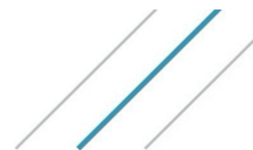

SECURITIES OPERATIONS

REGULATORY UPDATE

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For more information please contact info@mediantonline.com

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SEC's FinHub to Host Virtual Meet-Ups

On June 11, 2020, the U.S. Securities and Exchange Commission's ("SEC" or "Commission") Strategic Hub for Innovation and Financial Technology ("FinHub") announced the launch of virtual peer-to-peer meet-ups. In 2019, FinHub engaged with financial technology ("FinTech") communities nationwide by hosting in-person meet-ups. These meet-ups offered members of various FinTech communities the opportunity to speak in person with FinHub staff at locations throughout the country to discuss general issues, specific questions, or make presentations about their work. Given the current challenges surrounding the COVID-19 pandemic, FinHub is planning to host a series of thematically-based virtual meet-ups over the next few months to facilitate ongoing communications with FinTech industry participants. During each series, FinHub staff will meet virtually with innovators, entrepreneurs, or firms that wish to discuss issues related to that series' theme. The first theme is regulatory technology ("RegTech"), given that financial services firms are increasingly turning to technological innovation to strengthen and add efficiencies to their regulatory compliance programs. According to the SEC, RegTech tools have the potential to enhance investor and market protections, and the SEC's FinHub staff is inviting industry engagement concerning these technologies. The FinHub staff also encourages anyone working on RegTech solutions or implementations to engage with FinHub as a part of this initiative. Dates and information concerning each virtual P2P meet-up series will be available on the FinHub website.

Information about the RegTech event:

- Event Date/Time: Week of July 6, 2020, time TBD
- RSVP Web Form: https://www.sec.gov/finhub-form#no-back

FinHub Website: https://www.sec.gov/finhub

SEC Asset Management Advisory Committee Upcoming Meeting

The SEC's Asset Management Advisory Committee is planning to hold a public meeting beginning at 9:00 a.m. ET on July 16, 2020 by remote means through the SEC's website. The meeting will include a discussion of matters pertaining to improving diversity and inclusion, as well as data and technology in the asset management industry.

Meeting Notice: https://www.sec.gov/rules/other/2020/34-89087.pdf

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SEC EXTENDS RELIEF FOR VIRTUAL MEETINGS OF FUND BOARDS

On June 19, 2020, the SEC announced that it had extended conditional relief from the in-person voting requirements for fund boards that it had originally provided in March 2020. That relief will now extend at least through December 31, 2020. The SEC granted the extension to provide flexibility to boards of registered funds and business development companies that may continue to face challenges meeting in person. The Commission initially provided in-person board meeting relief in March 2020 as part of broader exemptive orders providing temporary relief from several requirements of the Investment Company Act and Investment Advisers Act. The SEC also stated that, based on staff outreach to fund and adviser representatives, it determined not to extend the other relief provided in those orders at the present time. The SEC stated that it is continuing to assess impacts relating to the COVID-19 pandemic on investors and market participants. The SEC is encouraging firms and financial professionals affected by COVID-19 to contact its staff with questions and concerns.

SEC Exemptive Order: https://www.sec.gov/rules/exorders/2020/ic-33897.pdf
SEC COVID-19 Response FAQs: https://www.sec.gov/investment/covid-19-response-faq
Press Release: https://www.sec.gov/news/press-release/2020-139

SEC, DOJ ANTITRUST DIVISION SIGN HISTORIC MOU

On June 22, 2020, the SEC announced that it had signed an interagency Memorandum of Understanding (“MOU”) with the U.S. Department of Justice’s Antitrust Division to foster cooperation and communication between the agencies with the aim of enhancing competition in the securities industry. Key provisions of the MOU facilitate both communication and cooperation between the agencies. In particular, the MOU establishes a framework for the SEC and the DOJ’s Antitrust Division to hold regular discussions and review law enforcement and regulatory matters affecting competition in the securities industry, including provisions to establish periodic meetings among the respective agencies’ officials. The MOU also provides for the exchange of information and expertise the agencies believe to be potentially relevant and useful to their oversight and enforcement responsibilities, as appropriate and consistent with applicable legal and confidentiality restrictions. With respect to the MOU, SEC Chairman Jay Clayton said, “As competition is embedded in our securities laws, there are many policy areas where the missions of the SEC and DOJ’s Antitrust Division align, but where our respective areas of expertise differ. By formalizing the exchange of knowledge between our agencies, we aim to foster even greater collaboration and cooperation to ensure that we maintain the efficient and competitive markets that American investors rely on.”

SEC/DOJ Memorandum of Understanding: https://www.sec.gov/MOU-06-22-2020.pdf
Press Release: https://www.sec.gov/news/press-release/2020-140

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SEC, FOUR OTHER U.S. FEDERAL AGENCIES FINALIZE CHANGES TO VOLKER RULE

On June 25, 2020, five federal agencies, including the SEC, finalized a rule modifying the Volcker Rule's prohibition on banking entities investing in or sponsoring hedge funds or private equity funds—known as covered funds. As previously reported, the proposed changes were jointly developed by the Federal Reserve Board, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency. The Volcker Rule generally prohibits banking entities from engaging in proprietary trading and from acquiring or retaining ownership interests in, sponsoring, or having certain relationships with a hedge fund or private equity fund. The final rule is broadly similar to the proposed rule announced on January 30, 2020. Like the proposal, the final rule modifies three areas of the rule by: 1) streamlining the covered funds portion of rule; 2) addressing the extraterritorial treatment of certain foreign funds; and 3) permitting banking entities to offer financial services and engage in other activities that do not raise concerns that the Volcker Rule was intended to address.

Effective Date: October 1, 2020
Final Rule: https://www.sec.gov/rules/final/2020/bhca-9.pdf
Press Release: https://www.sec.gov/news/press-release/2020-143

SEC'S CLAYTON, REDFEARN HIGHLIGHT INITIATIVES TO MODERNIZE EQUITY MARKET STRUCTURE

On June 22, 2020 during an SEC-sponsored virtual forum, SEC Chairman Jay Clayton and the Director of the SEC's Division of Trading and Markets Brett Redfearn delivered a speech regarding the SEC's initiatives to reform and modernize equity market structure. The remarks focused on three primary areas: 1) improving the market for thinly traded securities; 2) combatting retail fraud; and 3) addressing concerns about the quality and cost of market data. With respect to market data, Chairman Clayton said, "Currently, we have 1) NMS market data that is disseminated by an exclusive processor, known as the SIP, which the [securities] exchanges govern jointly pursuant to three separate NMS plans; and 2) an array of proprietary data products that the exchanges sell to various market participants. Many panelists and commenters at the 2018 Roundtable on Market Data and Market Access expressed a strong belief that NMS market data was no longer adequate to meet the needs of many investors, both retail and institutional. I am pleased that the Commission was able to move forward with three initiatives over the last year. These initiatives addressed (1) the process for review of NMS market data fee changes, (2) governance of the NMS market data plans, and (3) infrastructure for NMS market data. Finally, while there are undoubtedly many issues to be addressed in terms of whether initiatives as proposed should be modified or improved, I do not believe that the status quo is acceptable. I anticipate that considering each of the three market data initiatives will be a high priority item on the SEC's equity market agenda for the remainder of the year." Following Clayton's remarks, Redfearn detailed each of the SEC's three initiatives with respect to market data, including an SEC proposal to rescind the exception in Rule 608 of Regulation NMS that allows NMS plan amendments regarding fee changes to become immediately effective upon filing and bypass the public comment process.

Clayton and Redfearn's Speech: https://www.sec.gov/news/speech/clayton-redfearn-modernizing-us-equity-market-structure-2020-06-22

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SEC'S BROKER-DEALER EXAM PROGRAM LEADER SOLLAZZO TO RETIRE AFTER 38 YEARS OF SERVICE

On June 19, 2020, the SEC announced that Robert A. Sollazzo, the longtime leader of the New York Regional Office's Broker-Dealer Examination Program, will retire from the agency in July 2020 after more than 38 years of service. The SEC stated in its press release that Sollazzo began his SEC career as a securities compliance examiner and ascended to lead the New York office's broker-dealer regulatory efforts in 1992. According to the SEC, Sollazzo and his team formulated new exam approaches and structured a program that was particularly responsive and adept in identifying and examining emerging risks in an ever-changing broker-dealer industry. Sollazzo and the examiners under his leadership successfully rooted out abusive sales practice schemes and questionable capital markets practices in the course of their duties. Their work led to several notable enforcement cases, such as the record settlement involving Latour Trading's significant and persistent violations of the net capital rule, a $100 million settlement with Credit Suisse for improper sharing of profits in hot initial public offerings that were channeled back to the firm via excessive commission charges on brokerage transactions, the exposure of a massive kickback scheme at Direct Access Partners that involved a complex web of offshore accounts and a shadow accounting system, and various AML-related matters including Meyers Associates for failing to file Suspicious Activity Reports in relation to various highly questionable transactions that had been executed through the firm. "Bob saw our Broker-Dealer Examination Program through years of significant change in our markets. The Commission has benefited greatly from his wide range of expertise and commitment to public service throughout his nearly four decades at the agency," said SEC Chairman Jay Clayton.

Press Release: https://www.sec.gov/news/press-release/2020-136

FINRA ANNOUNCES UPDATE OF BLUE SHEET DATA ELEMENTS

On June 23, 2020, the Financial Industry Regulatory Authority, Inc. ("FINRA") published Regulatory Notice 20-19 to announce, along with the other U.S. members of the Intermarket Surveillance Group ("ISG") certain enhancements to Electronic Blue Sheets ("EBS"). The enhancements are designed to improve FINRA's and the ISG's ability to analyze broker-dealers' trading activity. Effective immediately, firms will be required to update certain data elements for EBS to reflect the SEC's May 10, 2019, and May 4, 2020, approvals of Long Term Stock Exchange and Members Exchange, respectively, and to reserve certain data elements for MIAX PEARL Equities and the Boston Security Token Exchange. In addition, effective November 30, 2020, firms will be required to move the Exchange Code field and its values to another position within the EBS record layout. Regulatory Notice 20-19 sets forth the modifications to the EBS record layout and changes from the version previously published in Regulatory Notice 19-33. FINRA provided a link in its press release where firms can submit questions regarding the EBS enhancements.

Regulatory Notice 20-19: https://www.finra.org/sites/default/files/2020-06/Regulatory-Notice-20-19.pdf
Notice Release: https://www.finra.org/rules-guidance/notices/20-19

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FINRA TO AMEND CAT NMS PLAN COMPLIANCE RULE

On June 22, 2020, the SEC published for comment a FINRA proposal, which was effective on filing, to amend the FINRA Rule 6800 Series, FINRA's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan") to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. Specifically, the proposal would make the following changes to the FINRA CAT NMS Plan compliance rules: 1) add additional data elements to the consolidated audit trail ("CAT") reporting requirements for industry members to facilitate the retirement of FINRA's Order Audit Trail System ("OATS"); 2) add additional data elements related to over-the-counter ("OTC") equity securities that FINRA currently receives from alternative trading systems ("ATSs") that trade OTC equity securities for regulatory oversight purposes to the CAT reporting requirements for industry members; implement a phased approach for industry member reporting to the CAT; 4) to the extent that any industry member's order handling or execution systems utilize timestamps in increments finer than milliseconds, revise the timestamp granularity requirement to require the industry member to record and report industry member data to the central repository with timestamps in finer increments up to nanoseconds; 5) require introducing industry members to comply with the requirements of the CAT NMS Plan applicable to small industry members; 6) revise the CAT reporting requirements so industry members would not be required to report to the central repository dates of birth, individual tax payer identification numbers, social security numbers or account numbers; and 7) revise the CAT reporting requirements regarding cancelled trades and assigned market participant identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT. In separate filings, The Nasdaq Stock Market, Inc. ("Nasdaq"), The New York Stock Exchange LLC ("NYSE") and NYSE American LLC ("NYSE American") proposed parallel changes to their respective corresponding rules.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/finra/2020/34-89119.pdf

FINRA TO DELAY IMPLEMENTATION OF RULE 4240 GOVERNING MARGIN REQUIREMENTS FOR CERTAIN CDS TRANSACTIONS

On June 10, 2020, the SEC published for a comment a FINRA proposal, which was effective on filing, to extend to September 1, 2021 the implementation of FINRA Rule 4240, which implements an interim pilot program with respect to margin requirements for certain transactions in credit default swaps ("CDS") that are security-based swaps. FINRA Rule 4240, coterminous with certain Commission actions enacted pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), was intended to address concerns arising from systemic risk posed by CDS, including, among other things, risks to the financial system arising from the lack of a central clearing counterparty to clear and settle CDS. The SEC approved FINRA Rule 4240 on May 22, 2009. On May 21, 2019, FINRA filed a proposed rule change for immediate effectiveness extending the implementation of FINRA Rule 4240 to July 20, 2020. FINRA's proposal to further extend the implementation of Rule 4240 is an effort to maintain consistency with the Commission's actions to extend compliance periods for certain Dodd-Frank related new rules and guidance.

Comments Due: July 7, 2020
Notice Release: https://www.sec.gov/rules/sro/finra/2020/34-89036.pdf

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FINRA ANNOUNCES THE PASSING OF THOMAS GIRA

On June 23, 2020, FINRA announced that Thomas Gira, FINRA's Executive Vice President of Market Regulation and Transparency Services, passed away at the age of 58. Under Gira's leadership, FINRA's Market Regulation Department grew to conduct cross-market surveillance of all U.S. equities markets and nearly half of U.S. options markets. The department is also responsible for trading compliance examinations of FINRA-registered firms and the provision of regulatory services to U.S. exchanges. According to FINRA, Gira recently assumed leadership of FINRA's Transparency Services Department and helped guide that team through significant milestones in delivering increased market transparency to investors, including the reporting of U.S. Treasury securities to FINRA's Trade Reporting and Compliance Engine ("TRACE"). Gira was also at the forefront of leading FINRA's work in support of the CAT. Before joining FINRA in 1992, Gira was an Associate General Counsel of Nasdaq. Prior to that, he was Branch Chief for Options and Derivative Products Regulation within the Division of Market Regulation at the SEC.

Press Release: https://www.finra.org/media-center/newsreleases/2020/finra-announces-passing-thomas-gira-executive-vp-market-regulation

NASDAQ TO PERMIT LISTING AND TRADING OF PROXY PORTFOLIO SHARES

On June 22, 2020, the SEC published for comment a Nasdaq proposal, which was effective on filing, to adopt Nasdaq Rule 5750 to permit the listing and trading of "proxy portfolio shares," which are securities issued by an actively managed open-end management investment company. As stated in the filing, the purpose of the structure of proxy portfolio shares is to provide investors with the traditional benefits of exchange traded funds ("ETFs") while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. A series of proxy portfolio shares will disclose daily the proxy basket, which is designed to closely track the performance of the holdings of the investment company, instead of the actual holdings of the investment company. In the filing, Nasdaq stated that it believes the proxy basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of proxy portfolio shares diverge.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89110.pdf

NASDAQ TO DELAY OUCH TO TRADE OPTIONS PROTOCOL

On June 16, 2020, the SEC published for comment a Nasdaq proposal, which was effective on filing, to delay the protocol "Ouch to Trade Options" ("OTTO") on The Nasdaq Options Market LLC ("NOM") so that it may receive additional feedback from market participants with respect to the protocol, including ways to enhance OTTO risk management features available to members. This delay follows previous delays in the protocol's implementation, following Nasdaq rule amendments in 2018 and 2019 where the previous OTTO protocol was modified and renamed "Quote Using Orders" ("QUO") and was replaced with the current OTTO protocol which has yet to be implemented.

Comments Due: July 13, 2020
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89077.pdf

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NASDAQ TO AMEND FEE SCHEDULE FOR LIQUIDITY PROVIDERS

On June 22, 2020, the SEC published for comment a Nasdaq proposal, which was effective on filing, to amend its transaction fees at Equity 7, Section 114(d) to add a Qualified Market Maker ("QMM") tier, and Section 118(a) to add several credits for displayed orders/quotes that provide liquidity to Nasdaq. In its filing, Nasdaq proposed to increase credits to liquidity providing QMMs from $0.0001 to $0.00025 when certain liquidity providing criteria are met. In addition, Nasdaq proposed to amend in two respects, its schedule of credits, as set forth in Equity 7, Section 118, which it provides to members for certain displayed quotes and orders that provide liquidity. Specifically, Nasdaq would provide a $0.00305 per share executed credit to a member with shares of liquidity provided that represent more than 1.20% of consolidated volume during the month and would provide a new $0.00005 per share executed supplemental credit to members that add liquidity in Tape A and Tape B securities above certain volume thresholds.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89110.pdf

NASDAQ TO INCREASE POSITION LIMITS FOR SPY OPTIONS

On June 25, 2020, the SEC published for comment a Nasdaq proposal, which was effective on filing, to amend the NOM Rules at Options 9, Section 13 to increase position limits for options overlying the SPDR S&P 500 ETF Trust ("SPY"), and similarly increase exercise limits at Options 9, Section 15. According to Nasdaq, position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. Nasdaq stated in its filing that it has observed an ongoing increase in demand in options overlying SPY for both trading and hedging purposes. Though the demand for options overlying SPY appear to have increased, position limits and corresponding exercise limits for options on SPY have remained the same. Nasdaq stated in its filing that it believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies. The Nasdaq proposal is consistent with a similar proposal by the Cboe Exchange, Inc.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-89151.pdf

NYSE TO FURTHER EXTEND "HOT HANDS" FEE WAIVER

On May 27, 2020, the SEC published for comment an NYSE proposal to further extend the temporary fee waiver related to its "hot hands" co-location service through the earlier of the reopening of the Mahwah, New Jersey data center or May 15, 2020. The waiver of the hot hands fee was originally through March 29, 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. The termination of the temporary fee waiver will be announced at future date through an NYSE customer notice.

Notice Filing: https://www.sec.gov/rules/sro/nyse/2020/34-88955.pdf

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NYSE TO MODIFY FEE SCHEDULE RELATED TO CO-LOCATION SERVICES

On June 1, 2020, the SEC published for comment an NYSE proposal, which was effective on filing, to amend the price list related to co-location services with respect to connectivity to the Intercontinental Exchange ("ICE") Data Global Index ("DGI") and to waive any change fees that a user would otherwise incur as a result of the proposed change. NYSE offers users connectivity to data feeds from third-party markets and other content service providers. The list of third-party data feeds is set forth in the NYSE's price list and includes connectivity to the DGI for a monthly connectivity fee of $100. ICE, the NYSE's parent company which publishes the DGI, announced to its customers that it will no longer offer the DGI as a stand-alone product. Accordingly, the NYSE proposed to cease offering connectivity to the DGI once it is no longer available. The NYSE has been informed by ICE that cessation is currently expected to occur before the end of 2020. Users are ordinarily subject to a change fee if they request a change to one or more existing colocation services, however the NYSE is proposing to waive any change fees that a user would otherwise incur as a result of the proposed change.

Notice Release: https://www.sec.gov/rules/sro/nyse/2020/34-88985.pdf

NYSE TO AMEND PRICE LIST FOR LIQUIDITY PROVIDERS

On June 11, 2020, the SEC published for comment an NYSE proposal to amend its price list to: 1) adopt a step up tier for member organizations adding liquidity in non-displayed limit orders in Tapes A, B and C securities; 2) revise the credits for member organizations qualifying for the NYSE's "Step Up Tier 2 Adding Credit;" and 3) extend through June 2020 the waiver of equipment and related service charges and trading license fees for NYSE trading floor-based member organizations implemented for April and May 2020. In its filing, the NYSE stated that the proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the NYSE. The NYSE also stated that proposed changes respond to the current volatile market environment that has resulted in unprecedented average daily volumes and the temporary closure of the NYSE's trading floor, which are both related to the ongoing COVID-19 pandemic. NYSE proposes to implement the fee changes effective June 1, 2020.

Comments Due: July 8, 2020
Notice Release: https://www.sec.gov/rules/sro/nyse/2020/34-89050.pdf

NYSE AMERICAN TO EXTEND FEE WAIVERS DUE TO COVID-19-RELATED FLOOR CLOSURES

On June 11, 2020, the SEC published for comment an NYSE American proposal to modify the NYSE American Options fee schedule to extend through June 2020 certain fee waivers implemented for April and May 2020 in response to the COVID-19 pandemic. Specifically, the NYSE American proposed to waive its floor access fee, floor broker handheld fee, transport charges, floor market maker podia fee, booth premises fees and wire services fees. The Exchange proposes to implement the fee change effective June 5, 2020.

Comments Due: July 8, 2020
Notice Release: https://www.sec.gov/rules/sro/nyseamer/2020/34-89049.pdf

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OCC PROPOSAL TO MODIFY PROCESSING OF OPTIONS TRANSACTIONS APPROVED BY SEC

On June 2, 2020, the SEC issued an order approving a proposed rule change by The Options Clearing Corporation ("OCC") to change the sequence in which options transactions are processed. Currently, OCC processes all securities and commodity futures options transactions in the following sequence: 1) opening buys; 2) opening sells; 3) closing buys; 4) exercises; 5) closing sells; and 6) assignments. As discussed below, OCC's clearing members indicated that the current processing sequence could raise issues related to compliance with exchange rules requiring that firms exercise only "outstanding" net long positions. The modified rule changes the order in which OCC processes such transactions by moving closing sells ahead of exercises. The proposed rule change was previously published by the SEC for comment on April 21, 2020, but generated no comments.

Approval Order: https://www.sec.gov/rules/sro/occ/2020/34-88989.pdf

MSRB TO WAIVE CERTAIN MARKET ACTIVITY FEES DUE TO COVID-19

On June 1, 2020, the SEC published for comment a proposal by the Municipal Securities Rulemaking Board ("MSRB") to waive certain underwriting, transaction and technology assessments ("market activity fees") related to transactions with the Municipal Liquidity Facility ("MLF") established by the Board of Governors of the Federal Reserve System. According to the MSRB, the immediate purpose of the MLF is to enhance the liquidity of the primary short-term municipal securities market through the purchase at issuance of Tax Anticipation Notes ("TANs"), Tax and Revenue Anticipation Notes ("TRANs"), Bond Anticipation Notes ("BANs"), and similar short-term notes. The MLF was designed to provide a liquidity backstop to certain issuers through a special purpose vehicle ("SPV"). The SPV may purchase certain TANs, BANs and/or TRANs through a direct sale to the SPV or, if there is a competitive sale process, the SPV generally will not submit a bid in the competitive sale process, but instead may agree to purchase such municipal securities that are not awarded to other bidders. The MSRB stated in its filing that, based on the information currently available regarding the operation of the MLF, the MSRB believes that the MLF would be considered a "customer" under its rules and, therefore, would be subject to fees. Considering the hardship presented by the COVID-19 pandemic, the MSRB has proposed to waive its market activity fees for transactions conducted with the MLF.

Notice Release: https://www.sec.gov/rules/sro/msrb/2020/34-88986.pdf

MSRB PROPOSAL TO MODIFY ITS RULES TO ALIGN WITH REG BI APPROVED BY SEC

On June 25, 2020, the SEC issued an order approving an MSRB proposal, which was effective on filing, to align MSRB rules with Regulation Best Interest. MSRB's revised rules comport with Regulation Best Interest obligations involving suitability, non-cash compensation, and books and records. The proposed rule changes were previously published by the SEC for comment on May 12, 2020. The comment letters received by the SEC pertaining to the proposal are available on the SEC's website.

Approval Order: https://www.sec.gov/rules/sro/msrb/2020/34-89154.pdf

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Notable Enforcement Actions

Continuing the recent trend, many of this month's enforcement actions focused on supervisory and operational failures, and reinforce the importance of designing robust systems and procedures to test for compliance in these critical areas of business.

A firm was ordered to pay approximately $7.2 million in restitution and interest to customers who incurred unnecessary sales charges and paid excess fees in connection with mutual fund transactions. The firm did not have supervisory systems and procedures reasonably designed to ensure that these customers, who collectively held more than 13,000 accounts at the firm, received available sales charge waivers and fee rebates. Between April 2011 and April 2017, the firm did not have reasonably designed supervisory systems and procedures to ensure that all eligible mutual fund investors received sales charge waivers or fee rebates available through rights of reinstatement. Instead, the firm relied on its registered representatives to manually identify and apply such waivers and rebates, an unreasonably designed system given the number of customers involved, the complexity of determining which customers were due sales charge waivers or fee rebates, and difficulty in calculating the amount of the waiver and rebate. In addition, the firm did not reasonably monitor for missed reinstatements. Alerts were designed to capture only recently executed mutual fund transactions while, in fact, fee waivers were available in connection with certain fund purchases for up to a year after initial sales. The firm engaged an outside consulting firm to identify potentially disadvantaged customers and to calculate total remediation.
(**FINRA Case #2017053494401**)
https://www.finra.org/sites/default/files/2020-06/mlpfs-awc-060420.pdf

A firm settled SEC charges and agreed to pay penalties and fines totaling $3.1 million for failing to provide complete and accurate blue sheet data. According to the SEC's order, for more than five years, the firm made numerous deficient blue sheet submissions containing missing or inaccurate data, largely due to undetected coding errors. The order found that the firm submitted missing or incorrect data for approximately 27.6 million transactions and had inadequate processes for validating the accuracy of its submissions. The SEC's order also found that the firm willfully violated the broker-dealer books and records and reporting provisions of the federal securities laws. The firm has since engaged in remedial efforts to address the cause of its deficient submissions, including retaining an outside consultant and adopting new policies and procedures for processing blue sheet requests. (**SEC File No. 3-19833**)

https://www.sec.gov/litigation/admin/2020/34-89143.pdf

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A private equity firm and registered investment adviser settled SEC charges and agreed to pay a $1 million penalty for failing to implement and enforce policies and procedures reasonably designed to prevent the misuse of material nonpublic information. The SEC's order states that the firm invested several hundred million dollars in a public company through a loan and equity investment that allowed the firm to appoint a senior employee to the company's board. The order also states that the firm's compliance policies failed to account for the special circumstances presented by having an employee serve on the portfolio company's board while that employee continued to participate in trading decisions regarding the portfolio company. The firm obtained potential material nonpublic information about the company, including through the firm's representative on the company's board, relating to changes in senior management, adjustments to the company's hedging strategy, and decisions with respect to the company's assets, debt, and interest payments. After receiving this information, the firm purchased more than one million shares of the company's common stock. The firm did not require its compliance staff, prior to approving the trades, to sufficiently inquire and document whether the board representative and members of the firm possessed material nonpublic information relating to the portfolio company. Consequently, the SEC found that the firm violated the compliance policies and procedures requirements of Sections 204A and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-7 thereunder. (**SEC File No. 3-19812**) https://www.sec.gov/litigation/admin/2020/ia-5510.pdf

A firm was censured, fined $300,000, and required to revise its written supervisory procedures ("WSPs") for erroneously submitting reports to OATS that it was not required to report and submitting reports to OATS with inaccurate data. The findings state that the firm implemented programming logic that caused its system to incorrectly report a cancel/replace report to OATS any time a non-material change was made to a customer order. The firm began implementing a series of fixes to its OATS reporting logic and later fully remediated its over-reporting issue. In addition, internal updates to an algorithm that routed orders to the firm's ATS resulted in cancel/replace reports being unnecessarily reported to OATS. The programming change to the firm's ATS also resulted in order events being reported to OATS out of sequence. The OATS reporting logic used to submit this order flow inadvertently generated incorrect timestamps for order modifications that in turn caused the subsequent route reports to be incorrectly reported with the order identifier of the original order instead of the new order identifier generated by the cancel/replace report. The firm also implemented erroneous logic that resulted in its failure to submit the "Counter Party Restriction" special handling code on new order reports. Subsequently, the firm corrected the logic. The findings state that the firm failed to establish a supervisory system, including WSPs, reasonably designed to achieve compliance with its OATS reporting obligations. The firm's supervisory system, including its WSPs, did not include a review for reporting violations that could only be identified from a comparison to its books and records. The firm's supervisory reviews would not have identified instances where it either over- or under-reported data to OATS or reported incorrect timestamps or special handling codes to OATS. (**FINRA Case #2015044226501**)
https://www.finra.org/sites/default/files/fda_documents/2015044226501%20Morgan%20Stanley%20%26%20Co.%20LLC%20CRD%208209%20%20AWC%20va%20%282020-1589761170241%29.pdf

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A firm was censured and fined $125,000 for causing certain broker-dealers to violate the SEC's Regulation S-P (Privacy of Consumer Financial Information and Safeguarding Information) by causing certain recruited registered representatives to take non-public personal customer information from those broker-dealers where they were then registered and to disclose it to a third-party vendor that assisted the representatives with their transition to the firm, without the other broker-dealers' or the customers' knowledge or consent. The findings state that the firm contracted the vendor to provide assistance recruiting representatives who had agreed to join the firm. The firm worked with the vendor to create a template spreadsheet to collect information about the recruited representatives' customers, including their non-public personal information. The spreadsheet contained fields for, among other items, customer social security numbers, driver's license numbers and birth dates, as well as fields pertaining to their financial position. In certain instances, firm employees worked with recruited representatives to complete the spreadsheet while they were still registered through their prior broker-dealers. Firm employees, however, did not receive copies of the spreadsheet or have access to the non-public personal information provided to the vendor. Once a recruited representative became registered through the firm, the vendor used the spreadsheet to automatically pre-populate new account forms that the vendor sent to customers who agreed to open accounts with the firm. The firm typically reimbursed recruited representatives for the fees charged to them by the vendor to generate the firm's new account documents. The firm failed to take any steps to inquire whether the recruited representatives or their broker-dealers at the time had notified customers about the disclosure of their non-public personal information, nor did the firm take any steps to inquire as to whether customers had been given an opportunity to opt-out of having their information disclosed. The firm also failed to provide any guidance to the recruited representatives concerning the disclosure of customer non-public personal information to the vendor. (**FINRA Case #2018060228201**)
https://www.finra.org/sites/default/files/fda_documents/2018060228201%20Kestra%20Investment%20Services%2C%20LLC%20CRD%2042046%20AWC%20sl%20%282020-1590797967174%29.pdf

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