SECURITIES OPERATIONS

REGULATORY UPDATE

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IN THIS ISSUE

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SEC Adopts Final Rules on Universal Proxy Cards and Proposes Changes to Proxy Voting Advice Rules

On November 17, 2021, the U.S. Securities and Exchange Commission ("SEC" or "Commission") adopted final rules requiring the use of universal proxy cards in non-exempt director elections and mandating such proxy cards include all director nominees (registrant, dissident, and certain other nominees) presented for election at a shareholder meeting. The rules do not apply to registered investment companies nor business development companies. The rule changes give shareholders the ability to vote by proxy for their preferred combination of board candidates. Generally, the final rules: expand the definition of a "bona fide nominee," require dissidents to provide notice to registrants of the intent to solicit proxies, require registrants and dissidents to provide each other with notice of the names of their nominees by designated time periods as well as refer to the other party's proxy statement or the SEC website for information about their nominees, establish a deadline for the dissidents to file their definitive proxy statement, require dissidents to solicit shareholders holding a minimum percentage of voting power, and prescribe presentation and formatting requirements for universal proxy cards. The final rules also require proxy cards to clearly specify the applicable shareholder voting options in all director elections (against, abstain, withhold) and the effect of a shareholder's election to withhold. Compliance with the rules will be required for any shareholder meeting involving director elections held after August 31, 2022.

On November 17th, the Commission also proposed amendments to the proxy voting advice rules adopted in 2020 ("2020 Final Rules") aimed to recalibrate the rules to preserve the independence of proxy voting advice and ensure that proxy voting advisory businesses can deliver advice in a timely manner without ultimately passing on higher costs to their clients. The proposed amendments would amend Rule 14a-2(b)(9) to remove the Rule 14a-2(b)(9)(ii) conditions and amend Rule 14a-9 to remove Note (e) to that rule, which sets forth specific examples of material misstatements or omissions related to proxy voting advice. The proposed amendments would not affect the other aspects of the 2020 Final Rules, which would remain in place. See SEC website for dissenting statements and related remarks of SEC Commissioners.

Final Rule: https://www.sec.gov/rules/final/2021/34-93596.pdf
Press Release: https://www.sec.gov/news/press-release/2021-235
Proposed Rule: https://www.sec.gov/rules/proposed/2021/34-93595.pdf
Comments Due: December 27, 2021
Press Release: https://www.sec.gov/news/press-release/2021-236

SEC Publishes Staff Legal Bulletin Regarding Rule 14a-8

On November 3, 2021, the Division of Corporation Finance ("Division") of the SEC published a staff legal bulletin ("Bulletin") providing information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934 (the "Exchange Act"). In Rule 14a-8, the Commission provides a means by which shareholders can present proposals for the shareholders' consideration in the company's proxy statement. Rule 14a-8 also sets forth several bases for exclusion of such proposals. Companies often request assurance that the staff will not recommend enforcement action if they omit a proposal based on one of these exclusions ("no-action relief"). The Division issued this new Bulletin to streamline and simplify the process for reviewing no-action requests, and to clarify the standards staff will apply when evaluating these requests. This Bulletin, like all staff guidance, has no legal force or effect and does not alter or amend applicable law. The Division is rescinding Staff Legal Bulletin Nos. 14I, 14J and 14K (the "rescinded SLBs") after a review of staff experience applying the guidance in them. This Bulletin outlines the Division's views on Rule 14a-8(i)(7), the ordinary business exception, and Rule 14a-8(i)(5), the economic relevance exception. This Bulletin also republishes, with primarily technical, conforming changes, the guidance contained in SLB Nos. 14I and 14K relating to the use of graphics and images, and proof of ownership letters. In addition, the Bulletin provides new guidance on the use of e-mail for submission of proposals, delivery of notice of defects, and responses to those notices.

Legal Bulletin: https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals

SEC AMENDS RULE ON PERFORMANCE-BASED INVESTMENT ADVISORY FEES

On November 4, 2021, the SEC adopted amendments to Rule 205-3 under the Investment Advisers Act of 1940 ("Advisers Act") that permits investment advisers to charge performance-based compensation to "qualified clients." Current Rule 205-3 defines "qualified client" with reference to specific dollar amount thresholds related to assets under management and net-worth tests, which are required to be adjusted every five years to account for the effects of inflation. The amendments to Rule 205-3 replace the specific dollar amount thresholds in the Rule with references to the "most recent order" issued by the Commission containing the specific dollar amount thresholds adjusted for inflation. The "most recent order" is now defined in Rule 205-3 to mean "the most recently issued Commission order in accordance with paragraph (e) of this section and as published in the Federal Register." By amending Rule 205-3 to refer to the "most recent order" for the dollar amount thresholds in the Rule's "qualified client" tests, the Rule will reference the most recently issued and published adjusted dollar amounts, and more directly tie the relevant amount to the mechanism by which it is established (*i.e.*, the order). The amendments also amend Rule 205-3 to update from "May 1, 2016" to "May 1, 2026" the reference point of a specific date in paragraph (e). By amending the Rule to refer to a date in the future, the Rule will establish clearly the next expected date for issuance of a Commission order for purposes of the amended Rule's definition of "most recent order." The amendments are effective on November 10, 2021.

Final Rule: https://www.sec.gov/rules/final/2021/ia-5904.pdf

SEC PROPOSES UPDATES TO ELECTRONIC FILING REQUIREMENTS

On November 4, 2021, the SEC published proposed amendments to update electronic filing requirements in two separate rule proposals (i.e., Updating the Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR") Filing Requirements [Release Nos. 33-11005; 34-93519; File No. S7-16-21] and Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F [Release Nos. 34-93518; IA-5903; IC-34415; File No. S7-15-21]). The SEC currently permits and sometimes requires certain forms to be filed or submitted in paper format. The proposed rules and form amendments would require certain forms to be filed or submitted electronically. The proposed amendments also would make technical amendments to certain forms to require structured data reporting and remove outdated references. The amendments are intended to promote efficiency, transparency, and operational resiliency by modernizing the manner in which information is submitted to the Commission and disclosed. Publicly filed electronic submissions would be more readily accessible to the public and would be available on the SEC website in easily searchable formats, which benefits both investors and the broader public and addresses logistical and operational issues raised by the spread of coronavirus disease (COVID-19).

EDGAR Proposed Rule: https://www.sec.gov/rules/proposed/2021/33-11005.pdf
EDGAR Comments Due: December 22, 2021
Adviser and Investment Co. Act Proposed Rules: https://www.sec.gov/rules/proposed/2021/34-93518.pdf
Adviser and Investment Co. Act Comments Due: December 20, 2021
Fact Sheet: https://www.sec.gov/rules/proposed/2021/34-93518-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2021-223
Chair Gensler Statement: https://www.sec.gov/biography/gary-gensler

SEC PROPOSES UPDATES TO ELECTRONIC RECORDKEEPING REQUIREMENTS

On November 18, 2021, the SEC proposed amendments to the electronic recordkeeping requirements for broker-dealers, security-based swap dealers ("SBSDs"), and major security-based swap participants ("MSBSPs"). Specifically, the proposal would amend the electronic record preservation and prompt production of records requirements of Rules 17a-4 (applicable to registered broker-dealers) and 18a-6 (preservation requirements for SBSDs and MSBSPs that are not also registered as broker-dealers, collectively "SBS Entities"). The record preservation requirements of Rule 18a-6 were modeled largely on Rule 17a-4, which requires broker-dealers to preserve electronic records exclusively in a non-rewriteable, non-erasable format (otherwise known as write once, read many). The proposed amendments would add an audit-trail alternative. Under this alternative, electronic records could be preserved in a manner that permits the recreation of an original record if it is altered, over-written, or erased. The audit-trail alternative is designed to provide broker-dealers with greater flexibility in configuring their electronic recordkeeping systems to allow them to more closely align with current technologies and practices while also protecting the authenticity and reliability of original records. The proposed amendments would also require nonbank SBS Entities to preserve electronic records using either of the above alternatives that would be available to broker-dealers. Additionally, the amendments to Rule 17a-4 would eliminate the third-party access and undertakings requirements and replace them with a requirement that a senior officer of the broker-dealer provide the access and undertakings. The amendments to Rule 18a-6 would add an analogous senior officer access and undertakings requirement. The amendments also would require broker-dealers and SBS Entities to produce electronic records to securities regulators in a reasonably usable electronic format that is compatible with commonly used systems for accessing and reading, not in a proprietary electronic format. Other minor and technical amendments are also proposed.

Proposed Rule: https://www.sec.gov/rules/proposed/2021/34-93614.pdf
Comments Due: 30 days after publication in the Federal Register
Fact Sheet: https://www.sec.gov/rules/proposed/2021/34-93614-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2021-240
Statement by Chair Gensler: https://www.sec.gov/news/statement/gensler-electronic-recordkeeping-20211118?utm_medium=email&utm_source=govdelivery

SEC PROPOSES RULE FOR REPORTING SECURITIES LENDING TRANSACTIONS

On November 18, 2021, the SEC proposed Rule 10c-1 under the Exchange Act to increase the transparency and efficiency of the securities lending market consistent with its authority under Section 984 of the Dodd-Frank Act. The Rule will require any person that loans a security on behalf of itself or another person to report the material terms of those securities lending transactions and related information regarding the securities the person has on loan and available to loan to a registered national securities association ("RNSA"). Currently, the Financial Industry Regulatory Authority ("FINRA") is the only RNSA. The proposed rule would also require that the RNSA make available to the public certain information concerning each transaction and aggregate information on securities on loan and available to loan. Proposed Rule 10c-1 is intended to provide investors and other market participants with access to pricing and other material information regarding securities lending transactions in a timely manner.

Proposed Rule: https://www.sec.gov/rules/proposed/2021/34-93613.pdf
Comments Due: 30 days after publication in the Federal Register
Fact Sheet: https://www.sec.gov/rules/proposed/2021/34-93613-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2021-239

SEC NAMES NICOLE CREOLA KELLY CHIEF OF SEC WHISTLEBLOWER OFFICE

On November 5, 2021, the SEC announced the appointment of Nicole Creola Kelly as Chief of the SEC's Office of the Whistleblower. Ms. Kelly, who goes by Cree, is currently Senior Special Counsel in the Office of the General Counsel and has more than 20 years of experience with the SEC. Among her other SEC-related roles were Counsel to former SEC Chair Mary Jo White, Counsel to former SEC Commissioner Kara M. Stein, the Enforcement Division's Complex Financial Instruments Unit, and the Whistleblower Office.

Press Release: https://www.sec.gov/news/press-release/2021-225

SEC NAMES AHMED ABONAMAH DIRECTOR OF OFFICE OF CREDIT RATINGS

On November 8, 2021, the SEC announced the appointment of Ahmed Abonamah as the Director of the agency's Office of Credit Ratings, where he has served as Acting Director since October 2020. The Office of Credit Ratings is responsible for oversight of nationally recognized statistical rating organizations (NRSROs). Mr. Abonamah joined the SEC in 2016.

Press Release: https://www.sec.gov/news/press-release/2021-227

SEC NAMES DANIEL R. GREGUS DIRECTOR OF CHICAGO OFFICE

On November 15, 2021, the SEC announced the appointment of Daniel R. Gregus as the Director of the Chicago Regional Office, where he has served as acting co-director since June. Mr. Gregus is a 28-year veteran of the SEC and has held leadership roles in both the Division of Enforcement and the Division of Examinations.

Press Release: https://www.sec.gov/news/press-release/2021-234

SEC NAMES HAOXIANG ZHU DIRECTOR OF DIVISION OF TRADING AND MARKETS

On November 19, 2021, the SEC announced the appointment of Haoxiang Zhu as Director of the agency's Division of Trading and Markets, effective December 10, 2021. Mr. Zhu is the Gordon Y. Billard Professor of Management and Finance and Associate Professor of Finance at the Massachusetts Institute of Technology. He also serves as a Research Associate at the National Bureau of Economic Research, Finance Department Editor at Management Science, and Associate Editor at the Journal of Finance. Mr. Zhu previously served as an academic expert for the Commodity Futures Trading Commission and the Bank for International Settlements and as a member of the Federal Reserve Bank of Chicago's Working Group on Financial Markets. David Saltiel, who has served as Acting Director of the Division of Trading and Markets for the past several months, has been appointed as one of the Division's Deputy Directors and will continue to lead the Office of Analytics and Research, a role he has held since 2016.

Press Release: https://www.sec.gov/news/press-release/2021-242

FINRA RULE 4210 MARGIN REQUIREMENTS IMPLEMENTATION DATE EXTENDED

On November 19, 2021, the SEC published for comment a FINRA proposal, effective upon filing, to extend to April 26, 2022, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) approved pursuant to SR-FINRA-2015-036 (the "Proposed Amendments"), other than the amendments pursuant to SR-FINRA-2015-036 that were implemented on December 15, 2016. Informed by extensive dialogue with industry participants and other regulators, including the staff of the SEC and the Federal Reserve System, FINRA has proposed to amend the requirements of the Proposed Amendments and the rulemaking is ongoing. FINRA believes it is appropriate, in the interest of regulatory clarity, to adjust the implementation date to allow time for the Commission to act on the Proposed Amendments.

Proposed Rule: https://www.sec.gov/rules/sro/finra/2021/34-93630.pdf
Comments Due: December 17, 2021

FINRA PROPOSES CHANGES TO RULE 6732 TO EXEMPT ATS MEMBERS FROM TRACE REPORTING

On November 23, 2021, the SEC published for comment a FINRA proposal to amend Rule 6732 to provide FINRA with authority to, subject to conditions, exempt transactions by a member alternative trading system ("ATS") that meets specified criteria from the transaction reporting obligations of FINRA Rule 6730 (Transaction Reporting). Rule 6730 generally requires each FINRA member that is a party to a transaction in a TRACE-Eligible Security report the transaction to TRACE within the period of time prescribed in the Rule. An ATS is a party to each transaction in a TRACE-Eligible Security occurring through its system and has a TRACE transaction reporting obligation unless an exception or exemption applies. FINRA adopted Rule 6732 (Exemption from Trade Reporting Obligation for Certain Alternative Trading Systems) in response to concerns raised by members regarding operational difficulties with respect to certain transactions on an ATS. FINRA is proposing to amend Rule 6732 to expand the scope of transactions that may be exempt under the Rule to include trades that involve only one FINRA member (other than the ATS), similar to the transactions that are currently eligible for exemptive relief under Rule 6732.

Rule Proposal: https://www.sec.gov/rules/sro/finra/2021/34-93651.pdf
Comments Due: 21 days from publication in the Federal Register

FINRA CHANGES TO FINGERPRINTING PROCESSES DECLARED EFFECTIVE

On November 2, 2021, the SEC published a declaration of effectiveness of a FINRA fingerprint plan ("Plan") pursuant to Rule 17f-2(c) of the Exchange Act that was filed on October 28, 2021. The Plan supersedes and replaces FINRA's current fingerprint plan due to the age of FINRA's current fingerprint processing platform, and the availability of more modern alternatives offered by private vendors approved by the Federal Bureau of Investigation ("FBI") to channel fingerprints. To continue to facilitate compliance with the fingerprinting requirement in Section 17(f)(2) of the Exchange Act, FINRA is transitioning to a new fingerprinting process for broker-dealer personnel (of both FINRA members and other broker-dealers) and for FINRA personnel using the services of an FBI-approved channeler. FINRA will continue, at this time, its current role as the channeler for processing fingerprints of transfer agent and clearing agency personnel that are submitted to FINRA.

Declaration of Effectiveness: https://www.sec.gov/rules/other/2021/34-93511.pdf

FINRA 2022 AND FIRST QUARTER 2023 REPORTING FILING DUE DATES

On November 12, 2021, FINRA published an Information Notice to provide the filing due dates for Annual Reports, Financial and Operational Combined Uniform Single (FOCUS) reports, Form Custody, and supplemental FOCUS Report filings due in 2022 or the first quarter of 2023. FINRA reminds members that all such filings must be made electronically through FINRA Gateway. Filings are due no later than 11:59 p.m. Eastern Time (ET) on the due dates listed in the Notice.

Information Notice: https://www.finra.org/sites/default/files/2021-11/information-notice-111221.pdf

FINRA AMENDS RULES 1210 AND 1240 TO ENHANCE THE CONTINUING EDUCATION PROGRAM

On November 17, 2021, FINRA published Regulatory Notice 21-41 outlining amendments to FINRA Rules 1210 ad 1240 to enhance the Continuing Education ("CE") Program for Securities Industry Professionals. Specifically, the amendments to Rules 1210 and 1240: (1) provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual CE through a new program, the Maintaining Qualifications Program ("MQP"); (2) require registered persons to complete CE Regulatory Element annually for each representative or principal registration category that they hold; and (3) expressly allow firms to consider other required training toward satisfying an individual's annual CE Firm Element and extend the Firm Element requirement to all registered persons. The changes relating to the MQP (paragraph (c) of Rule 1240) and the Financial Services Affiliate Waiver Program (FSAWP) (Rule 1210.09) will become effective March 15, 2022. All other changes, including the changes relating to the Regulatory Element, Firm Element, and the two-year qualification period, will become effective January 1, 2023.

Regulatory Notice 21-41: https://www.finra.org/sites/default/files/2021-11/Regulatory-Notice-21-41.pdf

NASDAQ PROPOSES TO AMEND FEE SCHEDULE AT EQUITY 7, SECTION 118

On November 12, 2021, the SEC published for comment a Nasdaq Stock Market LLC ("Nasdaq") proposal, effective on filing, to amend the schedule of credits, at Equity 7, Section 118(a). Specifically, Nasdaq proposed to amend the criteria for two existing credits of $0.0029 per share executed with respect to its schedule of credits for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity in Tapes A, B and C. One of the existing credits applies to members with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.675% of Consolidated Volume during the month. The other credit applies to members (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.80% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of Consolidated Volume. Nasdaq proposes to amend the credits in all three Tapes by requiring a member to execute an average daily volume ("ADV") of at least 350,000 shares of Midpoint Extended Life Orders ("M-ELOs") during the month. The proposed amendments are expected to increase the extent to which members engage in M-ELO activity on Nasdaq and grow the extent of such activity over time.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-93558.pdf

NASDAQ PROPOSES TO RETIRE CERTAIN ORDER ENTRY PROTOCOLS AND FEES AT EQUITY 7, SECTION 115

On November 16, 2021, the SEC published for comment a Nasdaq proposal, effective on filing, to discontinue the following order entry protocols: (i) QIX OTCBB, effective as of November 8, 2021; (ii) CTCI (except for CTCI MFUND, which will remain active), effective as of November 22, 2021; and (iii) BRUT FIX and SUMO FIX, effective as of November 22, 2021. Nasdaq also proposed to amend Equity 7, Section 115 to reflect the retirement of these protocols and their related fees. Nasdaq proposed to delete references to two QIX-related fees that relate to QIX OTCBB due to decommissioning of the FINRA OTCBB platform. Nasdaq proposed to discontinue the CTCI/TCP and CTCI/MQ protocols for communicating trade information to the FINRA/Nasdaq TRF Carteret and trade and order information to ACES because it plans to replace these protocols with the FIX (FIX Port for services other than Trading and FIX Trading Port, respectively) order entry protocol, going forward. Nasdaq proposed to continue to offer CTCI for use by participants in the Nasdaq Fund Network ("CTCI MFUND") as FIX does not provide the capabilities that these participants require for use with the Nasdaq Fund Network. Additionally, Nasdaq proposed to amend Equity 7, Section 115(c), to specify that going forward, fees relating to CTCI will be limited to CTCI MFUND. Finally, Nasdaq proposed to discontinue offering BRUT FIX and SUMO FIX because both are now obsolete as their specifications have been integrated into the standard FIX protocol specification and the standard Nasdaq INET applications and will be required to utilize FIX Trading Ports instead at the same price per port per month.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-93580.pdf
Comments Due: December 13, 2021

NASDAQ AMENDS PRICING SCHEDULE FOR REVISED FINRA FEES

On November 17, 2021, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend Nasdaq's Pricing Schedule at Equity 7, Section 30, Registration and Processing Fees, to reflect adjustments to FINRA Registration Fees, Fingerprinting Fees and Continuing Education Fees, with the amendments to become operative on January 2, 2022. The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of Nasdaq members that are not FINRA members ("Non-FINRA members"). Nasdaq is merely listing these fees on its Pricing Schedule. The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-93602.pdf
Comments Due: December 14, 2021

NYSE CLOSING AUCTION CHANGES GRANTED EXTENDED PERIOD

On November 1, 2021, the SEC published a notice designating a longer period for Commission action on a New York Stock Exchange LLC ("NYSE") rule change to amend Rules 7.31, 7.35, 7.35B, 7.35C, 98, and 104 relating to the Closing Auction. The proposed rule change was published for comment in the Federal Register on September 22, 2021. The Commission has received no comments on the proposed rule change. The SEC designates December 21, 2021, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to approve or disapprove, the proposed rule change (File No. SR-NYSE-2021-44).

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-93488.pdf

NYSE AMENDS ITS PRICE LIST

On November 9, 2021, the SEC published for comment a NYSE proposal, effective on filing, to amend its price list. The NYSE proposes to amend its Price List to (1) eliminate the underutilized additional credits for member organizations that add liquidity in Tape B and C Securities when qualifying for certain non-tier and tiered credits by adding liquidity in Tape A Securities; (2) eliminate the underutilized Adding Tier for Non-Displayed Providers in Tape A Securities; and (3) revise the requirements to qualify for the Tier 5 Adding Credit in Tape A Securities. The proposed revision to the Tier 5 Adding Credit responds 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 proposes to implement the rule change on November 1, 2021.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-93545.pdf
Comments Due: December 7, 2021

NYSE AMERICAN AMENDS PRICE LIST AND FEE SCHEDULE REGARDING COLOCATION

On November 12, 2021, the SEC published for comment a proposal by the NYSE American LLC ("NYSE American"), effective on filing, to amend the Equities Price List and Fee Schedule and the NYSE American Options Fee Schedule (together, the "Price and Fee Schedule") regarding colocation services and fees to provide users with wireless connectivity to CME Group, Inc. ("CME Group") market data. The NYSE American currently provides users with wireless connections to eight market data feeds or combinations of feeds from third-party markets (the "Existing Third Party Data"). The NYSE American proposes to add to its Price List and Fee Schedule wireless connections to CME Group market data (such data, "CME Group Data" and, together with the Existing Third-Party Data, the "Third Party Data"). Users would be offered the proposed wireless connection to the CME Group Data through connections into the colocation center in the Mahwah, New Jersey data center ("Data Center"). NYSE American expects that the proposed rule change would become operative no later than March 31, 2022 and will announce the date that the wireless connection to the CME Group Data will be available through a customer notice. To receive CME Group Data, the user would enter into an agreement with a non-NYSE American-affiliated party for permission to receive the data, if required. The user would pay this third party any fees for the data content. As with the Existing Third-Party Data, if a user purchased two wireless connections, it would pay two non-recurring initial charges. Each wireless connection would include the use of one port for connectivity to CME Group Data. A user would not pay a fee for the use of such port. If a user also connects to Existing Third-Party Data, it would not be able to use the same port that it uses for connectivity to CME Group Data to connect to such Existing Third-Party Data. Accordingly, a user that connects to both CME Group Data and Existing Third-Party Data would have at least two ports and would not be separately charged for two ports.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2021/34-93561.pdf
Comments Due: December 9, 2021

OCC CORRECTS OMISSION TO SCHEDULE OF FEES

On November 18, 2021, the SEC published for comment a proposal by the Options Clearing Corporation ("OCC"), effective upon filling, to correct a rule change by OCC of an inadvertent omission in OCC's schedule of fees that was the subject of a prior rule filing. OCC's schedule of fees is included as Exhibit 5 to File No. SR-OCC-2021-012. The omission in the prior rule filing that established a fee holiday for the period from November 1, 2021, and ending December 31, 2021 reduced its per contract and per trade clearing fees to $0 for the last two months of 2021. However, through an inadvertent oversight, two line items in the schedule of fees related to clearing fees were not reduced accordingly: (1) the minimum monthly clearing fee of $200 and (2) a fee of $0.02 per side for linkage transactions, capped at $55 per trade per side. OCC is proposing to correct the schedule of fees to reflect that OCC will not collect these fees during the fee holiday. The listing of the fees in the schedule of fees would be reordered to group these two fees with the other clearing fees that are subject to the fee holiday. The linkage per side fee and the minimum monthly clearing fee will revert to the fee schedule in effect before November 1, 2021, and OCC will remove the fee holiday from its schedule of fees effective the first trading day of 2022. No fees for transactions occurring within the fee holiday period have been collected because clearing fees are due to OCC the month after the fees are incurred. OCC will not collect fees for transactions that occurred between November 1, 2021, through the first date it may implement the corrected fee schedule after completing all regulatory actions necessary to make the proposed corrections.

Notice Release: https://www.sec.gov/rules/sro/occ/2021/34-93612.pdf
Comments Due: December 15, 2021

Notable Enforcement Actions

This month's enforcement actions relate to failures by firms regarding proper disclosures, proper registration of personnel and proper and timely reporting.

A firm was censured and fined $175,000 based on findings that it published and distributed to its institutional customers equity research reports that omitted required disclosures or included inaccurate disclosures. The findings stated that the firm provided inaccurate disclosures under the requirement to disclose in each equity report the percentage of subject companies within each rating category for which it provided investment banking services within the previous 12 months; failed to disclose that the firm or any of its affiliates expected to receive or intended to seek compensation for investment banking services from a subject company in the subsequent three months; failed to disclose that the firm or any of its affiliates managed or co-managed a public offering of securities for a subject company in the past 12 months; failed to disclose that the firm or any of its affiliates received compensation for investment banking services from a subject company in the past 12 months; failed to disclose that a subject company was a firm client in the 12-month period preceding the report and the types of services provided by the firm; and failed to disclose that the firm or its affiliates had received compensation for products or services other than investment banking services from a subject company in the previous 12 months. The findings also stated that debt research reports the firm published and distributed to its institutional customers omitted required disclosures. Specifically, the firm failed to disclose the definition of each firm rating (i.e., overweight, market weight, underweight); failed to disclose the percentage of all subject companies the firm rated with each rating; failed to disclose the percentage of subject companies with each rating to which the firm provided investment banking services within the previous 12 months; failed to disclose the historical ratings for a subject company for which the firm had assigned a rating for at least one year; failed to disclose that the firm or its affiliates received compensation for investment banking services from a subject company in the past 12 months; failed to disclose that the firm or its affiliates expected to receive or intended to seek compensation for investment banking services from a subject company in the subsequent three months; failed to disclose that the firm or any of its affiliates managed or co-managed a public offering of securities for a subject company in the past 12 months; failed to disclose that a subject company was a client of the firm in the 12-month period preceding the report and the types of services provided by the firm; and failed to disclose that the firm or its affiliates had received compensation for products or services other than investment banking services from a subject company in the previous 12 months. The findings also included that the firm failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with FINRA disclosure requirements. The firm had no procedures, testing, or other mechanisms to review and confirm, at the time of publishing or on a periodic basis, that disclosures in its equity and debt research reports were complete and accurate. Consequently, the firm failed to detect for over three-and-a-half years that required disclosures were not appearing in its equity research reports or that newly required disclosures were not added to its debt research reports. The firm also failed to enforce its Written Supervisory Procedures, which required that all disclosures be made in each applicable research report and specifically required that certain information be submitted to the firm's research department to ensure compliance with certain of those disclosure requirements. After identifying the issue, the firm reported it to FINRA and immediately ceased the production of all debt research and suspended the issuance of equity research until it could remediate these issues in future reports. **(FINRA Case # 2019063972801)**

https://www.finra.org/sites/default/files/fda_documents/2019063972801%20Santander%20Investment%20Securities%20Inc.%20CRD%2037216%20AWC%20sl%20%282021-1633738813559%29.pdf

A firm was censured and fined $10,000 for failing to qualify and register two associated persons who supervised securities trading activity with FINRA in the appropriate categories of registration. The findings stated that neither associated person was qualified and registered with FINRA as a securities trader despite their direct supervision of customer trading activity, including review of surveillance exceptions related to SEC Regulation National Market System (Reg NMS) and Regulation SHO and review of potentially manipulative trading activity. **(FINRA Case #2019061061001)**
https://www.finra.org/sites/default/files/fda_documents/2019061061001%20SogoTrade%2C%20Inc.%20CRD%2017912%20AWC%20jlg%20%282021-1633911609322%29.pdf

A firm was censured and fined $25,000 for failing to repair and resubmit rejected Reportable Order Events (ROEs) to the Order Audit Trail System (OATS). The findings stated that OATS rejected those submissions due to repairable context or syntax errors in the data. Moreover, although the firm attempted to repair and resubmit some of the rejected ROEs, its submission of those repairs to OATS was untimely, as they were made outside of the required deadline of five business days. **(FINRA Case #2017055179601)**
https://www.finra.org/sites/default/files/fda_documents/2017055179601%20Tourmaline%20Partners%2C%20LLC%20CRD%20154492%20AWC%20va%20%282021-1634516406238%29.pdf