SECURITIES OPERATIONS

REGULATORY UPDATE

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IN THIS ISSUE

SEC PROPOSES AMENDMENTS TO RULE 10b5-1 AND INSIDER TRADING

On January 13, 2022, the U.S. Securities and Exchange Commission ("SEC" or "Commission") published for comment a proposal to amend Rule 10b5-1 under the Securities Exchange Act of 1934 (the "Exchange Act") to enhance disclosure requirements and investor protections against insider trading. The proposal includes updates to Rule 10b5-1(c), which provides an affirmative defense to insider trading for parties that frequently have access to material non-public information, including corporate officers, directors, and issuers. The proposed amendments to Rule 10b5-1 would update the requirements for the affirmative defense, including imposing a cooling off period before trading can commence under a plan, prohibiting overlapping trading plans, and limiting single-trade plans to one trading plan per 12-month period. The proposed rules would also require directors and officers to provide written certifications that they are unaware of any material non-public information when they enter into the plans and expand the existing good faith requirement for trading under Rule 10b5-1 plans. The amendments would elicit more comprehensive disclosure about issuers' policies and procedures related to insider trading, and their practices around the timing of options grants and the release of material non-public information. A new table would require the reporting of any options granted within 14 days of the release of material non-public information and the market price of the underlying securities the trading day before and the trading day after the disclosure of the material non-public information. Insiders that report on Forms 4 or 5 would have to indicate via a new checkbox whether the reported transactions were made pursuant to a Rule 10b5-1 or other trading plan. Finally, corporate insiders subject to reporting requirement of Exchange Act Section 16 for gifts of securities that were previously permitted to be reported on Form 5 would be required to be reported on Form 4.

SEC Proposal Replacing Version Initially Issued on December 15, 2021:
https://www.sec.gov/rules/proposed/2022/33-11013.pdf
Press Release: https://www.sec.gov/news/press-release/2021-256
Fact Sheet: https://www.sec.gov/rules/proposed/2021/33-11013-fact-sheet.pdf
Comments Due: 45 days after publication in the Federal Register

SEC PROPOSES ENHANCEMENTS TO PRIVATE FUND REPORTING

On January 26, 2022, the SEC published for comment a proposal to amend Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds to require current reporting upon the occurrence of key events. The proposed amendments also decrease the reporting threshold for large private equity advisers and require these advisers to provide additional information to the SEC about the private equity funds they advise. Finally, the proposal would amend requirements concerning how large liquidity advisers report information about the liquidity funds they advise. The proposed amendments are designed to enhance the Financial Stability Oversight Counsel's ability to monitor systemic risk as well as bolster the SEC's regulatory oversight of private fund advisers and investor protection efforts.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/ia-5950.pdf
Press Release: https://www.sec.gov/news/press-release/2022-9
Fact Sheet: https://www.sec.gov/files/ia-5950-fact-sheet.pdf
Comments Due: 30 days after publication in the Federal Register

SEC PROPOSES TO INCLUDE SIGNIFICANT TREASURY MARKET PLATFORMS WITHIN REGULATION ATS

On January 26, 2022, the SEC published for comment a proposal to amend a rule which defines certain terms used in the statutory definition of "exchange" under Section 3(a)(1) of the Exchange Act to include systems that offer the use of non-firm trading interest and communication protocols to bring together buyers and sellers of securities. In addition, the Commission re-proposed amendments to Regulation ATS under the Exchange Act for alternative trading systems ("ATSs") to take into consideration systems that may fall within the definition of exchange because of the proposed amendments and operate as an ATS. The Commission also reproposed, with certain revisions, amendments to Regulation ATS for ATSs that trade government securities as defined under Section 3(a)(42) of the Exchange Act ("government securities") or repurchase and reverse repurchase agreements on government securities ("Government Securities ATSs") to: eliminate the exemption from compliance with Regulation ATS for an ATS that limits its securities activities to government securities or repurchase and reverse repurchase agreements on government securities ("repos"), and registers as a broker-dealer or is a bank; require Government Securities ATSs to file public revised Form ATS-N, which would be subject to a Commission review and effectiveness process, and would require a Government Securities ATS to disclose information about its manner of operations and the ATS-related activities of the registered broker-dealer or government securities broker or government securities dealer that operates the ATS and its affiliates; and apply the fair access rule to Government Securities ATSs that meet certain volume thresholds in U.S. Treasury Securities or in a debt security issued or guaranteed by a U.S. executive agency, or government-sponsored enterprise ("Agency Securities"). The Commission also proposed to amend Form ATS-N for NMS Stock ATSs, which would require existing NMS Stock ATSs to file an amendment to their existing disclosures and to require electronic filing of and to modernize Form ATS-R and Form ATS, which would require existing Form ATS filers to amend their existing disclosures. In addition, the Commission proposed to amend the Regulation ATS fair access rule to apply to Government Securities ATSs that, during at least four of the preceding six calendar months, had: (1) for U.S. Treasury Securities, three percent or more of the average weekly dollar volume traded in the U.S, and (2) for Agency securities, five percent or more of the average daily dollar volume traded in the U.S. Finally, the Commission re-proposed amendments to Regulation Systems Compliance and Integrity ("Regulation SCI") to apply it to ATSs that meet certain volume thresholds in U.S. Treasury Securities or Agency Securities.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/34-94062.pdf
Press Release: https://www.sec.gov/news/press-release/2022-10
Fact Sheet: https://www.sec.gov/files/34-94062-fact-sheet.pdf
Comments Due: 45 days after publication in the Federal Register

FINRA PROPOSES TO SUPPLEMENT RULE 2231 REGARDING CUSTOMER ACCOUNT STATEMENTS

On January 4, 2022, the SEC published for comment a Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to modify the proposed rule change SR-FINRA-2021-024 with Amendment No. 1 in response to the comment letters received. The amendment to FINRA Rule 2231 (Customer Account Statements) would add new Supplementary Materials .01 - .08, incorporate specified provisions from dual FINRA-NYSE temporary rules, and delete those temporary rules. Specifically, the proposed rule change would amend Rule 2231 to add new supplementary materials pertaining to compliance with FINRA Rule 4311 (Carrying Agreements), the transmission of customer account statements to other persons or entities, the use of electronic media to satisfy delivery obligations, and compliance with FINRA Rule 3150 (Holding of Customer Mail). Finally, the proposal would delete NYSE Rule 409T and NYSE Rule Interpretation 409T in their entirety on the basis that the underlying concepts in these provisions will have been included in Rule 2231, are duplicative of other rules, or are outdated.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-93897.pdf
Comments Due: February 14, 2022

FINRA AMENDS RULES TO CLARIFY APPLICATION TO SECURITY-BASED SWAPS

On January 6, 2022, the SEC published an order approving proposed rule changes to FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to clarify the application of its rules to security-based swaps ("SBS") following the Commission's completion of its rulemaking regarding SBS dealers and major SBS participants as modified by Amendment No. 1. In addition, on January 20, 2022, FINRA published Regulatory Notice 22-03 providing additional guidance on the newly adopted rule changes, including the effective dates of the amended rules: February 6, 2022 (Rules 0180, 4120 and 9610) and April 6, 2022 (Rules 4210, 4220 and 4240). New Rule 0180 replaces the expiring temporary Rule 0180 and generally applies FINRA rules to members' activities and positions with respect to SBS, with limited exceptions. FINRA also amended its financial responsibility and operational rules, including Rule 4120 (Regulatory Notification and Business Curtailment), to conform to the SEC's SBS-related capital, margin, and segregation requirements. Finally, FINRA has adopted a new SBS-specific margin rule, Rule 4240 (Security-Based Swap Margin Requirements), which replaces the expiring interim pilot program establishing margin requirements for credit default swaps with limited exceptions.

SEC Approval Order: https://www.sec.gov/rules/sro/finra/2022/34-93914.pdf
Regulatory Notice 22-03: https://www.finra.org/rules-guidance/notices/22-03
Attachment A: https://www.finra.org/sites/default/files/2022-01/sbs-amendments-notice-attachment-a.pdf

FINRA AMENDS SCHEDULE RELATING TO CONTINUING EDUCATION FEES

On January 7, 2022, the SEC published for comment a FINRA proposal, effective upon filing, that amends Section 4 of Schedule A to the FINRA By-Laws to: (1) revise the fee for the Regulatory Element of continuing education ("CE"); (2) establish the fee for individuals who elect to maintain their qualification following the termination of a registration category through the Maintaining Qualifications Program ("MQP"); and (3) make a technical change to clarify that the fee for failing to timely appear for a scheduled qualification examination appointment and for cancelling or rescheduling a qualification examination close to the scheduled appointment date equally applies to online administrations of qualification examinations. FINRA also revised the fee for completion of the Regulatory Element of the CE requirements from $55 to $18 annually, which will be implemented on January 1, 2023, to coincide with the effective date of the transition to an annual Regulatory Element requirement. Further, in conjunction with the amendments to adopt the MQP, FINRA is charging an annual fee of $100 to each MQP participant. The annual fee is a flat fee, regardless of the number of registrations for which an individual elects to remain qualified under the MQP and will be assessed at the time an eligible individual elects to participate in the MQP and thereafter annually each year that the individual continues in the MQP. This fee will be implemented on January 31, 2022, to coincide with the date that eligible individuals can begin making their election to participate in the MQP.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-93928.pdf

FINRA EXPANSION OF EXEMPTIONS FROM TRACE TO INCLUDE ATSs APPROVED

On January 12, 2022, the SEC issued an order approving a FINRA proposal to amend FINRA Rule 6732 (Exemption from Trade Reporting Obligation for Certain Transactions on an Alternative Trading System) to expand the scope of exemptions from the transaction reporting obligations of FINRA Rule 6730 (Transaction Reporting) that FINRA may grant to a member alternative trading system ("ATS"). Specifically, the amendments to Rule 6732 delete the current language in subparagraph (a)(1) of Rule 6732 that requires an exempted transaction to be between two FINRA members and replace it with the following: "The trade involves at least one member (other than the ATS) that meets the definition of 'Party to a Transaction." Rule 6732 was also amended to add paragraph (c) which provides that, with respect to a transaction between a member and a non-member on an ATS that is a "covered ATS," the ATS must provide to the member subscriber, and the member subscriber must report to Trade Reporting and Compliance Engine ("TRACE") using, the FINRA-assigned identifier for each non-FINRA member subscriber. An ATS that has received an exemption under Rule 6732 and that is a "covered ATS" must use the FINRA-assigned identifier to identify each non-FINRA member subscriber in the monthly transaction files that are required to be submitted to FINRA. FINRA has represented that it will announce the effective date of the rule change in a Regulatory Notice.

SEC Approval Order: https://www.sec.gov/rules/sro/finra/2022/34-93966.pdf

FINRA ISSUES GUIDANCE ON REIMBURSEMENT RATES REGARDING FORWARDING PROXY MATERIALS

On January 19, 2022, FINRA published Regulatory Notice 22-02, with immediate effectiveness, to provide guidance relating to recently approved amendments to FINRA Rule 2251 regarding rates of reimbursement for expenses incurred in processing and forwarding proxy and other issuer-related materials. These amendments conform Rule 2251 to provisions in the NYSE Rule 451 approved by the SEC. The amendments apply the Notice and Access fees set forth under the Rule to the distribution of investment company shareholder reports and further prohibit fees on accounts containing only shares that were transferred to the account holder by the member without charge. The Notice and Access fees will not be charged for any account with respect to which an investment company pays a Preference Management Fee in connection with a distribution of investment company shareholder reports. In calculating the rates at which the issuer will be charged Notice and Access fees for investment company shareholder report distributions, all accounts holding shares of any class of stock of the applicable issuer eligible to receive the same distribution will be aggregated in determining the appropriate pricing tier under Supplementary Material .01(a)(6). Further, notwithstanding any other provision of the Supplementary Material, no fee shall be imposed for a nominee account that contains only shares or units of the securities involved that were transferred to the account holder by the member at no cost.

Regulatory Notice 22-02: https://www.finra.org/rules-guidance/notices/22-02
Attachment A: https://www.finra.org/sites/default/files/2022-01/proxy-notice-attachment-a.pdf

LONGER ACTION PERIOD FOR FINRA PROPOSAL ON REPORTING TO TRACE

On January 20, 2022, the SEC published a notice to extend the period of Commission action on the FINRA proposal to amend Rule 6730 to require members to append modifiers to delayed Treasury spot trades and portfolio trades when reporting to FINRA's TRACE. The Commission designates March 7, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-FINRA-2021-030).

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-94011.pdf

FINRA EXTENDS REMOTE INSPECTIONS

On January 20, 2022, the SEC published for comment a FINRA proposal, effective upon filing, to extend temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020 and 2021, and Through June 30 of Calendar Year 2022) under FINRA Rule 3110 to include calendar year 2022 inspection obligations through December 31, 2022, within the scope of the Supplementary Material. The proposed additional six-month extension is meant to address the operational challenges resulting from the COVID-19 pandemic that many member firms continue to face in planning for and timely conducting, during the second half of calendar year 2022, the on-site inspection component of Rule 3110(c) (Internal Inspections) at locations requiring inspection in calendar year 2022.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-94018.pdf
Comments Due: February 16, 2022

COVERED AGENCY TRANSACTION REQUIREMENTS UNDER RULE 4210 APPROVED

On January 20, 2022, the SEC issued an order approving a FINRA proposal to amend the requirements for covered agency transactions under FINRA Rule 4210 as modified by Amendment No. 1. Revised FINRA Rule 4210 eliminates the two percent maintenance margin requirement that applies to non-exempt accounts pursuant to paragraph (e)(2)(H)(ii)e. This would eliminate the need for members to distinguish exempt account customers from other customers ("non-exempt accounts") for purposes of Covered Agency Transaction margin. As such, without regard to a counterparty's exempt or non-exempt account status, members would collect margin for each counterparty's excess mark to market loss, unless otherwise provided by the rule. The revised Rule also permits members to take a capital charge in lieu of collecting margin for excess net mark to market losses on Covered Agency Transactions. FINRA has designed these conditions and limitations to help protect the financial stability of members that opt to take capital charges while restricting the ability of the larger members to use their capital in lieu of collecting margin to compete unfairly with smaller members, subject to specified limits and conditions. Finally, the Rule revisions streamline, consolidate, and clarify the Covered Agency Transaction rule language.

SEC Approval Order: https://www.sec.gov/rules/sro/finra/2022/34-94013.pdf

FINRA REMINDS MEMBERS TO EXECUTE MARKETABLE CUSTOMER ORDERS PROMPTLY

On January 21, 2022, FINRA published Regulatory Notice 22-04 to remind member firms of their obligation to execute marketable customer orders fully and promptly considering the increasingly automated markets for NMS stocks. FINRA expects firms to regularly evaluate the thresholds they use to generate exceptions as part of their supervisory systems designed to achieve compliance with their "full and prompt" obligations. FINRA also reminds firms of their obligation to ensure that their supervisory systems are reasonably designed to achieve compliance with this obligation.

Regulatory Notice 22-04: https://www.finra.org/rules-guidance/notices/22-04

LONGER ACTION PERIOD FOR NASDAQ PROPOSAL ON ACQUISITION CONTRIBUTIONS TO ANOTHER ENTITY

On January 3, 2022, the SEC designated a longer period for Commission action on proceedings to determine whether to approve or disapprove a Nasdaq Stock Market LLC ("Nasdaq") proposal to modify Listing Rule IM-5101-2 to permit an acquisition company to contribute a portion of the amount held in its deposit account to a deposit account of a new acquisition company in a spin-off or similar corporate transaction. The SEC has designated March 10, 2022, as the date by which it shall either approve or disapprove the proposed rule change (File Number SRNASDAQ-2021-054).

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-93891.pdf

NASDAQ PROPOSES PRICING LIMITATION CHANGES FOR DIRECT LISTING PRIMARY OFFERINGS

On January 6, 2022, the SEC published for comment a Nasdaq proposal, modified by Amendment No. 2, to change certain pricing limitations for companies listing in connection with a Direct Listing primary offering in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. Amendment No. 2 supersedes the original filing, SR-NASDAQ-2021-045, in its entirety. Nasdaq proposes to clarify how the main provisions of Rules 4120(c)(8)(A) and (c)(9)(A) apply to a Direct Listing with a Capital Raise by restating the provisions of these rules in a clear and direct manner to make the rules easier to understand and apply. In the Amendment, Nasdaq proposes to modify the Initial Proposal to require that a company offering securities for sale in connection with a Direct Listing with a Capital Raise must register securities by specifying the quantity of shares registered, as permitted by Securities Act Rule 457(a). The proposal also clarifies that the price range in the preliminary prospectus included in the effective registration statement must be a bona fide price range in accordance with Item 501(b)(3) of Regulation S-K. Nasdaq also proposes to revise the certification process described in the Initial Proposal such that two certifications would be required in certain circumstances. Further, Nasdaq proposes to add to the operation of the Cross, in certain circumstances, a Post-Pricing Period. Specifically, if the actual price calculated by the Cross is not at or above the price that is 20% below the lowest price and at or below the price that is 20% above the highest price [sic] of the price range established by the issuer in its effective registration statement, Nasdaq will initiate a brief Post-Pricing Period following the calculation of the actual price. In the Amendment, Nasdaq proposes to prohibit market orders (other than by the company) from the opening of a Direct Listing with a Capital Raise. In addition, Nasdaq undertakes to disseminate, free of charge, the Current Reference Price, on a public website, such as Nasdaq.com, during the Pre-Launch Period and to indicate whether the Current Reference Price is within the price range established by the issuer in its effective registration statement. Nasdaq also proposes to adopt a new Price Volatility Constraint and disseminate information about whether the Price Volatility Constraint has been satisfied, which will indicate whether the security may be ready to trade. The Pre-Launch Period will continue until the Price Volatility Constraint has been satisfied. The Amendment will also impose specific requirements on Nasdaq members with respect to a Direct Listing with a Capital Raise. Nasdaq also proposes to provide that it will distribute, at least one business day prior to the commencement of trading of a security listing in connection with a Direct Listing with a Capital Raise, an information circular to its members that describes any special characteristics of the offering along with other informational requirements under Nasdaq Rules as noted in the proposal.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-93924.pdf

LONGER ACTION PERIOD FOR NASDAQ PILOT PROGRAM FOR MARKET-WIDE CIRCUIT BREAKERS IN RULE 7.12

On January 7, 2022, the SEC designated a longer period for Commission action on proceedings to determine whether to approve or disapprove a Nasdaq proposal to make its rules governing the operation of the Market-Wide Circuit Breakers mechanism permanent. The Commission is extending the 180-day time period for Commission action on the proposed rule change and designated March 19, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSE-2021-40).

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-93933.pdf

NASDAQ PROPOSES TO MODIFY EXCHANGE TRADED PRODUCT LISTING FEES

On January 11, 2022, the SEC published for comment a Nasdaq proposal, effective upon filing, modifying certain listing fees for exchange traded products ("ETPs") covered by Listing Rules 5930 and 5940, as well as modifying the Preamble to Company Listing Fees in Listing Rule 5901. The Rule change relocates the references to the fees for Linked Securities to Listing Rule 5940 such that Linked Securities will no longer be subject to the fees in Listing Rule 5930 and will instead be subject to the fees in Listing Rule 5940. For consistency and clarification, all references to Linked Securities and related Rule 5710 cites are also being deleted from the Preamble to Company Listing Fees in Listing Rule 5901 and updated language was added to the Preamble. Additionally, the introduction to Listing Rule 5940 was expanded to clarify the additional securities covered by the Rule. While these changes were effective upon filing, Nasdaq designated the amendments to be operative on January 1, 2022.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-93950.pdf
Comments Due: February 8, 2022

NASDAQ AMENDS NOM PRICING SCHEDULE AT OPTIONS 7

On January 18, 2022, the SEC published for comment a Nasdaq proposal, effective upon filing, amending the Nasdaq Options Market ("NOM") Pricing Schedule at Options 7, Section 2. Changes include (1) increases in the Fee to Remove Liquidity in Penny Symbols for Customers and Professionals, and (2) amendments to the qualifications for the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols to allow an alternative way to qualify for the rebate.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-93987.pdf
Comments Due: February 14, 2022

NASDAQ AMENDS PRICE LIST FOR NEW FIRM APPLICATIONS FOR BOND TRADING LICENSE

On January 18, 2022, the SEC published for comment a Nasdaq proposal, effective upon filing, amending its Price List to (1) extend a fee waiver for new firm application fees for applicants seeking only to obtain a bond trading license ("BTL") for 2022; and (2) waive the BTL fee for 2022. The fee changes became effective January 3, 2022. The waiver of the New Firm Fee is available only to applicants seeking approval as a new member organization, including carrying firms, introducing firms, or non-public organizations, which would be seeking to obtain a BTL at Nasdaq and not trade equities. Further, if a new firm that is approved as a member organization and has had the New Firm Fee waived converts a BTL to a full trading license within one year of approval, the New Firm Fee will be charged in full retroactively. Additionally, the BTL fee was $1,000 per year. The proposal amended the Price List to waive the BTL fee for 2022 for all member organizations.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-93992.pdf
Comments Due: February 14, 2022

NYSE EXCHANGES AMEND FEE SCHEDULES RELATED TO CRD

On January 5, 2022, the SEC published for comment a New York Stock Exchange LLC ("NYSE") and two NYSE American LLC ("NYSE American") proposals, each effective upon filling, amending their Price Lists with respect to regulatory fees related to the use of the Central Registration Depository ("CRD system") by non-FINRA members, but which are collected by FINRA. The fee changes were implemented on January 2, 2022. FINRA recently amended the fees assessed for use of the CRD system so, accordingly, NYSE and NYSE American amended their Price Lists to mirror the fee assessed by FINRA. Specifically, the Price Lists were amended to change certain fees charged to Non-FINRA Member Organizations for each initial Form U4 filed for the registration of a representative or principal from $100 to $125.

NYSE Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-93904.pdf
NYSE American Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-93901.pdf
NYSE American Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-93902.pdf

NYSE EXCHANGES EXTEND TEMPORARY AMENDMENTS TO RULES 9261 AND 9830

On January 6, 2022, the SEC published for comment a NYSE and a NYSE American proposal, both effective upon filling, extending the expiration date of the temporary amendments to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) as set forth in SR-NYSE-2021-76 and SR-NYSEAMER-2020-69, respectively, from December 31, 2021, to March 31, 2022, in conformity with recent changes by FINRA. Both proposals temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID-19 pandemic. The rule change does not make any changes to the text of Rules 9261 and 9830.

NYSE Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-93920.pdf
NYSE American Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-93917.pdf

SEC GRANTS PETITION FOR REVIEW OF FEES FOR FORWARDING PROXY MATERIALS

On January 7, 2022, the SEC published an order granting the petition of the NYSE to review the Division of Trading and Markets disapproval order released August 18, 2021, of the NYSE-proposed rule change (File No. SR-NYSE-2020-96) to amend its rules establishing maximum fee rates to be charged by member organizations for forwarding proxy and other materials to beneficial owners. The Commission established that any party to the action or other person may file a written statement in support of or in opposition to the disapproval order on or before February 3, 2022. It was also ordered that the automatic stay of delegated action pursuant to Commission Rule of Practice 431(e) was discontinued and the order disapproving the proposed rule change shall remain in effect.

Order Granting Petition for Review: https://www.sec.gov/rules/other/2022/34-93934.pdf

NYSE AMERICAN AMENDS EQUITES PRICE LIST AND FEE SCHEDULE

On January 13, 2022, the SEC published for comment a NYSE American proposal, effective upon filing, amending certain Standard Rates and requirements for transaction fees and credits that add and remove liquidity in securities at or above $1 and to reformat the section of the NYSE American Equities Price List and Fee Schedule setting forth transactions fees for all transactions other than transactions using Retail Order Rates, transactions in securities below $1, and transactions by Electronic Designated Market Makers ("eDMM") in assigned securities. Fee changes were effective January 3, 2022. The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing and liquidity-removing orders by offering further incentives for Exchange Traded Product ("ETP") holders to send additional adding and removing liquidity to NYSE American.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-93973.pdf
Comments Due: February 10, 2022

OCC CHANGES RULE CONCERNING CASH AND INVESTMENT MANAGEMENT

On January 6, 2022, the SEC published for comment an Options Clearing Corporation ("OCC") proposal that would: (1) formalize OCC's policy for safeguarding cash and related investments and (2) amend OCC's rules governing the use of the Clearing Fund in the event of the failure of a bank to meet a settlement obligation with OCC to ensure such access extends to the failure of an investment counterparty with whom OCC has invested cash deposited by Clearing Members in respect of margin or Clearing Fund requirements under the conditions identified in OCC Rule 1006(c) and (f), regardless of whether the investment counterparty is a bank. The Cash and Investment Management Policy is included in confidential Exhibit 5a of File Number SR-OCC-2021-014.

Notice Release: https://www.sec.gov/rules/sro/occ/2022/34-93916.pdf

LONGER ACTION PERIOD FOR DTC PROPOSAL TO ENHANCE CAPITAL REQUIREMENTS

On January 26, 2022, the SEC designated a longer period for Commission action on proceedings to determine whether to approve or disapprove The Depository Trust Company ("DTC") proposal to: (i) enhance DTC's capital requirements for participants; (ii) redefine DTC's Watch List and eliminate DTC's enhanced surveillance list; and (iii) make certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii). The Commission designates March 29, 2022, as the date by which the Commission shall either approve, disapprove or institute proceedings to determine whether to disapprove proposed rule change SR-DTC-2021-017.

Notice Release: https://www.sec.gov/rules/sro/dtc/2022/34-94067.pdf

Notable Enforcement Actions

This month's enforcement actions highlight the failure of broker-dealers to enforce reasonable supervisory systems, including written supervisory procedures, tailored to the risks associated with activity in customer accounts, including the sale of particular products. In addition, the actions spotlight the failure to identify and investigate red flags in a timely manner, which is especially important to maintaining an effective AML program.

A firm was censured, ordered to pay $300,000 in partial restitution to customers, and required to review and revise its supervisory system and written supervisory procedures ("WSPs"). Additionally, a principal of the firm was fined $5,000 and suspended from association with any FINRA member in any principal capacity for three months and ordered to attend and satisfactorily complete 24 hours of continuing education concerning supervisory responsibilities. FINRA imposed no fine against the firm in this case, and agreed to partial restitution after it considered, among other things, the firm's revenues, and financial resources. The firm and principal consented to findings that the firm failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to identify and prevent excessive trading in violation of FINRA Rules 3110 and 2010. FINRA Rule 3110(a)(5) mandates that a firm's supervisory system include the assignment of each registered person to an appropriately registered representative or principal responsible for supervising that person's activities. The firm did not designate a supervisor for all representatives and did not conduct supervision over all representatives. The findings stated that the WSPs tasked supervisors with reviewing trade blotters, account statements, exception reports and commission reports to monitor for excessive trading but did not explain how to identify such trading or how supervisors should respond to such trading. In addition, the firm's supervisors did not review exception reports, as required by the WSPs, in the exercise of their supervisory obligations. The firm and principal failed to reasonably supervise a registered representative who recommended excessive trading in customer accounts. Further, once the principal began directly supervising the representative, reasonable steps were not taken to monitor for excessive trading in the representative's customer accounts and exception reports for potential excessive trading, including significant losses in the customer accounts, were not reviewed. Although the principal reviewed certain commission information, he failed to recognize the representative's high commissions as a red flag, did not consider costs when reviewing the representative's trading activity and did not consider, or even understand, turnover rates and cost-to-equity ratios. The findings also included that the firm failed to report statistical and summary information to FINRA related to customer complaints about the representative's trading activity in accounts that were excessively traded. The complaints pertained to commissions charged, account losses and alleged unauthorized trading. **(FINRA Case # 2018059045003)**
https://www.finra.org/sites/default/files/fda_documents/2018059045003%20Traderfield%20Securities%2C%20Inc.%20CRD%2020130%20Mario%20Divita%20CRD%201504199%20AWC%20sl%20%282021-1640391617088%29.pdf

A firm was censured, fined $155,000, of which $30,000 is to be paid jointly and severally with the firm's Chief Compliance Officer, and ordered to retain a consultant to review and revise its anti-money laundering ("AML")- related procedures to appropriately tailor them to its microcap stock liquidation business model. The findings were made final upon appeal by SEC Enforcement staff in a National Adjudicatory Council ("NAC") decision. Additionally, the AML Compliance Officer ("AMLCO") of the firm was separately fined $20,000 and suspended in all capacities for 18 months. The NAC found numerous

aggravating factors apply to the firm's and the AMLCO's misconduct and affirmed the Hearing Panel's findings that their misconduct was egregious. The sanctions were based on findings that the firm and the AMLCO failed to establish and implement reasonable AML policies and procedures and failed to detect, investigate, and report, where appropriate, suspicious activity. The AML program deficiencies allowed misconduct to occur that affected market integrity and transparency, and the investing public. The findings stated that, among other findings, the firm and the AMLCO failed to comply with the firm's customer identification program ("CIP") to verify the identities of a registered representative's customers using non-documentary methods, as necessary. The findings also included that the firm and AMLCO failed to conduct adequate due diligence on a bank located in Belize and the customers it introduced by failing to perform the required risk-based due diligence on the accounts opened through the bank. Rather than conduct their own due diligence on the accounts introduced by the bank, they relied on the bank ensuring AML compliance for these customers, including fulfilling the CIP obligations with respect to the accounts opened for undisclosed customers. FINRA also found that the firm and the AMLCO failed to reasonably supervise a registered representative, including supervision over account opening documents and deposits, reviewing the representative's email, inquiring about the means of communication with the customers and whether the customers understood the representative's written communications (i.e., the representative communicated with customers in Mandarin and Chinese). While the representative had translated portions of the firm's account opening documents for the customers, the AMLCO took no steps to ensure the accuracy of these translations and asked no questions about whether the customers understood the portions of the documents the representative did not translate. Upon review of the representative's emails, the AMLCO conducted word searches in English which were ineffective to identify red flags in the representative's communications with the customers. The firm failed to adequately enforce and implement its AML procedures. The NAC decision was stated to serve as a Letter of Caution to the firm and the AMLCO relating to the past transactions with the Belize bank that has since been terminated. Significantly, despite numerous red flags, the AMLCO did no investigation for promotional activity while customers were trading and realizing substantial gains. The failures to investigate with respect to these liquidations lasted for almost a year and involved numerous customers and millions of dollars of liquidation transactions. Original allegations that the firm engaged in market manipulation, in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010 were dismissed. Allegations that the firm violated FINRA Rule 2010 by participating in the sale of restricted securities in contravention of Section 5 of the Securities Act of 1933 were also dismissed.

(FINRA Case #2016049565901)

https://www.finra.org/sites/default/files/fda_documents/2016049565901%20Glendale%20Securities%2C%20Inc.%20CRD%20123649%20et%20al%20NAC%20Decision%20sl%20%282021-1636158009326%29.pdf

A firm was censured and fined $60,000 for failure to fully and immediately display, route, execute or cancel customer Over the Counter (OTC) limit orders. Absent an exception, pursuant to FINRA Rule 6460, firms must display customer limit orders as soon as practicable after receipt, which under normal market conditions would require display no later than 30 seconds after receipt. The findings stated that the firm operated a trading desk where traders were required to handle some order flow manually, outside of automated systems, resulting in delays in the handling of certain OTC orders. As a result, the firm failed to fully and immediately display, route, execute or cancel 77 percent of sampled customer limit orders,

several of which were cancel/replace orders and constituted all of the cancel/replace orders in the sample. The findings also stated that the firm failed to reasonably supervise for cancel/replace orders not displayed immediately. Although the firm utilized exception reports to identify limit orders that were displayed more than 30 seconds after the order became eligible, the exception reports failed to capture cancel/replace orders. While the firm's procedures required a supervisory review of orders for compliance with FINRA Rule 6460, its written procedures failed to provide reasonable guidance and instructions to supervisors as to how to conduct such reviews. The findings concluded the firm failed to establish and maintain a supervisory system, including WSPs, that was reasonably designed to achieve compliance with Rule 6460 in violation of FINRA Rules 3110(a), 3110(b), and 2010. **(FINRA Case #2018059344901)**
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A firm was censured, fined $35,000 and required to revise its WSPs and establish and implement policies, procedures, and internal controls reasonably designed to address the deficiencies identified in the AWC. The findings concluded that the firm failed to establish and maintain a supervisory system and enforce WSPs reasonably designed to achieve compliance with FINRA Rule 2111 (the "suitability rule") in relation to the sale of non-traditional exchange traded products (NT-ETPs). FINRA Rule 3110(a) requires that members establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Rule 3110 also requires firms to investigate red flags of potential misconduct by its registered representatives. The findings stated that the firm's supervisory system and WSPs were not reasonably tailored to address the unique features and risks associated with NT-ETPs, including the risks associated with holding them for extended periods of time. Although the firm's WSPs required a higher level of due diligence and supervision for sales of NT-ETPs, the WSPs provided no guidance regarding how supervisors should determine whether an NT-ETP was suitable for customers. Moreover, the sole principal responsible for reviewing the daily trades of 25 registered representatives had no tools for identifying NT-ETPs. The firm had no alerts, exception reports, restrictions or approval process that would have detected when NT-ETPs were purchased and no method for monitoring the holding periods for NT-ETPs. The firm also failed to reasonably supervise a representative's recommendations of complex options trading strategies to customers. The firm was aware of red flags in the risky options trading but failed to reasonably investigate whether the trading was suitable for the customers. The firm did not review the frequency of options trading recommended by the representative to determine whether the size and frequency of options transactions were suitable for each customer. The firm has since effectively banned all sales of NT-ETPs and prohibited its representatives from offering complex options trading strategies. The findings concluded that the firm violated FINRA Rules 3110, 2010, and 2360(b)(20), and NASD Rule 3010 (for conduct prior to December 1, 2014). **(FINRA Case #2018058820103)**
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