SECURITIES OPERATIONS

REGULATORY UPDATE

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IN THIS ISSUE

SEC Approves DDR Registration as a Security-Based Swap Data Repository 2
SEC Publishes Semiannual Regulatory Flexibility Agenda 2
SEC Announces New Chief Economist 2
FINRA Proposes Rule Changes to Clarify Application to Security-Based Swaps 3
FINRA Proposes to Adopt Supplemental Liquidity Schedule 3
FINRA Proposes to Amend Requirements for Covered Agency Transactions 4
Nasdaq Changes Connectivity, Surveillance and Risk Management Services and Fees 4
Nasdaq to Adopt Fee Schedule Related to the National Market System Plan Governing CAT 5
Nasdaq Changes Options Market Rules 5
Nasdaq Expands Distribution of Last Sale to Investing Public 6
Nasdaq Amends NOM Rules to Limit Short Term Options Series Intervals Between Strikes 6
SEC Approves Nasdaq Change to Allow Direct Listing of a Primary Offering in Opening Auction 7
SEC Order Disapproves Nasdaq Amendments to Listing Rules Applicable to SPACs 8
SEC Approves NYSE Rules for Registration and Obligations of Non-DMM Market Makers 8
NYSE Extends and Seeks to Make Permanent Certain Temporary Commentaries 9
SEC Designates Longer Period for Action on NYSE Rules 7.35, 7.35A and 7.35C 9
NYSE and Affiliated Exchanges' Proposals Related to Amended Fee Schedules for Co-Location Services Reconsidered by SEC 10
NYSE Amends Price List 11
SEC Approves NYSE American Amendments to Rules 970NY and 970.1NY 11
OCC Expands Use of Synthetic Futures Model 11
OCC Revises Schedule of Fees 12
SEC Approves OCC Change to Auction Participation Requirements 12
Notable Enforcement Actions 13

SEC APPROVES DDR REGISTRATION AS A SECURITY-BASED SWAP DATA REPOSITORY

On May 7, 2021, the U.S. Securities and Exchange Commission ("SEC" or "Commission") issued an order approving the application of DTCC Data Repository (U.S.), LLC ("DDR") to register as a security-based swap data repository ("SDR") pursuant to Section 13(n)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and 17 CFR 240.13n-1 ("Rule 13n-1") thereunder, and as a securities information processor ("SIP") under Section 11A(b) of the Exchange Act. DDR is approved to operate as a registered SDR for security-based swap ("SBS") transactions in the equity, credit and interest rate derivatives asset classes.

Approval Order: https://www.sec.gov/rules/other/2021/34-91798.pdf
Press Release: https://www.sec.gov/news/press-release/2021-80

SEC PUBLISHES SEMIANNUAL REGULATORY FLEXIBILITY AGENDA

On May 11, 2021, the SEC issued a notice indicating the approval of the publication of an agenda of the Commission's rulemaking actions pursuant to the Regulatory Flexibility Act ("RFA"). The RFA requires each federal agency in April and October 3 of each year to publish in the Federal Register an agenda identifying rules that the agency expects to consider in the next 12 months that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda, and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). The items listed in the Regulatory Flexibility Agenda for Spring 2021 reflect only the priorities of the Chair of the U.S. Securities and Exchange Commission, and do not necessarily reflect the view and priorities of any individual Commissioner. The SEC's agenda is part of the Unified Agenda of Federal Regulatory and Deregulatory Actions scheduled for publication in its entirety on www.reginfo.gov in Spring 2021. The Commission invites questions and public comment on the agenda and on the individual agenda entries via electronic or paper comments.

Notice Release: https://www.sec.gov/rules/other/2020/33-10942.pdf
Comments Due: 30 days after publication in the Federal Register

SEC ANNOUNCES NEW CHIEF ECONOMIST

On May 3, 2021, the SEC announced that Jessica Wachter has been appointed Chief Economist and Director of the Division of Economic and Risk Analysis. Dr. Wachter joins the SEC from the Wharton School, University of Pennsylvania, where she has been a professor since 2003. Dr. Wachter is one of the leading academic researchers on financial markets. Her research focuses on behavioral finance, capital markets, and financial crises. She holds the Dr. Bruce I. Jacobs Chair of Quantitative Finance at the Wharton School and is a Research Associate with the National Bureau of Economic Research.

Press Release: https://www.sec.gov/news/press-release/2021-77

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FINRA PROPOSES RULE CHANGES TO CLARIFY APPLICATION TO SECURITY-BASED SWAPS

On May 7, 2021, the SEC published for comment a Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to amend FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to clarify the application of its rules to SBS following the SEC's completion of its rulemaking regarding SBS dealers ("SBSDs") and major SBS participants ("MSBSPs") (collectively, "SBS Entities"). The proposed amendments generally fall into three categories and take into account members' SBS activities once SBS Entities begin registering with the SEC on October 6, 2021. First, one proposed rule change would adopt a new FINRA Rule 0180, to replace expiring current FINRA Rule 0180, that would generally apply FINRA rules to members' activities and positions with respect to SBS, while providing limited exceptions for SBS in circumstances where FINRA believes such exceptions are appropriate. Second, another proposed rule change would amend FINRA's financial responsibility and operational rules to conform to the SEC's amendments to its capital, margin and segregation requirements for SBSDs and broker-dealers, and to otherwise take into account members' SBS activities. Finally, the proposed rule change would adopt a new margin rule specifically applicable to SBS, which would replace the expiring interim pilot program establishing margin requirements for credit default swaps.

Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-91789.pdf

FINRA PROPOSES TO ADOPT SUPPLEMENTAL LIQUIDITY SCHEDULE

On May 12, 2021, the SEC published for comment a FINRA proposal to adopt a Supplemental Liquidity Schedule ("SLS"), and instructions thereto, pursuant to FINRA Rule 4524 (Supplemental FOCUS Information). The proposed SLS, which would be filed as a supplement to the FOCUS Report, is tailored to apply only to members with the largest customer and counterparty exposures. The SLS is designed to improve FINRA's ability to monitor for events that signal an adverse change in the liquidity risk of the members that would be subject to the requirement. Effective monitoring of liquidity and funding risks is an essential element of members' financial responsibility and an ongoing focus for FINRA's financial supervision programs. Liquidity and funding stress was a significant factor in the financial crisis of 2008. FINRA believes that the proposed SLS is a logical complement to guidance in this area that FINRA has previously communicated to members and would provide essential information about members' sources and uses of liquidity to enable FINRA to better understand their liquidity profile and provide an additional warning of market stress. The proposed SLS identifies 10 required reporting areas. Under the proposed SLS, unless otherwise permitted by FINRA in writing, the SLS would be required to be filed by each carrying member with $25 million or more in free credit balances, as defined under SEA Rule 15c3-3(a)(8), and by each member whose aggregate amount outstanding under repurchase agreements, securities loan contracts and bank loans is equal to or greater than $1 billion, as reported on the member's most recently filed FOCUS report. The SLS must be completed as of the last business day of each month (the "SLS date") and filed within 24 business days after the end of the month. A member need not file the SLS for any period where the member does not meet the $25 million or $1 billion thresholds.

Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-91876.pdf
Comments Due: June 8, 2021

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FINRA PROPOSES TO AMEND REQUIREMENTS FOR COVERED AGENCY TRANSACTIONS

On May 19, 2021, the SEC published for comment a FINRA proposal to amend the requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as approved by the SEC pursuant to SR-FINRA-2015-036. In the period since the approval date, there has been opportunity to discern with greater clarity the potential impact of the requirements pursuant to SR-FINRA-2015-036 on both firms and their customers. The proposed rule change would amend, under FINRA Rule 4210, paragraphs (e)(2)(H), (e)(2)(I), (f)(6), and Supplementary Material .02 through .05, each as amended or established pursuant to SR-FINRA-2015-036, generally, to (1) eliminate the two percent maintenance margin requirement that applies to non-exempt accounts pursuant to paragraph (e)(2)(H)(ii)e under Rule 4210, subject to specified conditions and limitations, (2) permit members to take a capital charge in lieu of collecting margin for excess net mark to market losses on Covered Agency Transactions, and (3) make revisions designed to streamline, consolidate and clarify the Covered Agency Transaction rule language.

Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-91937.pdf
Comments Due: June 15, 2021

NASDAQ CHANGES CONNECTIVITY, SURVEILLANCE AND RISK MANAGEMENT SERVICES AND FEES

On May 3, 2021, the SEC published for comment a Nasdaq Stock Market LLC ("Nasdaq") proposal relating to connectivity, surveillance and risk management services and fees. More specifically, Nasdaq is proposing to amend Equity 7, Section 115 and adopt Equity 7, Sections 116-A and 149-A to incorporate these new products into Nasdaq's pricing schedule. While these amendments are effective upon filing, the SEC has designated Equity 7, Section 116-A to be operative no later than Q3 2021. Nasdaq has re-platformed three of its products for trade reporting, surveillance and risk management services – (1) ACT Workstation, (2) Nasdaq InterACT and (3) Nasdaq Risk Management. These products will be renamed (1) Nasdaq WorkXTM, (2) Nasdaq Real-Time Stats and (3) Nasdaq Post-Trade Risk Management, respectively. As Nasdaq rolls out these enhanced products, users will have the option of using both the current products and the re-platformed products for the first month of accessing the replatformed products. Fees for the re-platformed products will be waived for the first month of usage. After the first month of service on each of the re-platformed products, a member firm will be expected to fully migrate to the new product and will be charged for any fees incurred for using the new products thereafter. Firms will have at least one year before the existing products are retired. Once all current participants have migrated to the new products, the Exchange will submit a future filing to retire the services and remove the Workstation, InterACT and Risk Management products from its fee schedule.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-91744.pdf

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NASDAQ TO ADOPT FEE SCHEDULE RELATED TO THE NATIONAL MARKET SYSTEM PLAN GOVERNING CAT

On May 4, 2021, the SEC published for comment a Nasdaq proposal, effective upon filing, to adopt a fee schedule to establish fees related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan"). Under the CAT NMS Plan, the Operating Committee has discretion to establish funding to operate the CAT, including establishing fees that the participants will pay, and establishing fees for industry members that will be implemented by the participants. The Operating Committee has filed with the SEC a proposal to amend the CAT NMS Plan to implement a revised funding model for the CAT ("CAT Funding Model") and to establish a fee schedule for participant CAT fees ("Proposed CAT Fee Plan Amendment"). The Proposed CAT Fee Plan Amendment describes the CAT Funding Model in detail, including, for example, the implementation of a bifurcated funding model where costs associated with developing, implementing and operating the CAT for the relevant quarter would be borne by both participants and industry members, the discounts to be received by industry members that are either an Options Market Maker or an Equity Market Maker, and minimum and maximum industry member CAT fees that will be established. The participants are required to file with the SEC under Section 19(b) of the Exchange Act any CAT fees applicable to industry members that the Operating Committee approves. Accordingly, the purpose of this proposed rule change is to implement the required fee schedule provisions for CAT fees applicable to industry members that are Nasdaq members in accordance with the CAT Funding Model. The fee schedule provisions will become operative upon the SEC's approval of the Proposed CAT Fee Plan Amendment.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-91752.pdf

NASDAQ CHANGES OPTIONS MARKET RULES

On May 11, 2021, the SEC published for comment a Nasdaq proposal, effective on filing, to amend The Nasdaq Options Market LLC ("NOM") Rules at Options 3, Section 7, Types of Orders and Order and Quote Protocols, and Options 3, Section 15, Risk Protections. Nasdaq proposes to amend NOM's Rules at Options 3, Section 15, Risk Protections, to describe Size Limitation. Nasdaq also proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols, to: (1) remove the One-Cancels-the Other Order; (2) indicate the risk protections that are applicable to On the Open Orders and Immediate or Cancel orders; (3) remove references to an outdated "Ouch to Trade Options" or "OTTO" protocol; and (4) make technical corrections. Nasdaq also proposes to update a rule citation within General 1, Section 1, Definitions, and add and reserve certain sections within the Equity Rules.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-91841.pdf
Comments Due: June 7, 2021

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NASDAQ EXPANDS DISTRIBUTION OF LAST SALE TO INVESTING PUBLIC

On May 12, 2021, the SEC published a Nasdaq proposal, effective on filing, to allow broker-dealers that purchase the Nasdaq Basic enterprise license at Equity 7, Section 147(b)(5) to distribute Nasdaq Last Sale ("NLS") to the general investing public under the same terms and conditions currently permitted under the NLS enterprise license at Equity 7, Section 139(b)(4). The current Nasdaq Basic enterprise license at Section 147(b)(5) allows distribution of NLS to natural persons in a brokerage relationship with the broker-dealer, while the current NLS enterprise license at Section 139(b)(4) allows distribution to the general investing public for display usage, and requires the distributor to have a reasonable basis to conclude that all users of such information are either non-professionals or professionals whom the distributor has no reason to believe are using NLS in their professional capacity. The proposal is to allow broker-dealers that purchase the Nasdaq Basic enterprise license at Section 147(b)(5) to distribute NLS to the general investing public for display usage under the same conditions as set forth at Section 139(b)(4).

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-91874.pdf
Comments Due: June 8, 2021

NASDAQ EXTENDS IMPLEMENTATION DATE OF OPENING CROSS ENHANCEMENTS

On May 13, 2021, the SEC published a Nasdaq proposal, effective on filing, to extend the implementation date of its Nasdaq Opening Cross Enhancements to the end of Q2 2021. Nasdaq proposed to enhance its Opening Cross by (i) disseminating abbreviated order imbalance information prior to the dissemination of the Order Imbalance Indicator, (ii) amending certain cutoff times for on-open orders entered for participation in the Nasdaq Opening Cross and (iii) extending the time period for accepting certain Limit On Open Orders. Nasdaq initially proposed that these changes become operative on April 26, 2021. Due to additional testing in advance of the date of launch, Nasdaq decided to delay the implementation of this new functionality until the end of Q2 2021. Nasdaq will announce the new implementation date in an Equity Trader Alert at least 10 days in advance of implementing the changes.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-91885.pdf
Comments Due: June 9, 2021

NASDAQ AMENDS NOM RULES TO LIMIT SHORT TERM OPTIONS SERIES INTERVALS BETWEEN STRIKES

On May 18, 2021, the SEC published for comments a Nasdaq proposal, effective on filing, to amend NOM Rules at Options 4, Section 5, "Series of Options Contracts Open for Trading." The proposal seeks to limit Short Term Options Series intervals between strikes which are available for quoting and trading on NOM. Specifically, this proposal seeks to limit the intervals between strikes for multiply listed equity options classes within the Short Term Options Series program that have an expiration date more than 21 days from the listing date.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-91931.pdf
Comments Due: June 14, 2021

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SEC APPROVES NASDAQ CHANGE TO ALLOW DIRECT LISTING OF A PRIMARY OFFERING IN OPENING AUCTION

On May 19, 2021, the SEC issued an order approving a Nasdaq proposal, modified by Amendment No. 2, to allow companies to list in connection with a direct listing with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq and to explain how the opening transaction for such a listing will be affected. Nasdaq Listing Rule IM-5315-1 provides additional listing requirements for listing a company that has not previously had its common equity securities registered under the Exchange Act on the Nasdaq Global Select Market at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares (a "Selling Shareholder Direct Listing"). To allow a company to also sell shares on its own behalf in connection with its initial listing upon effectiveness of a registration statement, without a traditional underwritten public offering, Nasdaq proposed to adopt Listing Rule IM5315-2. Listing Rule IM5315-2 allows a company that has not previously had its common equity securities registered under the Exchange Act to list its common equity securities on the Nasdaq Global Select Market at the time of effectiveness of a registration statement pursuant to which the company itself will sell shares in the opening auction on the first day of trading on Nasdaq (a "Direct Listing with a Capital Raise"). Amendment No. 2 revised the original proposal to (1) clarify Nasdaq's intent in Amendment No. 1 that in a Direct Listing with a Capital Raise, Nasdaq alone would make a determination of whether to postpone and reschedule the offering, and would not postpone and reschedule if (i) all market orders will be executed in the cross, and (ii) the actual price calculated by the cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement; and (2) make minor technical and conforming changes to improve the clarity of the proposal. Because the changes in Amendment No. 2 to the proposed rule change did not materially alter the substance of the proposed rule change or make conforming or technical amendments, Amendment No. 2. is not subject to notice and comment.

Approval Order: https://www.sec.gov/rules/sro/nasdaq/2021/34-91947.pdf

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SEC ORDER DISAPPROVES NASDAQ AMENDMENTS TO LISTING RULES APPLICABLE TO SPACS

On May 20, 2021, the SEC issued an order disapproving a Nasdaq proposed rule change to amend its listing rules to permit companies whose business plan is to complete one or more business combinations ("SPACs" or "Acquisition Companies") 15 calendar days following the closing of a business combination to demonstrate that the SPAC has satisfied the applicable round lot shareholder requirement. Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder…is on the self-regulatory organization ['SRO'] that proposed the rule change." The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations. The Commission concludes that because Nasdaq has not demonstrated that its proposal is designed to prevent fraudulent and manipulative acts and practices or to protect investors and the public interest, Nasdaq has not met its burden to demonstrate that its proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular Section 6(b)(5) of the Exchange Act. For this reason, the SEC has disapproved the proposal.

Disapproval Order: https://www.sec.gov/rules/sro/nasdaq/2021/34-91961.pdf

SEC APPROVES NYSE RULES FOR REGISTRATION AND OBLIGATIONS OF NON-DMM MARKET MAKERS

On May 4, 2021, the SEC issued an order approving a New York Stock Exchange LLC ("NYSE") proposal for new rules providing for the registration and obligations of Non-DMM Market Makers who would be electronic, off-floor market makers. Non-DMM Market Makers would comprise a new category of market participants on the NYSE and would have responsibilities different than those of Designated Market Makers ("DMMs") and Supplemental Liquidity Providers ("SLPs"). Under the new rules, for all securities that trade on the NYSE, a member organization may register as a Non-DMM Market Maker and be subject to obligations similar to those of Market Makers on NYSE Arca, Inc. ("NYSE Arca") and NYSE American LLC ("NYSE American") to, among other things, maintain continuous, two-sided trading interest in the securities in which they are registered as a Non-DMM Market Maker ("Two-Sided Obligation") and adhere to certain pricing obligations. The new NYSE rules, Rule 1.1(p) and (t), 7.20, 7.21, 7.22, and 7.23, are based on NYSE Arca and NYSE American rules of the same number with non-substantive changes to govern the registration and obligations of Non-DMM Market Makers on the NYSE.

Approval Order: https://www.sec.gov/rules/sro/nyse/2021/34-91769.pdf

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NYSE EXTENDS AND SEEKS TO MAKE PERMANENT CERTAIN TEMPORARY COMMENTARIES

On May 5, 2021, the SEC published a NYSE proposal, effective on filing, to extend the temporary period for specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C and temporary rule relief in Rule 36.30, to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the NYSE closes on August 31, 2021. The current temporary period that these Rules are in effect ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the NYSE closes on April 30, 2021. On May 24, 2021, the SEC designated a longer period for Commission action on proceedings to determine whether to approve or disapprove a proposed rule change, as modified by Amendment No. 1, to make permanent Commentaries to Rule 7.35A and Commentaries to Rule 7.35B and make related changes to Rules 7.32, 7.35C, 46B, and 47. On November 13, 2020, NYSE had filed a proposed rule change to make permanent Commentaries .01(a) and (b) and .06 to Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) and Commentaries .01 and .03 to Rule 7.35B (DMM-Facilitated Closing Auctions) and to make related changes to Rules 7.32 (Order Entry), 7.35C (NYSE-Facilitated Closing Auctions), 46B (Regulatory Trading Official), and 47 (Floor Officials - Unusual Situations). The Commission designated a longer period within which to issue an order on the proposed rule change so there was sufficient time for consideration as modified by Amendment No.1. Accordingly, the Commission designated July 29, 2021, as the date by which the Commission shall either approve or disapprove the proposed rule change.

Notice Release Extending Temporary Commentaries: https://www.sec.gov/rules/sro/nyse/2021/34-91778.pdf
Notice Release for Longer Period: https://www.sec.gov/rules/sro/nyse/2021/34-91975.pdf

SEC DESIGNATES LONGER PERIOD FOR ACTION ON NYSE RULES 7.35, 7.35A AND 7.35C

On May 7, 2021, the SEC designated a longer period to either approve or disapprove a proposed rule change, as modified by partial Amendment No. 1, to amend Rule 7.35 regarding the dissemination of Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction, and Rule 7.35A regarding DMM consultations in connection with an IPO or Direct Listing. The SEC designated July 15, 2021, as the date by which the Commission shall either approve or disapprove the proposed rule change. Additionally, on May 10, 2021, the SEC designated a longer period to either approve or disapprove a proposed rule change, as modified by Amendment No. 2, to amend Rule 7.35C regarding a proposed rule change to: (1) provide the NYSE the authority to facilitate a Trading Halt Auction if a security has not reopened following a Level 1 or Level 2 trading halt due to extraordinary market volatility under Rule 7.12 ("MWCB Halt") by 3:30 p.m.; (2) widen the Auction Collar for an NYSE-facilitated Trading Halt Auction following an MWCB Halt; (3) provide that certain DMM Interest would not be cancelled following a NYSE-facilitated Auction; and (4) change the Auction Reference Price for NYSE-facilitated Core Open Auctions. The SEC designated July 10, 2021, as the date to either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

Notice Release for Rules 7.35 and 7.35A: https://www.sec.gov/rules/sro/nyse/2021/34-91791.pdf
Notice Release for Rule 7.35C: https://www.sec.gov/rules/sro/nyse/2021/34-91807.pdf

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NYSE AND AFFILIATED EXCHANGES' PROPOSALS RELATED TO AMENDED FEE SCHEDULES FOR CO-LOCATION SERVICES RECONSIDERED BY SEC

On January 19, 2021, NYSE, NYSE American, NYSE Arca, NYSE Chicago, Inc. ("NYSE Chicago"), and NYSE National, Inc. ("NYSE National") (collectively, the "Exchanges") each filed with the SEC proposals to amend the Exchanges' fee schedules related to co-location to add two Partial Cabinet Solution bundles. According to the Exchanges, users and potential customers requested that the Exchanges offer Partial Cabinet Solution bundles to enable the users and potential customers to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have everywhere. On March 18, 2021, the Commission designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule changes. The Commission received no comments on the proposed rule changes. On May 6, 2021, the SEC issued an order instituting proceedings to determine whether to approve or disapprove the proposed rule changes. On May 7, 2021, the SEC issued a separate order instituting additional proceedings to determine whether to approve or disapprove previous rule proposals filed by the Exchanges related to other fee schedules for co-location services that had become effective on filing, which the SEC suspended temporarily under the same order. The proposals, originally filed on March 10, 2021, related to proposed rule changes to provide users with access to the execution systems and connectivity to the data feeds of several third parties as part of the Exchanges' co-location services and to establish associated fees. The Exchanges provided various arguments in support of the proposed fees for connections to the proposed third party systems and data feeds. Pursuant to Section 19(b)(3)(C) of the Act, at any time within 60 days of the date of filing of an immediately effective proposed rule change, the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As set forth in the May 7th order, the Commission believes a temporary suspension of the March 10, 2021 proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule changes' consistency with the Act and the rules thereunder. Additionally, the order stated that the institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide comments on the proposed rule changes. Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."

Order Instituting Proceedings, May 6, 2021: https://www.sec.gov/rules/sro/nyse/2021/34-91785.pdf
Rebuttal Comments Due: June 16, 2021
Order Instituting Proceedings, May 7, 2021: https://www.sec.gov/rules/sro/nyse/2021/34-91790.pdf
Rebuttal Comments Due: June 17, 2021

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NYSE AMENDS PRICE LIST

On May 20, 2021, the SEC published for comment a NYSE proposal, effective on filing, to amend its price list to (1) introduce a new fee for orders designated with a Retail Modifier at the open and the close; (2) revise certain requirements for executions at the open and the close; (3) introduce an additional credit under the Step Up Tier 2 Adding Credit; and (4) revise certain requirements for Retail Price Improvement orders in the Retail Liquidity Program. Fee changes were to be effective May 17, 2021.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-91948.pdf
Comments Due: 21 days after publication in the Federal Register

SEC APPROVES NYSE AMERICAN AMENDMENTS TO RULES 970NY AND 970.1NY

On May 5, 2021, the SEC issued an order approving an NYSE American proposal to amend Rule 970NY ("Firm Quotes") and Rule 970.1NY ("Quote Mitigation") to eliminate the use of "dark" series on NYSE American. Currently, Rule 970NY requires NYSE American to collect, process, and make available to quotation vendors the best bid and best offer for each option series that is a reported security unless the series is subject to an approved quote mitigation plan. Pursuant to the quote mitigation plan set forth in NYSE American Rule 970.1NY, NYSE American only disseminates quotes in "active" series. A series is considered active if the series: (i) has traded on any options exchange in the previous 14 calendar days; (ii) is solely listed on the NYSE American; (iii) has been trading 10 days or less; or (iv) is a series in which the NYSE American has an order. In addition, a series may be considered active on an intraday basis if: (i) the series trades at any options exchange; (ii) the NYSE Exchange receives an order in the series; or (iii) the NYSE American receives a request for quote from a customer in that series. Any options series that does not meet the definition of an active series is deemed be an inactive or "dark" series. Consequently, under the NYSE American's current rules, although it accepts quotes from ATP Holders in all series, the only quote messages the NYSE American disseminates to the Options Price Reporting Authority ("OPRA") are quotes for active series. The NYSE American is deleting Rule 970.1NY. Therefore, the rule change will eliminate the distinction between active and dark series, and thus requires quotes in all series to be disseminated to OPRA.

Approval Order: https://www.sec.gov/rules/sro/nyseamer/2021/34-91779.pdf

OCC EXPANDS USE OF SYNTHETIC FUTURES MODEL

On May 10, 2021, the SEC published for comment an OCC proposal, effective on filing, to expand the use of an existing OCC margin model, currently known as the "Synthetic Futures Model, to additional products. Specifically, OCC will extend the use of its Synthetic Futures Model to Light Sweet Crude Oil futures listed on the Small Exchange Inc. The proposed changes to OCC's propriety margin system, the System for Theoretical Analysis and Numerical Simulations ("STANS") Methodology Description, are contained in the confidential Exhibit 5 of the OCC regulatory filing SR-OCC-2021-005.

Notice Release: https://www.sec.gov/rules/sro/occ/2021/34-91833.pdf
Comments Due: June 4, 2021

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OCC REVISES SCHEDULE OF FEES

On May 18, 2021, the SEC published an OCC proposal, effective on filing, to revise OCC's schedule of fees effective June 1, 2021, to implement a decrease in clearing fees. OCC will modify its fee schedule to: (i) decrease its per contract clearing fee from $0.045 to $0.02 per contract; and (ii) adjust the quantity of contracts at which the fixed, per trade clearing fee begins from trades with more than 1,222 contracts per trade to trades with more than 2,750 contracts per trade.

Notice Release: https://www.sec.gov/rules/sro/occ/2021/34-91920.pdf
Comments Due: June 14, 2021

SEC APPROVES OCC CHANGE TO AUCTION PARTICIPATION REQUIREMENTS

On May 19, 2021, the SEC issued an order approving an OCC proposal to amend the auction participation requirements set forth in Interpretation and Policy ("I&P") .02(c) to OCC Rule 1104 (Creation of Liquidating Settlement Account). This change by the OCC will change I&P .02(c) to OCC Rule 1104 in order to clarify and streamline the process of on-boarding Clearing Members and non-Clearing Members as potential bidders in future auctions of a suspended Clearing Member's remaining portfolio.

Approval Order: https://www.sec.gov/rules/sro/occ/2021/34-91935.pdf

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Notable Enforcement Actions

This month's enforcement actions concentrate on disclosure, best execution and reporting obligations.

The SEC charged a sports apparel manufacturer with failure to disclose material information about its revenue management practices that rendered statements it made misleading and required the payment of a civil penalty of $9 million to settle the action. Since becoming a publicly traded company, the manufacturer has emphasized its consistent revenue growth, and regularly reported revenue and revenue growth that exceeded analysts' consensus estimates. Beginning in the second half of 2015, the manufacturer's internal revenue and revenue growth forecasts began to indicate shortfalls from analysts' revenue estimates. Concerned about the possible negative impact on the company's stock price that could result from missing these estimates, the company sought to accelerate, or "pull forward," existing orders that customers had requested be shipped in future quarters that could be completed in the current quarter to close the gap between its internal forecasts and analysts' revenue estimates. As a result of failure to disclose either the existence or impact of its pull forward practice on revenue growth, public statements were materially misleading and the company was deemed to have violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 and Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13, and 12b-20 thereunder. **(File # 3-20278)**
https://www.sec.gov/litigation/admin/2021/33-10940.pdf

A firm was censured and fined $850,000 for failing to exercise reasonable diligence to ascertain whether the venues where it routed certain equity and option customer orders provided the best market for the subject securities as compared to the execution quality that was being provided at competing markets. Since January 2014, the firm predominantly routed its customers' equity and option orders to several market-makers and certain exchanges that paid the firm for that order flow. The firm did not conduct reviews of the execution quality provided by existing routing venues for specific order types. As a result, the firm did not reasonably consider the quality of executions that the firm could have obtained from competing markets as compared to its current routing arrangements for marketable equity orders. The findings also stated that the firm failed to establish and maintain a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to achieve compliance with its best execution obligations under FINRA's rules. The firm's WSPs provided no guidance as to how it should supervise to achieve compliance with the firm's best execution obligations beyond requiring a regular and rigorous review of data regarding price and executions. By virtue of the foregoing, the firm violated NASD Rules 3010(a) and (b) and FINRA Rules 5310(a), 5310.09, and 3110(a) and (b). The findings also stated that the firm failed to disclose material aspects of its relationship with the markets to which it routed most of its order flow. Although the firm disclosed that it maintained payment for order flow arrangements with venues to which it routed nondirected equity and option orders for execution, it failed to report all the material aspects of those relationships. As a result, the Firm violated Rule 606 of the Exchange Act of 1934 and FINRA Rule 2010. **(FINRA Case # 2014041812501)**
https://www.finra.org/sites/default/files/fda_documents/2014041812501%20TradeStation%20Securities%2C%20Inc.%20CRD%2039473%20AWC%20jlg%20%282021-1617409198567%29.pdf

A firm was fined $450,000 for failing to establish and implement anti-money laundering ("AML") policies and procedures reasonably designed to detect and cause the reporting of suspicious low-priced securities

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trading. The firm's AML procedures did not identify reasonable steps to monitor for, detect and investigate suspicious activity involving the liquidation of low-priced securities or how to identify red flags of potentially suspicious activity in connection with low-priced securities trading, such as identifying and investigating promotional activity potentially related to suspicious transactions. In addition, the firm's procedures did not reasonably set forth how, when and to whom red flags or other suspicious activity should be reported if detected and did not identify the personnel with decision making authority with respect to Suspicious Activity Report ("SAR") filing or circumstances under which a SAR should be filed. The firm failed to establish and implement a system reasonably designed to comply with Bank Secrecy Act regulations requiring firms to have due diligence procedures for correspondent accounts of foreign financial institutions ("FFIs"). FINRA found that the firm failed to ensure reasonable or timely annual independent testing of its AML program. Although the firm engaged an outside law firm to perform its annual AML tests, the testing was not timely. In addition, the testing was not reasonable because it did not include critical areas such as the firm's trade surveillance tools, monitoring practices, or procedures for escalating concerns about red flags of suspicious activity. The annual tests also failed to address the firm's AML procedures related to the correspondent accounts of FFI customers. **(FINRA Case #2017054643601)**
2017054643601 ITG, Inc. CRD 29299 AWC jlg (2021-1617409198965).pdf (finra.org)

A firm was fined $275,000 for findings that it reported treasury transactions to the Trade Reporting and Compliance Engine® (TRACE®) that it was not required to report causing violations of FINRA Rules 6730 and 2010. The findings stated that the over-reporting occurred when the firm transferred treasury securities within its internal accounts because it unintentionally removed the logic to prevent these internal transfers from being automatically reported. The findings also stated that the firm failed to append the no remuneration indicator to TRACE reports for treasury transactions with an affiliate that were at cost. Additionally, the firm reported to TRACE that the contra-party in a transaction was a customer when the transaction was with an affiliate. The inaccurate reporting occurred because the firm's logic automatically marked any contra-party that was not a broker-dealer as a customer. The firm detected each of the above issues prior to being contacted by FINRA and reinserted the appropriate logic. FINRA found that the firm did not have a supervisory system, including WSPs, reasonably designed to achieve compliance with TRACE reporting rules because its supervisory reviews for compliance with TRACE reporting were limited to alerts generated for reporting errors that were incorrect on their face. Thus, if there was an issue that could not be detected through an automatic alert, the firm's supervisory system would not detect it. Therefore, the firm violated FINRA Rules 3110(a) and (b) and 2010. The firm corrected this issue and added supervisory reviews to address the violations. **(FINRA Case #2019061038301)**
https://www.finra.org/sites/default/files/fda_documents/2019061038301%20Citadel%20Securities%20LLC%20CRD%20116797%20AWC%20jlg%20%282021-1619396406220%29.pdf

A firm was fined $80,000, ordered to pay $43,912.89 in restitution to customers, and required to revise its written policies and procedures related to determining the best inter-dealer market for a security in the absence of pricing information or multiple quotations, achieving compliance with FINRA Rule 5310 with respect to the firm's corporate fixed income business, and establishing and maintaining a system to supervise, including WSPs, reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable MSRB rules, including MSRB Rules G-30 and G-18. Specifically, the findings stated that the firm sold and bought corporate bonds to and from its customers at prices that were not as favorable as possible under the prevailing market conditions, including up to more than 8

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percent away from the relevant market (violating FINRA Rules 5310 and 2010) and failed to purchase municipal securities for its own account from a customer or sell municipal securities for its own account to a customer, at an aggregate price (including any mark-up or mark-down) that was fair and reasonable in connection with municipal bond transactions (violating MSRB Rules G-30 and G-17). The findings also stated that the firm failed to conduct, at a minimum, reasonably designed annual reviews of its policies and procedures for determining the best available market for the executions of its customers' transactions to assess whether its policies and procedures were reasonably designed to achieve best execution. FINRA found that the firm failed to establish and maintain a system, including WSPs, reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA and Municipal Securities Rulemaking Board (MSRB) rules. The WSPs failed to describe any supervisory steps required to be undertaken by the firm reasonably designed to achieve compliance with FINRA Rule 5310. In addition, the WSPs did not provide for any supervisory systems or processes to review the quality of the firm's fixed income executions or provide any other reasonably designed means by which to ensure compliance with MSRB best execution rules. **(FINRA Case #2017054188601)**
https://www.finra.org/sites/default/files/fda_documents/2017054188601%20Aegis%20Capital%20Corp.%20CRD%2015007%20AWC%20jlg%20%282021-1618100403356%29.pdf

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