SECURITIES OPERATIONS

REGULATORY UPDATE

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IN THIS ISSUE

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SEC Proposes Rule Requiring Disclosure of "Say-on-Pay" Votes for Institutional Investment Managers

On September 29, 2021, the U.S. Securities and Exchange Commission ("SEC" or the "Commission") proposed amendments to Form N-PX to enhance the information mutual funds, exchange-traded funds ("ETFs"), and certain other funds report about their proxy votes. The proposed rulemaking would require funds to tie the description of each voting matter to the issuer's form of proxy and to categorize each matter by type to help investors identify votes of interest and compare voting records. The proposal also would prescribe how funds organize their reports and require them to use a structured data language to make the filings easier to analyze. Funds would also be required to disclose how their securities lending activity impacted their voting.

Further, the rulemaking would require institutional investment managers to disclose how they voted on executive compensation, or so-called "say-on-pay" matters, which would fulfill one of the remaining rulemaking mandates under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act"). In general, managers would be subject to the same Form N-PX reporting requirements as funds with respect to their say-on-pay votes.

Since 2003, funds have been required to file Form N-PX reports disclosing how they voted on proxy proposals relating to investments they hold but, according to the SEC, investors may face difficulties analyzing these reports. As an example, the SEC noted that funds may report their votes in an inconsistent manner or in a format that is not machine readable, which could make it more difficult for investors to analyze the reported data. Staff indicated its belief that the proposal would make funds' proxy voting records more usable and easier to analyze, thereby improving investors' ability to monitor how their funds vote and compare different funds' voting records.

"This proposal will make it easier and more efficient for investors to get crucial information about proxy votes from funds," said SEC Chair Gary Gensler. "I am pleased to support the [SEC] staff's recommendations."

- **Comments Due:** December 14, 2021
- **SEC Proposed Rule:** https://www.sec.gov/rules/proposed/2021/34-93169.pdf
- **Fact Sheet:** https://www.sec.gov/files/npx-fact-sheet.pdf
- **Press Release:** https://www.sec.gov/news/press-release/2021-202

NYSE PROPOSES RULE TO AMEND SHAREHOLDER VOTING REQUIREMENTS

On September 29, 2021, the SEC published for comment a proposal by the New York Stock Exchange LLC ("NYSE") to amend its rules at Section 312.07 of the NYSE Listed Company Manual ("NYSE Manual") regarding shareholder voting requirements. Section 312.07 of the NYSE Manual provides that, where shareholder approval is a prerequisite to the listing of any additional or new securities of a listed company, or where any matter requires shareholder approval, the minimum vote which will constitute shareholder approval for such purposes is defined as approval by a majority of votes cast on a proposal in a proxy bearing on the particular matter. The text of Section 312.07, however, does not specifically address the treatment of abstentions. The NYSE has historically advised companies that abstentions should be treated as votes cast. Under that approach, a proposal is deemed approved under Section 312.07 only if the votes in favor of the proposal exceed the aggregate of the votes cast against the proposal plus abstentions. In its filing, the NYSE claimed that this approach has caused confusion among listed companies. The corporate laws of many states, including Delaware, allow companies to include in their governing documents that votes cast for purposes of a shareholder vote include yes and no votes, but not abstentions, such that a proposal succeeds if the votes in favor exceeds the votes cast against. Consistent with those state laws, many public companies have bylaws indicating that abstentions are not treated as votes cast. For purposes of alleviating complications that arise from potentially disparate voting standards under a company's governing documents, applicable state laws, and/or applicable NYSE rules, the NYSE's proposal would amend Section 312.07 to provide that a company must calculate the votes cast in accordance with its own governing documents and any applicable state law.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-93192.pdf

SEC REOPENS COMMENT PERIOD FOR PROPOSED RULE ON CLAWBACKS OF EXECUTIVE COMPENSATION

On October 14, 2021, the SEC announced that it had reopened the comment period for proposed rules regarding listing standards for the recovery of erroneously awarded incentive-based executive compensation. The proposed rule and rule amendments would direct the national securities exchanges and national securities associations to establish listing standards that would require each issuer to develop and implement a policy providing for the recovery, under certain circumstances, of incentive-based compensation based on financial information required to be reported under the securities laws that is received by current or former executive officers, and require disclosure of the policy. The rules were originally proposed in July 2015 and the initial comment period expired in September 2015. The reopened comment period permits interested parties to submit further comments and data on the original proposal, as well as on developments since 2015 when the proposal was first issued, including trends in accounting practices and the potential economic and other effects of the proposal in light of any such developments.

Comments Due: November 22, 2021
Proposed Rule: https://www.sec.gov/rules/proposed/2021/33-10998.pdf
Fact Sheet: https://www.sec.gov/rules/proposed/2021/33-10998-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2021-210

SEC PUBLISHES REPORT ON JANUARY 2021 MARKET ACTIVITY RELATED TO GAMESTOP

On October 18, 2021, the SEC announced that it had published a report entitled *Staff Report on Equity and Options Market Structure Conditions in Early 2021*, which focuses on the January 2021 trading activity of GameStop Corp. ("GME") shares, widely considered to have heralded the so-called "meme stock" trend in market activity. Meme stocks like GME experienced a dramatic increase in their share price in January 2021, as bullish sentiments of individual investors filled social media. As the market prices of GME and shares of other companies, such as AMC Entertainment, Inc. ("AMC") skyrocketed to new highs, increased attention followed, and their shares became known as meme stocks. Then, as the end of January 2021 approached, several retail broker-dealers temporarily prohibited certain activity in some of these stocks and options. GME experienced a confluence of all the factors that impacted the meme stocks: 1) large price moves; 2) large volume changes; 3) large short interest; 4) frequent mentions on social media, including on Reddit and the popular "subReddit" r/WallStreetBets; and 5) significant coverage in the mainstream media. The report, more than 40 pages in length, featured commentary by SEC staff that identified areas of market structure and the SEC's regulatory framework for potential study and additional consideration, including: 1) forces that may cause a brokerage to restrict trading; 2) digital engagement practices and payment for order flow; 3) trading in dark pools and wholesalers; and 4) the market dynamics of short selling.

SEC Staff Report: https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf
Press Release: https://www.sec.gov/news/press-release/2021-212

SEC ADOPTS RULE MODERNIZING FILING FEE DISCLOSURE AND PAYMENT METHODS

On October 13, 2021, the SEC announced that it had adopted amendments to modernize filing fee disclosure and payment methods by operating companies and investment companies when engaging in certain transactions, including, among others, registered securities offerings, tender offers, and mergers and acquisitions. The final rule, as amended, revised most fee-bearing forms, schedules, and related rules to require operating companies and investment companies/funds to include all required information for filing fee calculation in a structured format. The amendments also added new options for Automated Clearing House ("ACH") and debit and credit card payment of filing fees and eliminated infrequently used options for filing fee payment such as paper checks and money orders. In a press release, the SEC indicated that the amendments were aimed at improving filing fee preparation and payment processing by facilitating both enhanced validation through filing fee structuring and lower-cost, easily routable payments through the ACH payment option. The amendments generally will be effective on January 31, 2022, but the amendments that will add the options for filing fee payment via ACH and debit and credit cards and eliminate the option for filing fee payment via paper checks and money orders will not become effective until May 31, 2022. The Commission indicated that the phased roll out is intended to provide an extended transition period to give filers additional time to comply with the Inline XBRL structuring requirements for filing fee information.

Final Rule: https://www.sec.gov/rules/final/2021/33-10997.pdf
Fact Sheet: https://www.sec.gov/rules/final/2021/33-10997-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2021-209

SEC COMMISSIONER ROISMAN SPEAKS ON MARKET COMPETITION, OFF-EXCHANGE TRADING

On October 15, 2021, in a "fire-side" chat with Piper Sandler's Rich Repetto, SEC Commissioner Elad Roisman commented on several contemporary topics of equity market structure, including payment for order flow, best execution and off-exchange trading. In his remarks, Roisman pushed back on the public vitriol towards payment for order flow and the supposed need for greater regulation in the wake of the January 2021 market activity related to meme stocks. "Critics suggest that the SEC must regulate payment for order flow to deal with the conflict of interest it poses. However, the fact is we already regulate payment for order flow [through] Rule 606 of Reg NMS [and SEC rules governing] best execution." Roisman expanded on the topic of best execution and stated his belief that "the Commission should consider enhancing the monthly execution quality reports issued by market centers pursuant to Rule 605," a rule that has not been updated in approximately 20 years. "Potential enhancements to [Rule] 605 reports could include refining certain data elements as well as adding new elements and metrics, including those that may be most relevant for institutional investors. For example, more granular execution speed buckets may be appropriate in an era of sub-second execution." Roisman then suggested several potential regulatory enhancements related to off-exchange trading and public price discovery, noting that a requirement for off-exchange market makers to make public disclosures of their operations, as is required for national exchanges and alternative trading systems ("ATSs"), would improve market transparency while maintaining competition.

Roisman's Speech: https://www.sec.gov/news/speech/roisman-enhancing-equity-market-competition-2021-10

FINRA ADOPTS NEW RULES FOCUSED ON HIGH-RISK FIRMS

On September 28, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA") announced that it had adopted new rules to address its member firms with a significant history of misconduct, including firms with a high concentration of brokers with a significant history of misconduct. Once effective, the primary new rule, Rule 4111 (Restricted Firm Obligations), will require FINRA member firms designated as "restricted firms" to: 1) deposit cash or qualified securities in a segregated, restricted account; 2) adhere to specified conditions or restrictions; or 3) comply with a combination of those obligations. The rule will establish a multi-step, annual process through which FINRA will determine whether a member firm raises investor protection concerns substantial enough to require that it be designated, or re-designated, as a restricted firm. Broadly, the process of determining whether a firm will be designated as a restricted firm will include a calculation that factors in the number of adjudicated, pending and termination/internal review events for the firm and its registered persons. FINRA will then conduct an internal evaluation of firms that meet or exceed the calculation threshold to confirm that the firm should be designated as a restricted firm for the intents and purposes of Rule 4111. Any such firm will have opportunities to avoid or remedy its designation, including by reducing staffing levels (for first-time designees) or by engaging in a "consultation" with FINRA to demonstrate why it should not be designated as a restricted firm. Unless a remedy is secured, a firm designated as restricted firm will be required to make a "restricted deposit," the amount of which will be tailored to the firm's size, operations and financial condition.

Effective Date: January 1, 2022
FINRA Regulatory Notice 21-34: https://www.finra.org/sites/default/files/2021-09/Regulatory-Notice-21-34.pdf

FINRA REQUESTS COMMENT ON OTC ORDER ROUTING DISCLOSURE REQUIREMENTS

On October 6, 2021, FINRA published Regulatory Notice 21-35 to request comment on its proposal to require members to publish quarterly order routing disclosure reports for held orders in over-the-counter ("OTC") equity securities. The proposed new quarterly reports would be similar to those required for NMS stocks under Rule 606 of Regulation NMS, with certain modifications reflecting the different structure of the OTC market. FINRA noted the SEC's 2018 amendments to Rule 606(a) of Regulation NMS, which enhanced the content and modified the scope of quarterly public order routing reports for "held" orders in NMS securities. FINRA's proposal would apply certain aspects of Rule 606, as amended in 2018, to OTC securities, including public disclosure of payment for order flow and quarterly order routing reports for held orders. FINRA noted that its proposal is consistent with its practice of adopting NMS-principled rules for OTC securities which, in FINRA's past actions, were related to minimum pricing increments, locking and crossing quotations, access fees and limit order display. While FINRA requested comment on any aspect of the proposal, it also included 14 broad questions for which it is specifically seeking comment. FINRA also requested input on possible steps to further facilitate investor access and understanding of current order routing disclosures for NMS securities.

Comments Due: December 6, 2021
FINRA Regulatory Notice 21-35: https://www.finra.org/sites/default/files/2021-10/Regulatory-Notice-21-35.pdf

FINRA URGES FIRMS TO CONSIDER AND IMPLEMENT NEW FINCEN AML/CFT PRIORITIES

On October 8, 2021, FINRA published Regulatory Notice 21-36 to inform member firms that the Financial Crimes Enforcement Network ("FinCEN") had issued the first government-wide priorities for anti-money laundering ("AML") and countering the financing of terrorism policy ("AML/CFT Priorities"), which was mandated by the Anti-Money Laundering Act of 2020 ("AML Act"). FINRA noted that FinCEN also issued a statement to provide covered non-bank financial institutions, including broker-dealers, with guidance on how to approach the AML/CFT Priorities, and FINRA encouraged member firms to consider how to incorporate the AML/CFT priorities into their risk-based AML compliance programs. In general, the AML/CFT Priorities focus on threats to the U.S. financial system and national security and reflect longstanding and continuing AML/CFT concerns previously identified by FinCEN and other U.S. government departments and agencies. Specifically, FinCEN identified eight focus areas, including: 1) corruption; 2) cybercrime; 3) foreign and domestic terrorist financing; 4) fraud; 5) transnational criminal organization activity; 6) drug trafficking organization activity; 7) human trafficking; and 8) proliferation financing. In the AML/CFT Priorities, FinCEN provided details about each of the focus areas and included references to prior FinCEN advisories and guidance documents that identify typologies and red flags that may help broker-dealers comply with their Bank Secrecy Act ("BSA") obligations.

FINRA Regulatory Notice 21-36: https://www.finra.org/sites/default/files/2021-10/Regulatory-Notice-21-36.pdf

SEC INSTITUTES PROCEEDINGS ON NASDAQ PROPOSAL RELATED TO SPAC SPIN-OFFS

On September 30, 2021, the SEC issued an order that instituted proceedings to approve or disapprove a proposal by The Nasdaq Stock Market LLC ("Nasdaq") to permit a special purpose acquisition company ("SPAC") to contribute a portion of the amount held in its deposit account to a deposit account of a new SPAC in a spin-off or similar corporate transaction. Currently, Nasdaq Rule IM-5101-2 requires that at least 90% of the gross proceeds from the initial public offering ("IPO") and any concurrent sale by the SPAC of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an insured depository institution, or in a separate bank account established by a registered broker or dealer. In addition, Nasdaq IM-5101-2 requires that within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the SPAC specifies in its registration statement, the SPAC must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account at the time of the agreement to enter into the initial combination. According to Nasdaq, when a SPAC conducts its IPO, it raises the amount of capital that it estimates will be necessary to finance a subsequent business combination with its ultimate target. In its filing, Nasdaq stated its belief that because a SPAC cannot identify or select a specific target at the time of its IPO, often the amount raised is not optimal for the needs of a specific target. Nasdaq's proposal is aimed at this issue and would permit what Nasdaq claimed is a more efficient structure whereby a SPAC can raise in its IPO the maximum amount of capital it anticipates it may need for a business combination transaction, and then "right-size" itself by contributing any amounts not needed to a spin-off SPAC.

SEC Order: https://www.sec.gov/rules/sro/nasdaq/2021/34-93219.pdf

SEC APPROVES AMENDMENTS TO NASDAQ RULE GOVERNING PROXY PORTFOLIO SHARES

On October 8, 2021, the SEC issued an order granting approval of a Nasdaq proposal to amend Nasdaq Rule 5750 (Proxy Portfolio Shares) to provide for the use of custom baskets consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 ("Investment Company Act") applicable to a series of proxy portfolio shares. Prior to its amendment, Nasdaq Rule 5750 required that proxy portfolio shares be issued and redeemed in a specified aggregate minimum number in return for the proxy basket and/or cash. The rule, as amended, modified the definition of "proxy portfolio share" to permit creations and redemptions of shares in return for a custom basket in addition to the proxy basket, to the extent permitted by a fund's exemptive relief. In addition, the amended rule defined "custom basket" as a portfolio of securities that is different from the proxy basket but is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act applicable to a series of proxy portfolio shares. The amended rule also modified the definition of "reporting authority" to include custom baskets among the types of information for which the reporting authority designated for a particular series of proxy portfolio shares will be the official source for calculating and reporting such information. The new rule also added new listing requirements designed to prevent the use and dissemination of material non-public information regarding the fund portfolio, proxy baskets and custom baskets.

SEC Order: https://www.sec.gov/rules/sro/nasdaq/2021/34-93277.pdf

SEC APPROVES NASDAQ RULE ADDRESSING AUDIT CONCERNS IN FOREIGN JURISDICTIONS

On October 4, 2021, the SEC issued an order granting approval of Nasdaq proposed rule amendments that adopt additional listing criteria for companies primarily operating in jurisdictions that do not provide the Public Company Accounting Oversight Board ("PCAOB") with the ability to inspect public accounting firms. The SEC approved the proposal after designating a longer period and instituting proceedings on whether to approve or disapprove the proposal. Under Nasdaq rules and the federal securities laws, the financial statements of a Nasdaq-listed issuer included in its initial registration statement or annual report must be audited by an independent public accountant that is registered with the PCAOB. Auditors are responsible for providing reasonable assurances that the financial statements provided by a public company are free of material misstatements, which the PCAOB oversees. Industry stakeholders widely agree that accurate and complete financial statement disclosure is critical for investors to make informed decisions. Stakeholders have also recently raised concerns about the accuracy of disclosures, accountability, and access to information when a company is based in a jurisdiction that does not provide the PCAOB with access to conduct inspections of public accounting firms that audit Nasdaq-listed companies. Such companies, said to operate in so-called "restrictive markets," present unique potential risks to investors. Accordingly, Nasdaq's rules, as amended, formally define "restrictive market" as a jurisdiction that does not provide the PCAOB with access to conduct inspections of public accounting firms that audit Nasdaq-listed companies and apply several additional initial listing requirements to restrictive market companies in connection with IPOs, direct listings, or business combinations.

SEC Order: https://www.sec.gov/rules/sro/nasdaq/2021/34-93256.pdf

NASDAQ AMENDS TRANSACTION CREDITS AND CHARGES

On October 22, 2021, the SEC published for comment a Nasdaq proposal, effective immediately upon filing, to amend the Nasdaq's schedule of transaction credits and charges related to Midpoint Extended Life Orders ("M-ELOs") at Equity 7, Section 118(a). The M-ELO order type is designed to create additional trading opportunities on Nasdaq for investors with longer investment time horizons. A M-ELO order will only execute against other M-ELO orders, as well as certain other qualified midpoint orders on the continuous book. Before the proposed change became effective, Nasdaq charged a member that executed a M-ELO order a flat fee of $0.0004 per share executed, for securities priced at $1 or more, but did not provide a credit for liquidity provided or charge a fee for liquidity removed. The design of the tiers of the Section 118 "Nasdaq Market Center Order Execution and Routing" mandated that a member's trading activity that was not treated as "liquidity provided," necessarily became activity classified as "liquidity removed." Accordingly, before the proposed change became effective, all M-ELO trading activity was classified as liquidity removed. Nasdaq's rule, as amended, now counts all M-ELO Orders that a member executes on Nasdaq during the month as liquidity-adding activity on Nasdaq for the purposes of calculating the extent of a member's Nasdaq trading activity during the month and determining the charges and credits applicable to such member's activity. In its filing, Nasdaq stated its belief that the amended rule will provide extra incentives for members to be actively involved in M-ELO order types on the Nasdaq exchange.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-93407.pdf

SEC DISAPPROVES NYSE PROPOSAL TO ADD NEW CO-LOCATION PARTIAL CABINET BUNDLES

On September 30, 2021, the SEC issued an order disapproving a NYSE proposal to amend the NYSE's fee schedules related to co-location services to add two partial cabinet bundles and establish associated fees. The SEC disapproved the proposal after designating a longer period and instituting proceedings on whether to approve or disapprove the proposal. The NYSE offers co-location services to market participants from a data center in Mahwah, New Jersey ("Mahwah Data Center") where their electronic trading and execution systems are located. The co-location services provide market participants with a variety of options to obtain cabinet space, power, bandwidth, and related services that enable them to connect to the NYSE and its affiliate exchanges from within the Mahwah Data Center and thereby obtain the most efficient access (*e.g.*, reduced latency) to the NYSE's trading engines and market data. Among the co-location services currently offered by the NYSE are four "partial cabinet bundles," which are designed for smaller users with limited power or cabinet space demands. The NYSE's proposal aimed to create two new partial cabinet bundles with much faster connection speeds to three of the trading and market data networks provided by the NYSE and establish initial charges and ongoing monthly charges related to those bundles. In disapproving the order, the SEC generally found that the NYSE did not meet its burden of proof under the market-based approach that it was subject to significant competitive forces in setting the terms of the proposal, including the proposed fees.

SEC Order: https://www.sec.gov/rules/sro/nyse/2021/34-93214.pdf

FINRA, NASDAQ, NYSE EXTEND PILOT PROGRAMS FOR CLEARLY ERRONEOUS TRANSACTIONS

On October 15, 2021, the SEC published for comment parallel filings by FINRA, Nasdaq, NYSE and the NYSE American LLC (collectively, the "SROs"), effective on filing, which propose to extend from October 20, 2021 through April 20, 2022 the current pilot programs in place for each SRO related to its respective rules regarding clearly erroneous transactions. Previously, the SEC approved, on a pilot basis, changes to the SRO rules related to clearly erroneous transactions that, among other things: 1) provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving 20 or more securities; and 2) reduced the ability of the SROs to deviate from the objective standards set forth in the rule. The SROs adopted additional provisions in 2013 and 2014 regarding the operation of the plan and the powers of SRO officials to nullify certain trades after a trading halt had been issued, and when there was a disruption or malfunction in the electronic trading facilities. In their respective filings, the SROs indicated that the additional time to operate the pilot related to clearly erroneous transactions is necessary to allow them to consider whether further amendments to the relevant rules are appropriate.

Comments Due: November 11, 2021
FINRA Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-93355.pdf
Nasdaq Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-93361.pdf
NYSE Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-93354.pdf
NYSE American Notice Release: https://www.sec.gov/rules/sro/nyseamer/2021/34-93356.pdf

Notable Enforcement Actions

Stiff penalties against firms for a variety of compliance failures, including violations of federal law, underscore the critical importance of having Legal & Compliance review disclosures, policies and procedures, systems and operations.

A firm agreed to a fine of approximately $475 million to settle charges brought by U.S. and UK authorities for fraudulently misleading investors and violating the Foreign Corrupt Practices Act ("FCPA") in a scheme involving two bond offerings and a syndicated loan that raised funds on behalf of state-owned entities in Mozambique. These offerings raised more than $1 billion and, according to the charges, were used to perpetrate a hidden debt scheme, pay kickbacks to now-indicted former investment bankers of the firm, along with their intermediaries, and bribe corrupt Mozambique government officials. The offering materials created and distributed to investors by the firm obfuscated the underlying corruption and falsely disclosed that the proceeds would help develop Mozambique's tuna fishing industry. The firm failed to disclose the full extent and nature of Mozambique's indebtedness and the risk of default arising from these bond offerings. According to authorities, the scheme was the result, at least in part, of deficient internal accounting controls at the firm, which failed to properly address significant and known risks concerning bribery. In a separate but related action, another firm that served as co-manager on one of the bond offerings agreed to a fine of approximately $6 million to settle SEC charges related to its role in misleading investors. This offering allowed investors to exchange their notes in an earlier bond offering for new sovereign bonds issued directly by the government of Mozambique. The offering materials distributed and marketed by the two firms again failed to disclose the true nature of Mozambique's debt and the high risk of default on the bonds. Mozambique later defaulted on the financings after the full extent of its debt was revealed.
(**SEC File Nos. 3-20628 and 3-20629**)
https://www.sec.gov/litigation/admin/2021/33-11001.pdf
https://www.sec.gov/litigation/admin/2021/33-11000.pdf

A firm was censured and fined $250,000 for failing to correctly calculate its volume thresholds as a percentage of the overall NMS market average daily dollar volume and, as a result, did not recognize that it was required to comply with Regulation Systems Compliance and Integrity ("Reg SCI") under the Securities Exchange Act of 1934 ("Exchange Act"). The findings state that the firm was required to come into compliance with Reg SCI, however, it did not understand that its alternative trading system was an SCI entity until almost two years later, at which time it initiated a review of its SCI compliance and then fully implemented Reg SCI policies and procedures. Due to the firm's misinterpretation of the threshold test, it failed to identify its SCI systems and failed to establish Reg SCI policies and procedures. In addition, the firm did not file quarterly or annual reports with the SEC. The firm did not implement policies and procedures to identify material changes that would have allowed it to comprehensively report those material changes to the SEC, nor did the firm file quarterly reports of material changes to its systems with the SEC. The firm also did not implement an annual review process and did not conduct an annual SCI review, or submit a report of an annual SCI review to its senior management, board of directors, or the SEC. The firm did not establish standards for the designation of its SCI alternative trading system's members necessary to maintain fair and orderly markets in the event of the activation of business continuity and disaster recovery plans related to its alternative trading system and also did not coordinate testing with other SCI entities.

(**FINRA Case #2016048614701**)

https://www.finra.org/sites/default/files/fda_documents/2016048614701%20Dealerweb%20Inc.%20CRD%2019662%20AWC%20va%20%282021-1630887617625%29.pdf

A firm was censured and fined a total of $300,000 for failing to comply with SEC Regulation SHO Rule 204. The firm attempted to allocate certain fail-to-deliver positions caused by two introducing broker-dealers. To determine whether it needed to purchase securities to close out a fail, the firm did not look to its books and records but instead looked to the individual account that caused the fail. If the account had sufficient subsequent purchase activity, the firm would not take any further action. As a result, the firm risked not closing out a fail-to-deliver position within the timeframe and in a manner specified under Regulation SHO. If the firm determined there was an open fail caused by one of the broker-dealers, it would send the introducing broker-dealer a spreadsheet via email that included the security and the close-out date. The emails, however, did not make reasonably clear that the firm was allocating a close-out requirement. As a result, the introducing brokers understood that they were being provided notices of potential buy-ins. In addition, the email notifications sent to one of the broker-dealers did not expressly state the amount of the fail being allocated to it, based on the firm's understanding that the amount allocated was in each instance the entire amount of the fail. As a result of the flaws in the notices, the firm remained responsible for the fails. Further, because it had not allocated the fails, the firm was required to enforce the pre-borrow or penalty box requirements, which it did not do. In addition, the firm's supervisory system with respect to compliance with Regulation SHO was unreasonable. The firm did not conduct a reasonable supervisory review of its email notifications to determine whether they provided clear notice of an allocation. The firm's supervisory system with respect to allocations focused on tracking the fail-to-deliver positions that it had attempted to allocate and did not include a review to determine whether the email notifications achieved compliance with Regulation SHO's notice requirements. In addition, although the firm used a checklist to document its supervisory reviews for compliance with Regulation SHO, it did not describe this aspect of its supervisory system in its written supervisory procedures ("WSPs").

(**FINRA Case #2014041721501**)

https://www.finra.org/sites/default/files/fda_documents/2014041721501%20J.P.%20Morgan%20Clearing%20Corporation%20nka%20J.P.%20Morgan%20Securities%20LLC%20CRD%2079%20AWC%20va%20%282021-1632097255551%29.pdf

A firm was censured and fined a total of $85,000 for participating in distributions of securities in which it was late in filing, or failed to file, the notifications required under FINRA Rule 5190, which is in place to monitor compliance with the provisions of Regulation M of the Exchange Act. These failures were caused by administrative errors, failures to monitor publicly available information that triggers requirements to provide notice and misunderstandings as to the requirements to provide notice. The findings also state that the firm failed to establish, maintain and enforce WSPs reasonably designed to achieve compliance with FINRA notification requirements. While the firm

maintained operational procedures regarding what steps to take when filing Regulation M notifications, it did not conduct any supervisory reviews to ensure that the notifications were filed timely or accurately.
(**FINRA Case #2017055996901**)
https://www.finra.org/sites/default/files/fda_documents/2017055996901%20Piper%20Sander%20%26%20Co.%20fka%20Sandler%20O%27Neill%20%26%20Partners%2C%20L.P%20CRD%20665%20AWC%20va%20%282021-1630714828924%29.pdf

A firm was censured, fined $65,000 and ordered to pay $422.63, plus interest, in restitution to customers for trading for its own account on the same side of the market at prices that would have satisfied outstanding customer orders, without immediately thereafter executing the customer orders up to the size and/or at the same or better price as it traded for its own account. The firm's order management system was not programmed to protect orders that the firm accepted, held and later routed away for execution. As such, the customer orders were owed protection that the firm failed to provide. In addition, after trading for its own account, the firm executed outstanding customer orders at the customer limit price instead of at the price that the firm traded for its own account. This resulted in a loss to the firm's customers in the amount of $422.63.
(**FINRA Case #2019062082601**)
https://www.finra.org/sites/default/files/fda_documents/2019062082601%20Maxim%20Group%20LLC%20CRD%20120708%20AWC%20%20%20jlg%20%282021-1630887616721%29.pdf

A firm was censured and fined $50,000 for participating in offerings without establishing, maintaining and enforcing a supervisory system, including WSPs, reasonably designed to supervise its business relating to an EB-5 Immigrant Investor Program. Two of the firm's registered representatives engaged in EB-5 business through the firm and their respective outside business activities ("OBAs") by, among other things, soliciting foreign investors who wished to make an EB-5 investment, recommending specific EB-5 investments to customers, acting as a liaison between various regional centers and investors and facilitating the transfer of investment funds to the respective regional centers. The two representatives' business was intertwined with the firm's EB-5 business and the firm acted as a finder or placement agent for the offerings. The firm incorrectly characterized aspects of the two representatives' EB-5 businesses as OBAs that it was not required to supervise. In addition, the firm failed to update its WSPs to address its involvement in the offerings until four years after it became involved with the business. Even then, the WSPs were not reasonable because they provided only limited guidance to those-representatives at the firm who facilitated and participated in EB-5 transactions. In addition, the firm failed to establish, maintain and enforce a system, including WSPs, reasonably designed to supervise its registered representatives' EB-5 related websites. The firm did not conduct regular supervisory reviews of websites maintained by the two representatives in relation to their EB-5 business that contained content that violated FINRA's advertising rules. Two of the websites contained statements falsely suggesting that one of the representative's activities were endorsed by FINRA and/or the SEC. Another website contained summaries of EB-5 offerings that failed to provide a balanced treatment of the risks and potential benefits of investment. The firm also failed to make timely filings with FINRA in relation to private placement offerings. (**FINRA Case #2017053116801**)
https://www.finra.org/sites/default/files/fda_documents/2017053116801%20Primary%20Capital%2C%20LLC%20CRD%20127921%20AWC%20rir%20%282021-1631751621782%29.pdf