SECURITIES OPERATIONS

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SEC ADOPTS FINAL MARKETING RULE FOR INVESTMENT ADVISERS

On December 22, 2020, the SEC announced that it had finalized reforms under the Investment Advisers Act of 1940 ("Investment Advisers Act") to modernize rules that govern investment adviser advertisements and payments to solicitors. The reforms allow advisers to provide investors with information as they choose among investment advisers and advisory services, subject to conditions that are reasonably designed to prevent fraud. The rule replaces the current advertising rule's broadly drawn limitations with principles-based provisions designed to accommodate the continual evolution and interplay of technology and advice, and includes tailored requirements for certain types of advertisements. For example, the rule will require advisers to standardize certain parts of a performance presentation to help investors evaluate and compare investment opportunities and will include tailored requirements for certain types of performance presentations. Advertisements that include third-party ratings will be required to include specific disclosures to prevent them from being misleading. The rule also will permit the use of testimonials and endorsements, which include traditional referral and solicitation activity, subject to certain conditions. The SEC also adopted related amendments to the investment adviser registration form and the books and records rule. In addition, the staff of the SEC's Division of Investment Management is planning to withdraw now obsolete no-action letters and other guidance addressing the application of the advertising and cash solicitation rules.

Final Rule: https://www.sec.gov/rules/final/2020/ia-5653.pdf
Press Release: https://www.sec.gov/news/press-release/2020-334
Effective Date: 60 days after publication in the Federal Register

SEC ADOPTS NEW RULES RELATED TO NMS MARKET DATA

On December 9, 2020, the SEC announced that it had adopted rules to modernize the infrastructure for the collection, consolidation and dissemination of market data for exchange-listed national market system stocks ("NMS market data"). The adopted rules update and significantly expand the content of NMS market data to better meet the needs of investors in the modern equity markets. The adopted rules also update the method by which NMS market data is consolidated and disseminated, by fostering a competitive environment and providing for a new decentralized model that promotes reduced latency and other new efficiencies. Historically, the national securities exchanges and the Financial Industry Regulatory Authority ("FINRA") acted jointly to collect, consolidate and disseminate information for NMS stocks. For each NMS stock, the self-regulatory organizations ("SROs") were required to provide specified NMS market data to exclusive securities information processors ("SIPs"). The SIPs then consolidated that information and made it available to the public. The SEC designed its new rules to modernize and improve upon that historical structure, by expanding the content of NMS market data and replacing the historical exclusive SIP model with a decentralized model of competing consolidators.

Final Rule: https://www.sec.gov/rules/final/2020/34-90610.pdf
Press Release: https://www.sec.gov/news/press-release/2020-311
Effective Date: 60 days after publication in the Federal Register

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SEC ADOPTS FINAL RULE ON FUND VALUATION PRACTICES

On December 3, 2020, the SEC announced that it had voted to adopt a new rule that establishes an updated regulatory framework for fund valuation practices. The rule is designed to clarify how fund boards of directors can satisfy their valuation obligations given recent market developments, including an increase in the variety of asset classes held by funds and an increase in both the volume and type of data used in valuation determinations. Specifically, the rule establishes requirements for satisfying a fund board's obligation to determine fair value in good faith for purposes of the Investment Company Act of 1940 ("Investment Company Act"). The rule requires a board or its valuation designee to assess and manage material risks associated with fair value determinations; select, apply and test fair value methodologies; and oversee and evaluate any pricing services used. The rule also permits boards to designate the determination of fair value to certain parties, subject to detailed conditions and oversight requirements. The rule requires a board's effective oversight of its valuation process to be active. In addition, certain policies and procedures, including updated recordkeeping procedures, must be adopted and implemented by boards in connection with the rule. The new rule represents the SEC's first comprehensive action on fund valuation practices in more than 50 years. The SEC noted that markets and fund investment practices have evolved considerably since that time, including that many funds now engage third-party pricing services to provide pricing information, particularly for thinly traded or more complex assets. In addition, significant regulatory developments have altered how boards, investment advisers, independent auditors, and other market participants address valuation under the federal securities laws. The SEC's new rule is aimed at recognizing and reflecting these changes, including the role that funds' investment advisers may play and the expertise they may provide.

Final Rule: https://www.sec.gov/rules/final/2020/ic-34128.pdf
Press Release: https://www.sec.gov/news/press-release/2020-302
Effective Date: 60 days after publication in the Federal Register

SEC ADOPTS CLEARING AGENCY RULE FOR SECURITY-BASED SWAP ENTITIES

On December 16, 2020, the SEC announced that it had adopted a rule to limit the potential for overlapping or duplicative regulation within its security-based swap ("SBS") regulatory regime. Specifically, the rule exempts certain activities of SBS execution facilities and SBS dealers from triggering the requirement also to register as a clearing agency, in line with similar exemptions for broker-dealers and national securities exchanges. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") created new regulatory categories of entities for the SBS market. The rule as adopted helps ensure that those entities are treated similarly to national securities exchanges and broker-dealers, their counterparts for securities other than SBSs. Both the exemptions from and exclusions to the definition of clearing agency are designed to ensure that the entities are subject to appropriate regulation.

Final Rule: https://www.sec.gov/rules/final/2020/34-90667.pdf
Press Release: https://www.sec.gov/news/press-release/2020-320
Effective Date: 60 days after publication in the Federal Register

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SEC TO BEGIN INTERNAL SBS COLLABORATIVE VENTURE

On December 18, 2020, the SEC announced the creation of a collaborative venture among several SEC divisions and offices that will be responsible for coordinating functions related to the regulation of SBSs and oversight of certain SBS entities that will be required to register with the SEC. The co-leads of the SBS collaborative venture will be the SEC's Divisions of Examinations as well as Trading and Markets. The venture will also include participation from staff across the SEC, including from the Division of Enforcement, the Division of Economic Risk and Analysis, the Office of International Affairs and the Office of the Chief Data Officer. According to the SEC, the venture will enable it to effectively monitor SBS transaction data for regulatory purposes, as it implements the SBS regulatory regime established by Title VII of the Dodd-Frank Act. Title VII of the Dodd-Frank Act established a comprehensive framework for regulating the over-the-counter swaps markets, with authority divided between the SEC and the Commodity Futures Trading Commission ("CFTC"). The SEC's role is to regulate and oversee the SBS market, while the CFTC oversees other types of swaps, including commodities, currency, and interest rate swaps. As previously reported, in December 2019, the SEC adopted the final rule amendments that enacted its broad SBS regulatory regime and triggered the compliance date for SBS entities to register with the SEC. Beginning in November 2021, SBS entities will be required to register with the SEC and will be subject to various requirements, which, among other things, include capital, margin and segregation. SBS entities will also be required to report their SBS transaction data, which will be used for various regulatory purposes, such as monitoring the build-up and concentration of risk exposures, preventing fraud, systemic risk supervision and resolving issues and positions after an institution fails.

Press Release: https://www.sec.gov/news/press-release/2020-323

SEC TO AMEND RULE 144

On December 22, 2020, the SEC announced that it had voted to propose an amendment to Rule 144 under the Securities Act of 1933 to revise the holding period determination for securities acquired upon the conversion or exchange of certain market-adjustable securities. The proposed amendment is intended to reduce the risk of unregistered distributions in connection with sales of those securities. Currently, Rule 144 deems securities acquired solely in exchange for other securities of the same issuer to have been acquired at the same time as the securities surrendered for conversion or exchange. Under the amendments, the holding period for the underlying securities acquired upon conversion or exchange of market-adjustable securities would not begin until conversion or exchange, meaning that a purchaser would need to hold the underlying securities for the applicable Rule 144 holding period before reselling them under Rule 144. In addition, the SEC voted to propose amendments to update and simplify the Form 144 filing requirements. The proposed amendments would mandate electronic filing of Form 144, eliminate the requirement to file a Form 144 with respect to sales of securities issued by companies that are not subject to the reporting requirements under the Securities Exchange Act of 1934 ("Exchange Act"), and amend the Form 144 filing deadline to coincide with the Form 4 filing deadline.

Proposed Rule: https://www.sec.gov/rules/proposed/2020/33-10911.pdf
Press Release: https://www.sec.gov/news/press-release/2020-336
Comments Due: 60 days after publication in the Federal Register

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SEC REQUESTS COMMENT REGARDING CUSTODY OF DIGITAL ASSET SECURITIES

On December 23, 2020, the SEC issued a statement and requested comment regarding the custody of digital asset securities by broker-dealers to encourage innovation around the application of Rule 15c3-3 of the Exchange Act to digital asset securities. The statement promulgates the SEC's position that, for a period of five years, a broker-dealer operating under the circumstances set forth in the statement will not be subject to an SEC enforcement action on the basis that the broker-dealer deems itself to have obtained and maintained physical possession or control of customer fully paid and excess margin digital asset securities for the purposes of paragraph (b)(1) of Rule 15c3-3. These circumstances, among other things, include that the broker-dealer limits its business to digital asset securities, establishes and implements policies and procedures reasonably designed to mitigate the risks associated with conducting a business in digital asset securities, and provides customers with certain disclosures regarding the risks of engaging in transactions involving digital asset securities. The SEC is requesting comment to gain additional insight into the evolving standards and best practices with respect to custody of digital asset securities. The SEC indicated that such insights would serve to inform any potential future SEC action in this space.

SEC Statement/Request for Comment: https://www.sec.gov/rules/policy/2020/34-90788.pdf
Press Release: https://www.sec.gov/news/press-release/2020-340
Effective Date: 60 days after publication in the Federal Register

SEC FORMALIZES FINHUB OFFICE

On December 3, 2020, the SEC announced that its Strategic Hub for Innovation and Financial Technology ("FinHub") would become a stand-alone office. FinHub was established within the SEC's Division of Corporation Finance in 2018 with the goal of encouraging responsible innovation in areas in the financial sector such as distributed ledger technology and digital assets, digital marketplace financing, artificial intelligence and machine learning. In addition, FinHub has served as a medium for engagement between market participants and the SEC, as well as other domestic and international regulators, on new potential approaches to capital formation, trading and other financial services within the scope of the federal securities laws. According to the SEC, its designation of FinHub as a stand-alone office will make it more capable of fostering innovation in emerging market technologies consistent with investor protection. The SEC named Valerie A. Szczepanik as the office's first Director. Szczepanik led FinHub prior to its formally becoming an SEC office and previously served as an Assistant Director in the SEC's Division of Enforcement's Cyber Unit.

Press Release: https://www.sec.gov/news/press-release/2020-303

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SEC ANNOUNCES NEW INVESTOR ADVISORY COMMITTEE MEMBERS

On December 3, 2020, the SEC announced the appointment of eight new members to its Investor Advisory Committee. The SEC's Investor Advisory Committee was established under the Dodd-Frank Act to, among other things, advise the SEC on regulatory priorities, regulation of securities products, trading strategies, fee structures, disclosure effectiveness, and initiatives to help protect investors and promote investor confidence and the integrity of the U.S. securities markets. The new members of the Investor Advisory Committee are: 1) Jamila A. Abston, Partner, Ernst & Young LLP; 2) Cambria Allen-Ratzlaff, Corporate Governance Director, UAW Retiree Medical Benefits Trust; 3) Brian A. Hellmer, Managing Director, Global Public Market Strategies at State of Wisconsin Investment Board; 4) Sandra J. Peters, Senior Head, Global Financial Reporting Policy, CFA Institute; 5) Paul Sommerstad, Partner, Cerity Partners; 6) Alice Stinebaugh, Social Studies Department Chair, Parkland School District, and Adjunct Instructor in Economics, University of Scranton; 7) Joanne Yoo, Managing Director, Development Partners International; 8) Leslie Van Buskirk, Administrator, Division of Securities at State of Wisconsin Department of Financial Institutions, who replaces Craig Goettsch, Director of Investor Education and Consumer Outreach, Iowa Insurance Division, as the statutory representative of state securities commissions. The Investor Advisory Committee's next meeting will be on March 11, 2021 and webcast on the SEC's website, www.sec.gov.

Press Release: https://www.sec.gov/news/press-release/2020-305

SEC NAMES NEKIA HACKWORTH JONES AS DIRECTOR OF ATLANTA REGIONAL OFFICE

On December 3, 2020, the SEC announced that Nekia Hackworth Jones had been named Director of the Atlanta Regional Office. Upon assumption of her role as Director, Jones will lead a staff of more than 100 enforcement attorneys, accountants, investigators, and compliance examiners involved in the investigation and prosecution of enforcement actions and the performance of compliance inspections in the Atlanta region, which covers Georgia, North Carolina, South Carolina, Tennessee and Alabama. Most recently, Jones was a Litigation Partner at Nelson Mullins Riley & Scarborough LLP, specializing in government investigations and white-collar criminal defense. Prior to that, Jones was an Assistant U.S. Attorney for the Northern District of Georgia, where she investigated complex fraud cases, including securities and investment fraud, mortgage fraud, tax fraud, healthcare fraud and public corruption. She also served as Senior Counsel in the U.S. Department of Justice's Office of the Deputy Attorney General. Jones earned her law degree at Harvard Law School and her MBA at Harvard Business School, and a Bachelor of Business Administration with distinction from Emory University.

Press Release: https://www.sec.gov/news/press-release/2020-304

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SEC ANNOUNCES SEVERAL SENIOR-LEVEL DEPARTURES, CHAIRMAN CLAYTON RESIGNS

In December 2020, the SEC announced several planned departures of key senior staff, including Robert Stebbins, the SEC's General Counsel, Stephanie Avakian, Director of the SEC's Division of Enforcement, Brett Redfearn, Director of the SEC's Division of Trading and Markets, S.P. Kothari, the SEC's Chief Economist and Director of the SEC's Division of Economic Risk and Analysis, and Sean Memon, the SEC's Chief of Staff. These individuals had tenures in their senior-level roles spanning from approximately two years to four years, and some had long careers with the SEC prior to serving in those roles. In addition, SEC Chairman Jay Clayton announced on December 23, 2020 that he had resigned effective immediately. While the SEC is officially non-partisan, departures of this kind are typical amid a transition of U.S. Presidential administrations. Each individual has planned to depart the SEC by the end of January 2021.

Stebbins Press Release: https://www.sec.gov/news/press-release/2020-309
Avakian Press Release: https://www.sec.gov/news/press-release/2020-314
Redfearn Press Release: https://www.sec.gov/news/press-release/2020-317
Kothari Press Release: https://www.sec.gov/news/press-release/2020-328
Memon Press Release: https://www.sec.gov/news/press-release/2020-339
Clayton Announcement: https://www.sec.gov/news/public-statement/clayton-2020-12-23

SEC APPROVES FINRA RULE REGARDING TRACE PROTOCOLS FOR CERTAIN ASSET-BACKED SECURITIES

On December 11, 2020, the SEC announced that it had approved a proposal by FINRA to modify the Trade Reporting and Compliance Engine ("TRACE") dissemination protocols for agency pass-through mortgage-backed securities or Small Business Administration ("SBA")-backed asset-backed securities traded in specified pool transactions. Under FINRA rules, a specified pool transaction is an agency pass-through mortgage-backed security or an SBA-backed asset-backed security requiring the delivery at settlement of a pool or pools that is identified by a unique pool identification number at the time of delivery. Currently, FINRA does not identify CUSIP codes of the specific bond transacted in a specified pool transaction. Instead, FINRA disseminates more general information about the bond and the pool underlying the bond, including approximations of information widely used to project cash flows and prepayment rates of the underlying mortgages, such as loan-to-value ("LTV") information. FINRA then groups the pools underlying the transacted bonds into cohorts, using data elements that are integral to describing and valuing the bonds based on these pools, such as the LTV ratio. FINRA stated that, since commencing public dissemination of specified pool transactions, it has continued to evaluate the relevant market and the value of the information disseminated to market participants. As a result of these efforts, which included discussions with market participants, FINRA is now proposing changes to the LTV rounding convention used in the public dissemination of specified pool transactions. Specifically, FINRA proposes to create more granular cohorts for LTV to increase the precision of the information regarding the LTV of the pool traded. The effective date of the rule change will be announced in an upcoming Regulatory Notice.

Approval Order: https://www.sec.gov/rules/sro/finra/2020/34-90646.pdf

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FINRA REQUESTS COMMENT ON ENHANCEMENTS TO TRACE REPORTING FOR U.S. TREASURY SECURITIES

On December 23, 2020, FINRA published Regulatory Notice 20-43 to request comment on potential enhancements to the information reported to FINRA's Trade Reporting and Compliance Engine ("TRACE") facility regarding transactions in U.S. Treasury securities. Specifically, FINRA is seeking comment on potential changes to TRACE reporting for U.S. Treasury securities that would require: 1) more granular execution timestamps; 2) a shortened trade reporting timeframe; 3) new indicators to identify non-alternative trading system ("ATS") trading venues and method of execution, the trading unit within a firm executing a trade, and the method used to clear and settle a transaction; 4) new modifiers to identify additional multi-leg transactions and whether a transaction is priced at the current market; 5) standardized price reporting; and 6) separate reporting of per-transaction ATS fees. In addition, FINRA is soliciting feedback on whether these proposed changes should apply to all TRACE-eligible securities uniformly.

FINRA Regulatory Notice 20-43: https://www.finra.org/sites/default/files/2020-12/Regulatory-Notice-20-43.pdf
Comments Due: February 22, 2021

FINRA TO MODIFY SECURITIES TRANSACTION CREDITS FOR FINRA/NASDAQ TRF PARTICIPANTS

On December 18, 2020, the SEC published for comment a FINRA proposal, effective on filing, to modify the securities transaction credits applicable to non-retail participants that use the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago (collectively, the "FINRA/Nasdaq TRFs"). FINRA members that report over-the-counter ("OTC") transactions in NMS stocks to a FINRA/Nasdaq TRF for public dissemination or media purposes may receive quarterly transaction credits that equal a percentage of FINRA/Nasdaq TRF revenues that are attributable to the members' transactions. The percentage of attributable revenue that a FINRA member may receive in the form of a transaction credit varies depending upon the member's market share on the FINRA/Nasdaq TRF. Specifically, under the proposed rule change, participants that achieve one percent or more, but less than two percent of market share on the FINRA/Nasdaq TRF in securities in Tape B, would be entitled to receive credits equal to 95 percent of attributable revenue in Tape B, rather than the 90 percent of attributable revenue to which they are entitled under the existing rule. This proposed change would result in participants with one or more percent, but less than two percent of market share on the FINRA/Nasdaq TRF in securities in all Tapes, receiving an identical percentage of attributable revenue. It would also result in the FINRA/Nasdaq TRF providing the same percentage of revenue sharing as does the FINRA/NYSE TRF for participants in this market segment.

Notice Release: https://www.sec.gov/rules/sro/finra/2020/34-90728.pdf
Comments Due: 21 days after publication in the Federal Register

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FINRA APPOINTS SCOTT W. ANDERSON AS HEAD OF MARKET REGULATION

On December 15, 2020, FINRA announced that it had appointed Scott W. Anderson as Head of Market Regulation and Transparency Services. Anderson began his career at the National Association of Securities Dealers ("NASD"), FINRA's predecessor organization, and has decades of experience working on complex legal and compliance matters relating to the regulation of securities markets. Since working at NASD, Anderson has held senior compliance and legal positions at UBS, Fidelity Investments and J.P. Morgan Chase. He also worked at The Nasdaq Stock Market LLC ("Nasdaq") as an attorney in the Market Structure and Regulatory Policy Group of the Office of the General Counsel. Anderson's appointment concludes a months-long search since the passing of Tom Gira, FINRA's long-time chief of Market Regulation. Anderson will join FINRA on January 25, 2020.

Press Release: https://www.finra.org/media-center/newsreleases/2020/finra-appoints-scott-w-anderson-head-market-regulation-and

SEC GRANTS ACCELERATED APPROVAL OF FINRA PROPOSAL TO DELETE OATS

On November 30, 2020, the SEC granted accelerated approval to a FINRA proposal to delete the Order Audit Trail System ("OATS") rules once members are effectively reporting to the Consolidated Audit Trail ("CAT"). The SEC also published for comment Amendment No. 1 to the proposal but nevertheless approved the proposal as modified by the amendment. FINRA noted in the filing that it and other national securities exchanges subject to the CAT National Market System Plan ("CAT NMS Plan"), which governs the transition to the CAT, have set out several conditions and requirements, including thresholds for CAT data accuracy and reliability, that need to be satisfied prior to the retirement of OATS. As the transition to the CAT continues, FINRA will monitor the data's accuracy and reliability in phases and will test for errors on an ongoing basis. According to the proposal, portions of OATS will be retired as the testing reveals that the data within the CAT are as accurate and reliable as the data within OATS such that the systems would be reasonably considered duplicative.

SEC Approval Order: https://www.sec.gov/rules/sro/finra/2020/34-90535.pdf

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NASDAQ TO AMEND RESERVE SIZE ORDER RULE

On December 23, 2020, the SEC published for comment a Nasdaq proposal to amend its rule at Equity 4, Section 4703(h), which describes orders with a "reserve size" attribute. Effectively, the proposed amendment clarifies the Nasdaq's existing practice with respect to the replenishments of reserve size orders. Under the original Nasdaq rules, reserve size was an order attribute that permitted a market participant to stipulate that an order type that is displayed may have its displayed size replenished from additional non-displayed size. Nasdaq established the reserve size with the intention that the order attribute would always add liquidity to the exchange upon replenishment. There was, however, a rare circumstance where a reserve size order could theoretically remove liquidity. This scenario was not within the scope of Nasdaq's original intention when it drafted the rule and, thus, Nasdaq proposed the amendment to eliminate the issue. Specifically, the rule, as amended, would post displayed orders without attempting to execute them in circumstances where the execution of the order would remove liquidity.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-90793.pdf
Comments Due: 21 days after publication in the Federal Register

NASDAQ TO EXEMPT PROXY PORTFOLIO SHARES FROM CERTAIN GOVERNANCE REQUIREMENTS

On December 1, 2020, the SEC published for comment a Nasdaq proposal, effective on filing, to provide an exemption from certain governance requirements, as well as to include proxy portfolio shares listed on Nasdaq to the list of products covered under Nasdaq's rule regarding limit up-limit down plans and trading halts. Currently, Nasdaq provides management investment companies exemptions to certain corporate governance requirements and provides that management investment companies that are derivative securities are also exempt from certain governance requirements, including audit committee requirements, in Nasdaq Rule 5600. Index fund shares, managed fund shares, and exchange traded fund shares are all considered derivative securities under Nasdaq rules and are eligible for these exemptions, in large part because they are subject to the accounting and auditing requirements of the Investment Company Act. Nasdaq's proposal provides equitable treatment under Nasdaq rules to proxy portfolio shares, as they are also subject to the same Investment Company Act accounting and auditing requirements.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-90542.pdf

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SEC INSTITUTES PROCEEDINGS FOR NASDAQ'S DIRECT LISTING RULE

On December 17, 2020, the SEC announced that it had instituted proceedings to determine whether to approve or disapprove a Nasdaq proposal to allow companies to list in connection with a direct listing with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading. Currently, direct listings on Nasdaq do not allow issuers to raise capital as they would in a traditional underwritten initial public offering. Since becoming popularized within the past few years and following regulatory approval of existing rules, issuers have used direct listings primarily to create a public market for their respective shares and to provide a liquidity source for existing owners of its shares. The proposed rule would allow an issuer that has not previously had its common equity securities registered under the Exchange Act to list its common equity securities on Nasdaq at the time of effectiveness of the registration statement and to sell shares on its own behalf in the opening auction, without the service of a broker-dealer underwriter or underwriting syndicate. The proposed rule change was initially published for comment in the Federal Register on September 21, 2020 and, on November 4, 2020, the SEC designated a longer time period within which to approve, disapprove or institute proceedings for the proposal.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2020/34-90717.pdf
Comments Due: January 13, 2021
Rebuttal Comments Due: January 27, 2021

SEC APPROVES NYSE AMENDMENT TO DIRECT LISTING RULE ALLOWING ISSUERS TO RAISE CAPITAL

On December 22, 2020, the SEC announced it had approved a proposal by the New York Stock Exchange LLC ("NYSE") that would allow an issuer, at the time of its initial listing on the NYSE, to conduct a primary offering as part of a direct listing without having to first conduct a firm commitment underwritten offering. Firm commitment offerings involve a broker-dealer or group of broker-dealers buying shares from an issuer at a discounted price and then reselling them to the public offering subscribers at the initial public offering price. The approval follows a series of amendments, petitions from interested parties, and stays spanning the late summer and fall of 2020. The NYSE first filed the proposal on December 11, 2019 and it received SEC approval on August 26, 2020. Following that, however, the Council of Institutional Investors filed a petition for review of the SEC's approval order, which resulted in a stay of the SEC's initial approval order. Upon another review of NYSE's proposal, the SEC found that the NYSE met its regulatory burden to show that the proposed rule change is consistent with the Exchange Act. The SEC noted in the filing that it has a legal obligation under the Exchange Act to approve proposed rule amendments that meet such a burden.

Approval Order: https://www.sec.gov/rules/other/2020/34-90768.pdf

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NYSE TO PROHIBIT SOME REIMBURSEMENT FOR FORWARDING PROXY MATERIALS TO BENEFICIAL OWNERS

On December 14, 2020, the SEC published for comment a NYSE proposal to prohibit its member organizations from seeking reimbursement from issuers for forwarding proxy and other materials to beneficial owners who received shares from their broker at no cost or at a price substantially less than the market price in connection with a promotion by the broker. Existing NYSE rules required member organizations that hold securities for beneficial owners in street name to solicit proxies from, and deliver proxy and issuer communication materials to, beneficial owners on behalf of issuers. For this service, issuers would reimburse NYSE member organizations for out-of-pocket, reasonable clerical, postage and other expenses incurred for a particular distribution. This reimbursement structure stems from SEC Rules 14b-1 and 14b-2. Recently, brokers providing retail brokerage services have developed a practice in which customers are given securities, typically in very small quantities, without charge as a commercial incentive. This has caused some issuers to incur significant distribution expenses while the beneficial owners of these very small positions in gifted or promotional shares represents an infinitesimal amount of the voting power.

Notice Release: https://www.sec.gov/rules/sro/nyse/2020/34-90653.pdf
Comments Due: January 8, 2021

NYSE TO MODIFY RULES RELATED TO EXCHANGE TRADED PRODUCTS

On December 22, 2020, the SEC published for comment a NYSE proposal to 1) establish generic listing standards for exchange traded products that are permitted to operate in reliance on Exchange Act Rule 6c-11, and 2) establish a new rule that would govern trading halts for exchange traded products listed on the NYSE. Currently, exchange traded products trade on the NYSE's Pillar trading platform on an unlisted trading privileges ("UTP") basis. The SEC recently adopted Rule 6c-11 under the Exchange Act to permit exchange traded products that are exchange traded fund ("ETF") shares and that satisfy certain conditions to operate without obtaining an exemptive order from the SEC. Since its adoption, Rule 6c-11 has streamlined procedures related to ETFs and has reduced that costs and time associated with bringing ETFs to market, which should enhance competition among ETF issuers and ultimately reduce costs for investors. The NYSE's proposal to establish generic listing standards for ETF shares is intended to be consistent with Rule 6c-11.

Notice Release: https://www.sec.gov/rules/sro/nyse/2020/34-90775.pdf
Comments Due: 21 days after publication in the Federal Register

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Notable Enforcement Actions

This month saw fewer enforcement actions from regulators but featured two actions related to operational failures that carried severe monetary penalties.

A firm was censured and agreed to pay a $65 million penalty to settle charges that it failed repeatedly to disclose the firm's receipt of payments from trading firms for routing customer orders to them. The firm also failed to satisfy its duty to seek the best reasonably available terms to execute customer orders. Between 2015 and late 2018, the firm made misleading statements and omissions in customer communications, including in FAQ pages on its website, about its largest revenue source: payment for order flow. One of the firm's selling points to customers was that trading was "commission free," but due in large part to its unusually high payment for order flow rates, the firm's customers' orders were executed at prices that were inferior to other brokers' prices. The firm falsely claimed in a website FAQ between October 2018 and June 2019 that its execution quality matched or beat that of its competitors, when in actuality, the firm provided inferior trade prices that, in the aggregate, deprived customers of approximately $34.1 million even after taking into account the savings from not paying a commission. In addition to the monetary penalty and censure, the firm agreed to retain an independent compliance consultant to review its policies and procedures relating to customer communications, payment for order flow, and best execution of customer orders, and to ensure that the firm is effectively following those policies and procedures. (**SEC File #3-20171**)
https://www.sec.gov/litigation/admin/2020/33-10906.pdf

A firm was censured and agreed to pay an $8 million penalty for compliance deficiencies relating to its delivery to clients of prices based on quotes it received from a single market participant, also known as single broker quotes. From at least 2015 through September 2020, the firm delivered to its clients prices based on single broker quotes while failing to adopt and implement policies and procedures reasonably designed to address the risk that these prices would not reasonably reflect the value of the securities. The firm's quality controls for prices based on single broker quotes were not effectively or consistently implemented. These failures impaired the firm's ability to assess the reliability of quotes it received from market participants and determine whether a quote provider was an accurate source of information. This conduct affected the prices that the firm provided for more than 40,000 fixed-income securities. Due to these failures, the firm at times provided clients with prices based on single broker quotes that were inconsistent with the nature of, and that did not reasonably reflect the value of, certain securities. The firm also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Investment Advisers Act and its rules. (**SEC File #3-20164**)
https://www.sec.gov/litigation/admin/2020/ia-5643.pdf

A firm was censured and fined $125,000 for failing to comply with its Uniform Application for Securities Industry Registration or Transfer ("Form U4") and Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting obligations by failing to timely file Forms U4 and Forms U5 relating to reportable customer complaints and an unsatisfied judgment, and failing to file Forms U4 relating reportable customer complaints. The findings state that the firm knew about these events but was between one month and two years late in disclosing them. The firm

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also failed to report or reported late statistical and summary information for written customer complaints, reported late a settlement of a customer's claim against one of its associated persons for sales practice violations, and submitted inaccurate or incomplete filings required by FINRA Rule 4530(d). The findings also include that the firm failed to enforce its written supervisory procedures ("WSPs") designed to achieve compliance with reporting requirements for Form U4 and U5 amendments and FINRA Rule 4530 filings. The firm failed to identify the communication at issue as a customer complaint or incorrectly determined that a customer complaint was not a reportable event, failed to timely review and process customer complaints in accordance with firm procedures, and entered the wrong problem code or failed to identify the subject security in a FINRA Rule 4530 filing. In addition, the firm failed to establish, maintain and enforce WSPs reasonably designed to achieve compliance with Section 10(b) of the Exchange Act and Rule 10b-9 thereunder regarding contingency offerings. Although the firm maintained WSPs addressing contingency offerings, these written procedures were limited in that they only covered escrow requirements and the return of funds where a contingency was not met by the closing date. The firm's written procedures failed to address circumstances involving material changes to an offering such as the extension of an offering, a change in the contingency amount or a change in the structure. The written procedures also were silent on non-bona fide sales, which are prohibited absent required disclosures. (**FINRA Case #2017053208002**)
https://www.finra.org/sites/default/files/fda_documents/2017053208002%20National%20Securities%20Corporation%20CRD%207569%20AWC%20sl%20%282020-1606522803229%29.pdf

A firm was censured and fined $50,000 for failing to establish and implement anti-money laundering ("AML") and Customer Identification Program ("CIP") compliance programs reasonably designed to detect and cause the reporting of potentially suspicious transactions. A principal of the firm was also fined $10,000 and suspended from association with any broker-dealer in any principal capacity for one month. Specifically, the firm, the suspended principal, and the firm's AML compliance officer ("AMLCO") did not take reasonable steps to establish and implement an AML program tailored to the firm's new business lines. Although the AML procedures listed types of securities transactions that could be considered "red flags," there were no procedures as to how the firm would review for red flags related to its low-priced securities business. Further, the firm failed to reasonably train its employees regarding how to conduct reviews for suspicious transactions. The firm's review for potentially suspicious transactions was limited to a manual review, which was unreasonable given the growth and complexity of the firm's new international business lines. The suspended principal was aware that the firm's AMLCO had failed to reasonably discharge his responsibility to implement a surveillance system to monitor for suspicious activity, but failed to promptly act to resolve the deficiencies. With respect to its CIP, the firm relied on a third-party program, offered through its clearing firm, to satisfy its CIP requirements, but did not establish reasonably designed procedures related to the firm's use of the program, including how information the firm collected should be reviewed and what to do in the event the system flagged or rejected an account. The firm also did not maintain records of accounts that the system flagged as needing further review, or otherwise document how it responded to flagged or rejected accounts. Further, independent audit reports repeatedly noted the firm's failure to obtain valid picture identification and failure to maintain documentation of review. Although the firm's suspended principal was aware of these reports, he did not take reasonable steps to improve the firm's CIP procedures. The findings also include that the firm failed to establish and maintain a

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supervisory system reasonably designed to achieve compliance with securities laws and regulations, including failing to establish and implement WSPs tailored to its business. In addition, the firm did not have a system, including written procedures, designating principals to carry out the supervisory responsibilities of the firm for its various business lines. The firm failed to conduct testing of its supervisory control system for one calendar year and failed to create an annual report documenting its process for establishing, maintaining, reviewing, testing and modifying the firm's compliance policies. In addition to the fine, censure, and one-month suspension of its principal, the firm was required to engage an independent consultant to conduct a comprehensive review of the adequacy of its policies, systems and procedures, including but not limited to its AML procedures relating to detecting and causing the reporting of suspicious transactions and its CIP procedures.
(**FINRA Case #2017052478902**)
https://www.finra.org/sites/default/files/fda_documents/2017052478902%20Planner%20Securities%20LLC%20CRD%2036866%20Humberto%20Santos%20CRD%202855514%20AWC%20sl.pdf

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