve compliance with SEC Rule 15c3-5(c)(1)(i) and (ii). (**FINRA Case #2013037641201**)
https://www.finra.org/sites/default/files/fda_documents/2013037641201%20BNP%20Paribas%20Securities%20Corp.%20CRD%2015794%20AWC%20jlg%20%282020-1598746770695%29.pdf

A firm was fined $200,000 for failing to timely report to the Trade Reporting and Compliance Engine ("TRACE®") transactions in TRACE-eligible corporate debt securities. The findings stated that the majority of the untimely reporting violations were caused by latencies associated with the manual handling of orders by traders and salespersons, including untimely amendments and corrections to transaction terms. The findings also stated that the firm reported to TRACE transactions in TRACE-eligible corporate debt securities with an inaccurate contra-party identifier. The firm's failures to report the correct contra-party identifier largely resulted from limitations within the

firm's TRACE reporting system that could not accommodate contra-party firms with multiple Market Participant Identifiers. The findings also included that the firm's supervisory system was not reasonably designed to achieve compliance with the firm's transaction reporting obligations for TRACE-eligible securities. The firm's reviews of its traders and salespersons conduct to determine whether reports were timely submitted to TRACE failed to include traders and salespersons on non-U.S. desks. As a result, the firm's reviews failed to identify all of its untimely reporting to TRACE that was attributable to trader/salesperson conduct. (**FINRA Case #2016049876001**)
https://www.finra.org/sites/default/files/fda_documents/2016049876001%20BNP%20Paribas%20Securities%20Corp.%20CRD%2015794%20AWC%20va%20%282020-1598573965689%29.pdf

A firm was fined $175,000 for failing to provide best execution to customer orders it had received from two of its broker-dealer clients outside of normal trading hours, by failing to use reasonable diligence to ascertain the best market for the subject securities and by failing to buy or sell in such a market so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. The findings stated that due to a programming error in the firm's order management system, certain hold and release orders were executed by the firm's electronic market making systems prior to the completion of the crossing process. The hold and release orders were received and executed outside of normal trading hours and were marketable against each other and designated by each customer for execution at the same time but were not executed against each other at the National Best Bid or Offer ("NBBO") midpoint. Instead, the firm executed such eligible buy and sell orders separately, on a principal basis, at the NBBO or a price that was better than the NBBO but that was at prices less favorable than the NBBO midpoint. Subsequently, the firm took corrective action by implementing a temporary fix, and thereafter permanently fixed the programming error. The firm paid full restitution to the introducing broker-dealer clients affected by the programming error. The findings also stated that the firm failed to establish and maintain a supervisory system and WSPs reasonably designed to achieve compliance with FINRA Rule 5310 for customer orders executed outside of normal trading hours. The firm's exception report designed to monitor for best execution was developed prior to its acceptance and execution of hold and release orders outside of normal trading hours. Therefore, those orders were not captured by the exception report until the firm took corrective action. (**FINRA Case #2016049752801**)
https://www.finra.org/sites/default/files/fda_documents/2016049752801%20Virtu%20Americas%20LLC%20%28f%20k%20a%20KCG%20Americas%20LLC%29%20CRD%20149823%20AWC%20jlg%20%282020-1597969172197%29.pdf

A firm was fined $150,000 for reporting short sales to a trade reporting facility ("TRF") without a required short sale indicator, incorrectly marking principal sell orders as long sales, failing to establish and maintain a supervisory system reasonably designed to achieve compliance with the rule requirements related to the aforementioned activities, failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of short sale orders at prices at or below the national best bid during a short sale circuit breaker, and reporting over six million non-media transactions in National Market System ("NMS") equity securities to the FINRA/Nasdaq Trade Reporting Facility ("FNTRF") with inaccurate capacity codes,

reporting them as principal transactions rather than riskless principal transactions. The findings stated trades on the firm's convertibles desk were entered into the Order Audit Trail System ("OATS") as short sales but improperly reported to a TRF without a short sale indicator due to a coding error in the order management system used by that desk. Additionally, a systemic programming issue caused a trade entered into OATs as a long sale to be reported to a TRF with a short sale indicator when a firm trader attempted to cross two or more customer orders on an agency basis, while providing a partial principal fill to one or more customers. The programming issue caused the agency cross trade to be reported in the same manner as the principal fill. The firm did not discover this problem until FINRA inquired about it. Another FINRA inquiry flagged transactions in different stocks as having been improperly reported to a TRF. Certain firm traders at the time were authorized to effect transfers of shares to different but affiliated legal entities under the common control of that trader or trading desk. These transfers were affected via an application called the Booking Tool. The transactions resulted in changes in beneficial ownership for the positions in question, triggering the firm's requirement to report the transactions as trades. The Booking Tool was not programmed to automatically capture the transferring affiliates' positions in the equities subject to transfer. When reporting these transactions to a TRF, traders did not check whether the transferring (i.e., selling) entity was long or short on the stock, and the firm reported all such transfers as long sales. The transactions should have been reported to a TRF with a short sale indicator, as the selling entity was short the security at the time of transfer. The firm also incorrectly marked principal sell orders in shares of a single company as long sales, when it should have marked the trades as short sales. The mismarking issue occurred due to the speed of the entry of the sell orders and the firm's order management and position management systems unable to timely update the net position on a per-order basis. The firm did not discover this error until a FINRA inquiry. Upon learning of the error, the firm suspended the hedging strategy that led to the mismarking of orders. The findings stated that the firm failed to establish a supervisory system, including WSPs, reasonably designed to achieve compliance with its trade reporting obligations and order marking rules. FINRA also found that the firm failed to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of short sale orders at prices at or below the national best bid during a short sale circuit breaker. Finally, FINRA found inaccurate capacity codes reported to the FNTRF even after the firm informed FINRA that it had corrected the issue. However, FINRA later discovered that the issue persisted. (**FINRA Case #2015045603201**)
https://www.finra.org/sites/default/files/fda_documents/2015045603201%20Merrill%20Lynch%2C%20Pierce%2C%20Fenner%20%26%20Smith%20Inc.%20CRD%207691%20AWC%20sl%20%282020-1598141969567%29.pdf

A firm was fined $150,000 for failing to submit, and submitting inaccurate and incomplete, OATs reports to FINRA, sending trade confirmations to customers containing inaccurate and misleading information, misusing the prior reference price modifier on trade reports, creating and maintaining inaccurate books and records, and failing to reasonably supervise for compliance with its OATs reporting requirements. The findings stated that the firm failed to transmit Reportable Order Events ("ROEs") to OATS and transmitted ROEs to OATS that contained inaccurate, incomplete, or improperly formatted data, including ROEs with an inaccurate Receiving Department ID, Execution Reports that were not required to be reported, and Route Reports with an inaccurate Routed

Method Code. The firm also submitted inaccurate order information to OATS on orders selected for further review by FINRA. The findings stated that the firm sent trade confirmations to customers containing inaccurate and misleading information such as failing to disclose the type of remuneration it received, the correct average price, and that it executed the transaction in an agency and riskless capacity, among other inaccuracies. The findings also included that the firm misused the prior reference price modifier on trade reports because the firm used the modifier when it did not have a valid reason to do so due to a programming error in its order management system. FINRA found that the firm created and maintained inaccurate books and records by failing to denote an accurate execution time on customers' order tickets. FINRA also found that the firm's supervisory system was not reasonably designed to achieve compliance with its OATS reporting obligations, nor did the firm reasonably enforce its WSPs. While the firm's WSPs set forth a monthly process of sampling ROE and comparing the sampled trades to its audit trail report for accuracy, completeness, and timeliness, it did not conduct this sampling process. Additionally, the firm's supervisory system did not include a requirement that its personnel reasonably monitor issues of non-reporting of required OATS submissions. (**FINRA Case #2016048607401**)
https://www.finra.org/sites/default/files/fda_documents/2016048607401%20Canaccord%20Genuity%20LLC%20CRD%201020%20AWC%20sl%20%282020-1598228402480%29.pdf

A firm was fined $40,000 for failing to transmit ROEs from January through August 2017 to OATS. The findings stated that the firm's Route Reports were suppressed from being reported to OATS due to a coding error within its order management system used by its program trading desk that occurred during the implementation of an update. This coding error caused a Financial Information eXchange ("FIX") specifications tag to be omitted, which resulted in the system not identifying the transactions as being reportable. The findings also stated that the firm failed to make publicly available all accurate and complete information in quarterly reports required in order to comply with Rule 606 of Regulation NMS. The firm failed to include in its quarterly reports a discussion of the material aspects of its relationship with each venue, including a description of any payments for order flow, and any amounts per share or per order that the broker-dealer received. Additionally, the findings included that the firm failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with applicable federal securities laws and FINRA rules and, specifically, violating FINRA Rules 3110 and 2010. The firm's supervisory system and WSPs did not include a review designed to determine whether all required ROEs were being reported to OATS. In addition, the firm's supervisory system, including its WSPs, failed to include a review of its quarterly disclosure reports designed to achieve compliance with the requirements of Rule 606 of Regulation NMS. (**FINRA Case #2017055668501**)
https://www.finra.org/sites/default/files/fda_documents/2017055668501%20BMO%20Capital%20Markets%20Corp.%20CRD%2016686%20AWC%20sl%20%282020-1598055569514%29.pdf

A firm was fined $32,500 for publishing quotations in a quotation medium in reliance on an exception set forth in Rule 15c2-11(f)(2) of the Securities Exchange Act of 1934 ("1934 Act") without demonstrating its eligibility to rely on the exception by making contemporaneous records required by FINRA Rule 6432 (Supplementary Material .01). The findings also stated that the firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with recordkeeping requirements and the requirements set forth in

Rule 15c2-11 of the 1934 Act and FINRA Rule 6432. The firm's procedures did not describe how a daily review of an OTC equity statistics sheet provided by a third-party should be performed or identify any additional information that should be reviewed along with the statistics sheet, and did not set forth any other reviews of the firm's unsolicited quotes in order to achieve compliance with FINRA Rule 6432. (**FINRA Case #2017053655601**)
https://www.finra.org/sites/default/files/fda_documents/2017053655601%20Cowen%20and%20Company%20LLC%20CRD%207616%20AWC%20sl%20%282020-1597018766198%29.pdf

A firm was fined $30,000 and ordered to establish and implement policies, procedures and internal controls reasonably designed to establish and maintain a supervisory system or WSPs reasonably designed to achieve compliance with its disclosure obligations under the federal securities laws in connection with private placements structured as contingency offerings. The findings stated that although the firm maintained WSPs addressing the need for certain specified disclosures in the offering documents, those procedures did not specify who was responsible for reviewing the documents to ensure that the disclosures were included, or how such a review would occur. The firm relied on outside counsel to assist it with the content of offering documents being provided to investors. However, its supervisory system had no requirements for it to take reasonable steps to oversee the work of outside counsel or ensure that necessary disclosures were actually included in the offering documents. The firm also failed to adequately train its registered representatives to ensure that required disclosures were being made. As a result, the firm participated in separate offerings where one or more required disclosures were not contained in the offering documents. Although these failures were not intentional, they created the risk of misleading investors. (**FINRA Case #2017056738101**)
https://www.finra.org/sites/default/files/fda_documents/2017056738101%20CIM%20Securities%2C%20LLC%20CRD%20120852%20AWC%20jlg%20%282020-1598833170120%29.pdf

A firm was fined $12,500 for failing to qualify and register associated persons who engaged in securities trading activity with FINRA in the appropriate categories of registration. The findings stated that the firm's WSPs failed to specify the process, method, or frequency for its chief compliance officer's reviews for registration compliance. Accordingly, the firm's WSPs failed to specify a process or method through which the firm would reasonably monitor for and effectively review whether its associated persons were appropriately qualified and registered for their activities and duties, in compliance with applicable requirements. (**FINRA Case #2018057166401**)
https://www.finra.org/sites/default/files/fda_documents/2018057166401%20Precision%20Securities%2C%20LLC%20CRD%20103976%20AWC%20sl%20%282020-1597882770985%29.pdf

A firm was fined $7,500 for failing to report to TRACE the customer leg of its riskless principal transactions in fixed income securities. The findings stated that for the riskless principal transactions in TRACE-eligible securities, including corporate debt securities and U.S. Treasury securities, the firm only reported interdealer trades, one leg of the transactions, to TRACE and failed to report customer leg trades to TRACE. (**FINRA Case #2019060650601**)
https://www.finra.org/sites/default/files/fda_documents/2019060650601%20Avanza%20Capital%20Markets%20Inc.%20CRD%20103941%20AWC%20va%20%282020-1596241171028%29.pdf