SECURITIES OPERATIONS

REGULATORY UPDATE

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IN THIS ISSUE

SEC TO AMEND RULES RELATED TO 10b5-1 INSIDER TRADING PLANS

On December 15, 2021, the U.S. Securities and Exchange Commission ("SEC" or "Commission") announced proposed amendments to Rule 10b5-1 under the Securities Exchange Act of 1934 ("Exchange Act") to enhance disclosure requirements and investor protections against insider trading. The proposal included 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 could commence under a plan, prohibiting overlapping trading plans, and limiting single-trade plans to one trading plan per 12-month period. In addition, the proposed rules would require directors and officers to furnish written certifications that they are not aware of any material non- The future of investor communications has been rewritten by the pandemic. public information when they enter into the plans, and would expand the existing good faith requirement for trading under Rule 10b5-1 plans. The amendments also 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 report 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.

Comments Due: 45 days after publication in the Federal Register
Proposed Rule: https://www.sec.gov/rules/proposed/2021/33-11013.pdf
Fact Sheet: https://www.sec.gov/rules/proposed/2021/33-11013-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2021-256

SEC PROPOSES AMENDMENTS TO RULES REGARDING STOCK BUYBACK DISCLOSURE REQUIREMENTS

On December 15, 2021, the SEC announced that it had proposed amendments to its rules regarding disclosure about an issuer's repurchases of its equity securities, often referred to as stock buybacks. The proposed rules would require an issuer to provide a new Form SR before the end of the first business day following the day the issuer executes a stock buyback. Form SR would require disclosure identifying the class of securities purchased, the total amount purchased, the average price paid, as well as the aggregate total amount purchased on the open market in reliance on the safe harbor in Exchange Act Rule 10b-18 or pursuant to a plan that is intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c). In addition, the proposed amendments would require an issuer to disclose: 1) the objective or rationale for the share repurchases and the process or criteria used to determine the repurchase amounts; 2) any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions; and 3) whether the issuer is making its repurchases pursuant to a plan that it intends to satisfy the affirmative defense conditions of the Exchange Act.

Comments Due: 45 days after publication in the Federal Register
Proposed Rule: https://www.sec.gov/rules/proposed/2021/34-93783.pdf
Fact Sheet: https://www.sec.gov/rules/proposed/2021/34-93783-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2021-257

SEC TO MODIFY MONEY MARKET FUND RULES

On December 15, 2021, the SEC announced that it had proposed amendments to certain rules that govern money market funds under the Investment Company Act of 1940 ("Investment Company Act"). In March 2020, growing economic concerns about the impact of the COVID-19 pandemic led investors to reallocate their assets into cash and short-term government securities. Prime and tax-exempt money market funds, particularly institutional funds, experienced large outflows, which contributed to stress on short-term funding markets. According to the SEC, its proposed amendments are designed, in part, to address concerns about prime and tax-exempt money market funds highlighted by these events. Specifically, the proposed amendments would increase liquidity requirements for money market funds to provide a more substantial liquidity buffer in the event of rapid redemptions. The proposed amendments also would remove provisions in the current rule permitting or requiring a money market fund to impose liquidity fees or to suspend redemptions through a gate when a fund's liquidity drops below an identified threshold. To address concerns about redemption costs and liquidity, the proposal would require institutional prime and institutional tax-exempt money market funds to implement swing pricing policies and procedures that would require redeeming investors, under certain circumstances, to bear the liquidity costs of their redemptions.

Comments Due: 60 days after publication in the Federal Register
Proposed Rule: https://www.sec.gov/rules/proposed/2021/ic-34441.pdf
Fact Sheet: https://www.sec.gov/rules/proposed/2021/ic-34441-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2021-258

SEC PROPOSES NEW RULES TO COMBAT FRAUD IN SECURITY-BASED SWAPS TRANSACTIONS

On December 15, 2021, the SEC announced proposed rules to prevent fraud, manipulation and deception in connection with security-based swaps ("SBSs") transactions, to prevent undue influence over the chief compliance officer ("CCO") of SBS dealers and major SBS participants (collectively, "SBS Entities"), and to require any person with a large SBS position to publicly report certain information related to the position. Specifically, the proposed new Rule 9j-1 would prohibit fraudulent, deceptive or manipulative conduct in connection with all transactions in SBSs, including misconduct in connection with the exercise of any right or performance of any obligation under an SBS. Further, proposed new Rule 15Fh-4(c) would prohibit personnel of an SBS Entity from taking any action to coerce, mislead or otherwise interfere with the SBS Entity's CCO. Finally, proposed new Rule 10B-1 would require any person, or group of persons, who owns an SBS position that exceeds the threshold amount set by the rule to promptly file with the SEC a statement containing the information required by Schedule 10B on the SEC's EDGAR filing system. The filings will be publicly available. According to the SEC, such disclosure could provide relevant parties with advance notice that certain market participants are building large SBS positions and could facilitate risk management and inform pricing of SBSs.

Comments Due: 45 days after publication in the Federal Register
Proposed Rule: https://www.sec.gov/rules/proposed/2021/34-93784.pdf
Fact Sheet: https://www.sec.gov/rules/proposed/2021/34-93784-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2021-259

SEC FINALIZES RULES RELATING TO THE HOLDING FOREIGN COMPANIES ACCOUNTABLE ACT

On December 2, 2021, the SEC announced that it had adopted amendments to finalize rules implementing the submission and disclosure requirements in the Holding Foreign Companies Accountable Act ("HFCAA"). The rules apply to registrants the SEC identifies as having filed an annual report with an audit report issued by a registered public accounting firm that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board ("PCAOB") is unable to inspect or investigate ("Commission-Identified Issuers"). The final amendments require Commission-Identified Issuers to submit documentation to the SEC establishing that, if true, it is not owned or controlled by a governmental entity in the public accounting firm's foreign jurisdiction. The amendments also require that a Commission-Identified Issuer that is a "foreign issuer," as defined in Exchange Act Rule 3b-4, provide certain additional disclosures in its annual report for itself and any of its consolidated foreign operating entities. Further, the release provides notice regarding the procedures the SEC has established to identify issuers and to impose trading prohibitions on the securities of certain Commission-Identified Issuers, as required by the HFCAA. The SEC will identify Commission-Identified Issuers for fiscal years beginning after December 18, 2020. A Commission-Identified Issuer will be required to comply with the submission and disclosure requirements in the annual report for each year in which it was identified. If a registrant is identified as a Commission-Identified Issuer based on its annual report for the fiscal year ended December 31, 2021, the registrant will be required to comply with the submission or disclosure requirements in its annual report filing covering the fiscal year ended December 31, 2022.

Final Rule: https://www.sec.gov/rules/final/2021/34-93701.pdf
Fact Sheet: https://www.sec.gov/files/34-93701-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2021-250

SEC UPDATES LIST OF PROBLEMATIC UNREGISTERED SOLICITING FIRMS

On December 1, 2021, the SEC announced that it had updated its list of unregistered entities that use misleading information to solicit primarily non-U.S. investors, adding 82 soliciting entities, eight impersonators of genuine firms, and one bogus regulator. The SEC publishes this list of soliciting entities that have been the subject of investor complaints, known as the Public Alert: Unregistered Soliciting Entities ("PAUSE") list, to enable investors to better inform themselves and avoid being a victim of fraud. The latest additions to the list are firms that the SEC's staff found were providing inaccurate information about their affiliation, location or registration. Under U.S. securities laws, firms that solicit investors generally are required to register with the SEC and meet minimum financial standards and disclosure, reporting and recordkeeping requirements. In addition to alerting investors to firms falsely claiming to be registered, the PAUSE list flags those impersonating registered securities firms and bogus regulators who falsely claim to be government agencies or affiliates. As previously reported, the PAUSE list is periodically updated by the SEC's Office of Market Intelligence, in coordination with the SEC's Office of Investor Education and Advocacy and the SEC's Office of International Affairs.

PAUSE List Latest Additions: https://www.sec.gov/files/pause-list-2021-12.pdf
Press Release: https://www.sec.gov/news/press-release/2021-247

SEC PUBLISHES REPORT ON CAPITAL RAISING IN 2021

On December 9, 2021, the SEC announced that its Office of the Advocate for Small Business Capital Formation ("OASB") had published its 2021 Annual Report, which details how entrepreneurs and investors are building companies together from start-ups to small public companies. The SEC's OASB was created as an independent office in January 2019 pursuant to Congressional legislation to advance the interests of small businesses and their investors, both within the SEC and in the capital markets. Martha Legg Miller, Director of the SEC's OASB, noted in the report that 2021 was a "banner year" for capital raising in the aggregate, with a record number of initial public offerings and strong performance in the private markets, but that entrepreneurs and small businesses still face significant hurdles in raising adequate capital. The SEC contended that its report is a comprehensive resource on the dynamics of capital raising in communities across the country that highlights the advocacy work of the SEC's OASB during fiscal year 2021, shares policy recommendations, and provides data on small business capital formation in: 1) small and emerging businesses; 2) mature and later-stage businesses; 3) small public companies; 4) women-owned businesses and investors; 5) minority-owned businesses and investors; 6) natural disaster areas; and 7) rural communities. The SEC's OASB will host its third annual "Capital Call" on January 19, 2022, which will be a virtual public event where participants can ask questions about the report and share perspectives on capital raising.

SEC OASB Report: https://www.sec.gov/files/2021-OASB-Annual-Report.pdf
SEC's OASB Capital Call Information: https://seccapitalcall.eventbrite.com/
Press Release: https://www.sec.gov/news/press-release/2021-254

SEC COMMISSIONER ROISMAN TO RESIGN

Through a public statement issued on December 20, 2021, SEC Commissioner Elad Roisman announced that he had informed President Joseph Biden of his intention to resign as SEC Commissioner by the end of January 2022. "Serving the American people as a Commissioner and an Acting Chairman of [the SEC] has been the greatest privilege of my professional life," said Roisman. "It has been the utmost honor to work alongside my extraordinary SEC colleagues, who care deeply about investors and our markets. Over the next several weeks, I remain committed to working with my fellow Commissioners and the SEC's incredible staff to further our mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation." Roisman's statement did not indicate his future professional plans. Following Roisman's statement, SEC Chairman Gary Gensler issued his own public statement, in which he said, "I'd like to thank Commissioner Roisman for his dedicated service to the Commission and to the American public, both as a Commissioner and as Acting Chairman. While we didn't always agree on policy matters, I've come to rely on his judgment and expertise, and I have enjoyed a positive working relationship with him."

Roisman's Public Statement: https://www.sec.gov/news/statement/roisman-20211220
Gensler's Public Statement: https://www.sec.gov/news/statement/gensler-statement-roisman-departure-122021

SEC NAMES GRIMES AS CHIEF ADMINISTRATIVE LAW JUDGE

On December 17, 2021, the SEC announced that James E. Grimes had been named the agency's Chief Administrative Law Judge. Grimes will lead the SEC's Office of Administrative Law Judges that conducts hearings, issues initial decisions, and adjudicates matters in administrative proceedings before the agency. Grimes became an SEC Administrative Law Judge in 2014 after spending 13 years in the Civil Division at the U.S. Department of Justice, where he served as a trial attorney and a senior litigation counsel representing government agencies and officers before federal district and appellate courts. Grimes began his career with the Navy Judge Advocate General ("JAG") Corps, where he served as a trial defense counsel defending service members in courts-martial and as an appellate counsel representing the government before military appellate courts. Grimes graduated Phi Beta Kappa and cum laude in 1992 from Miami University in Ohio, and he graduated with honors from The Ohio State University College of Law in 1995.

Press Release: https://www.sec.gov/news/press-release/2021-263

SEC APPOINTS BIRDTHISTLE AS DIRECTOR OF INVESTMENT MANAGEMENT

On December 21, 2021, the SEC announced that William A. Birdthistle had been appointed as Director of the SEC's Division of Investment Management. Birdthistle, currently a professor at the Chicago-Kent College of Law, joined the faculty there in 2006, and he earned the school's Excellence in Teaching Award in 2010. He also has served as a visiting professor of law at the University of Chicago Law School, where he won the Award for Teaching Excellence in 2019 for teaching securities regulation. His research has explored investment funds, securities regulation, and corporate governance, and he has served as counsel of record on multiple amicus briefs to the U.S. Supreme Court. Prior to academia, he practiced law at Ropes & Gray in Boston, MA for five years as a corporate associate in the firm's investment management practice. Birdthistle received his J.D. from Harvard Law School, where he served as managing editor of the Harvard Law Review, and received a B.A. summa cum laude in English and psychology from Duke University.

Press Release: https://www.sec.gov/news/press-release/2021-268

SEC TAPS NEW SENIOR LEADERSHIP IN MUNICIPAL SECURITIES OFFICE AND PUBLIC FINANCE ABUSE UNIT

On December 3, 2021, the SEC announced that it had chosen Ernesto A. Lanza as Acting Director of the SEC's Office of Municipal Securities ("OMS"). Lanza, who had served as Senior Counsel to the SEC's OMS Director since 2019, replaced Rebecca J. Olsen, who was named Deputy Chief for the SEC's Division of Enforcement's Public Finance Abuse ("PFA") Unit. Prior to joining the SEC in 2019, Lanza was in private practice with a focus on public finance matters related to securities law, disclosure, and market structure issues. He previously served as the Deputy Executive Director of the Municipal Securities Rulemaking Board ("MSRB"), where he led a number of policy initiatives, including the launch of the Electronic Municipal Market Access ("EMMA") system. Prior to that, Lanza was the MSRB's Chief Legal Officer and General Counsel. Olsen became head of OMS in September 2018 and previously served as the OMS's Deputy Director, Chief Counsel, and attorney fellow.

Press Release: https://www.sec.gov/news/press-release/2021-251

FINRA MODIFIES PROXY FORWARDING RULES TO KEEP CONSISTENT WITH RECENT NYSE RULEMAKING

On December 14, 2021, the SEC published for comment a proposal by the Financial Industry Regulatory Authority, Inc. ("FINRA") to amend the provisions of FINRA Rule 2251 (Processing and Forwarding of Proxy and Other Issuer-Related Materials) relating to seeking reimbursement from issuers for forwarding proxy and other materials, and to make minor conforming revisions. FINRA Rule 2251 requires FINRA members to transmit proxy materials and other communications to beneficial owners of securities and limits the circumstances in which FINRA members may vote proxies without instructions from those beneficial owners. The Supplementary Material under FINRA Rule 2251 sets forth the rate reimbursement provisions pursuant to which FINRA members are entitled to receive fees in connection with the rule's forwarding obligations. FINRA has previously indicated that, in the interest of ensuring regulatory clarity and harmonization with respect to proxy rate reimbursement, it intends to conform the rate reimbursement provisions of FINRA Rule 2251 with the New York Stock Exchange ("NYSE") provisions in this area. Consistent with this approach, FINRA proposed amendments to its Rule 2251 Supplementary Material in accordance with rulemakings by the NYSE that have amended certain provisions under NYSE rules.

Comments Due: January 10, 2022
Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-93769.pdf

FINRA REQUESTS COMMENT ON PROPOSED AMENDMENTS TO RULE 3240

On December 13, 2021, FINRA published Regulatory Notice 21-43 to request comment on its proposed amendments to FINRA Rule 3240 (Borrowing from or Lending to Customers). In August 2019, FINRA launched a retrospective review that, among other things, sought input on the effectiveness of Rule 3240. Based on feedback received during the review, FINRA proposed to amend Rule 3240 to: 1) emphasize that the rule generally prohibits registered persons from entering into borrowing or lending arrangements with their customers; 2) clarify that the rule applies to borrowing or lending arrangements that pre-exist the broker-customer relationship; 3) extend the rule to prohibit entering into borrowing or lending arrangements within six months after the broker-customer relationship ends; 4) extend the rule to prohibit borrowing or lending arrangements with persons related to either the registered person or the customer, such as an arrangement between the registered person and the customer's spouse or between the registered person's outside business and the customer; 5) modernize the "immediate family" definition; 6) narrow the scope of the "personal relationship" exception; and 7) provide factors for evaluating whether an arrangement is within the "personal relationship" or "business relationship" exceptions.

Comments Due: February 14, 2022
Regulatory Notice 21-43: https://www.finra.org/sites/default/files/2021-12/Regulatory-Notice-21-43.pdf

FINRA AMENDS TRACE REPORTING RULES FOR DELAYED TREASURY SPOT AND PORTOLIO TRADES

On December 1, 2021, the SEC published for comment a FINRA proposal to amend FINRA Rule 6730 to require members to append modifiers to identify delayed Treasury spot and portfolio trades when reporting to FINRA's Trade Reporting and Compliance Engine ("TRACE"). The proposed rule amendments came in response to a February 2020 recommendation from the SEC's Fixed Income Market Structure Advisory Committee ("FIMSAC"). Specifically, the FIMSAC recommended that FINRA amend its TRACE reporting rules to require members to: 1) identify corporate bond trades where the price of the trade is based on a spread to a benchmark U.S. Treasury Security that was agreed upon earlier in the day, referred to as a delayed Treasury spot trade, and report the time at which the spread was agreed upon; and 2) identify corporate bond trades that are part of a larger portfolio trade. Broadly, FINRA proposed to adopt the FIMSAC recommendations into its TRACE reporting rules and will append modifiers to identify both delayed Treasury spot trades and portfolio trades, with modifications to the portfolio trade provision to clarify and simplify its conditions based on feedback received from public comment.

Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-93699.pdf

NASDAQ WITHDRAWS PROPOSED RULE ON CAT FEES

On December 17, 2021, the SEC published notice that The Nasdaq Stock Market LLC ("Nasdaq") had withdrawn its proposed rule amendments related to the National Market System ("NMS") Plan governing the Consolidated Audit Trail ("CAT"). The proposal included a revised funding model for the CAT's operation and the establishment of a fee schedule for CAT participants and industry members. The revised funding model proposed that the CAT fees applicable to participants and industry members for the relevant quarter would be designed to cover the total CAT costs associated with developing, implementing and operating the CAT for the relevant quarter. The funding model would have implemented a bifurcated funding model, where 25% and 75% of these costs would have been borne by participants and industry members, respectively. Each industry member would have paid a CAT fee calculated by its message traffic percentage of the total message traffic of all industry members during the relevant time period by the industry member allocation, subject to certain market maker message traffic discounts, and minimum and maximum limitations. The original proposal was published by the SEC for comment in May 2021. The SEC later suspended the proposed rule amendments on June 17, 2021, and instituted proceedings to determine whether to approve or disapprove the proposed rule amendments. On October 27, 2021, the SEC designated a longer period within which to conclude proceedings regarding the proposed rule changes. The SEC stated in its notice that, prior to Nasdaq's withdrawal of the proposed rule changes, it had received no public comments on the proposal.

Notice Release: https://www.sec.gov/rules/sro/bx/2021/34-93814.pdf

NASDAQ MODIFIES FEE SCHEDULE AT EQUITY 7, SECTION 118

On December 17, 2021, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend its fee schedule at Equity 7, Section 118 to add a new supplemental credit in Tapes A, B and C for displayed quotes and orders, other than supplemental orders or designated retail orders, that provide liquidity. Specifically, Nasdaq proposed to add a supplemental credit of $0.0001 per share executed to Tapes A, B and C available to a member that: 1) increases its shares of liquidity provided in all securities by at least 30% as a percentage of consolidated volume during the month relative to the month of October 2021; and 2) has shares of liquidity provided of at least 15 million average daily volume during the month. The credit will be in addition to other credits otherwise available to members for adding displayed liquidity to Nasdaq, other than supplemental orders or designated retail orders. In its filing, Nasdaq stated that it hopes that by proposing the new credit it will incentivize members to increase their liquidity providing activity on Nasdaq, which Nasdaq believes will improve market quality.

Comments Due: January 13, 2022
SEC Order: https://www.sec.gov/rules/sro/nasdaq/2021/34-93826.pdf

NASDAQ AMENDS PRICING SCHEDULE AT OPTIONS 7, SECTION 1

On December 7, 2021, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend its pricing schedule at Options 7, Section 1 to amend the way an exchange participant indicates its participation in the Affiliated Entity program. Prior to the amendment, the term "Affiliated Entity" was described as a relationship between an appointed market maker and an appointed order flow provider for purposes of aggregating eligible volume for pricing in Options 7, Sections 2(1) and 2(6) for which a volume threshold or volume percentage is required to qualify for higher rebates or lower fees. Nasdaq market makers and order flow providers were required to send an email to Nasdaq to appoint their counterpart at least three business days prior to the last day of the month to qualify for the next month. Each Affiliated Entity relationship would commence on the first day of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship would terminate after a one-year period, unless either party terminated it earlier. Prior to the amendments, participants were required to annually renew their Affiliate Entity relationship at the end of one year if they desired to continue the relationship. The parties were required to send an email to Nasdaq to avoid termination of the relationship, provided the relationship was not terminated earlier in the year. In its filing, Nasdaq stated its belief that this process was burdensome for participants that desire to remain in the program, given that the consequence of not renewing the Affiliated Entity relationship was automatic termination. Nasdaq's amendments, as proposed, removed the administrative burden associated with the requirement to annually renew and instead provided that the Affiliated Entity relationship will automatically renew each month, unless otherwise terminated.

SEC Order: https://www.sec.gov/rules/sro/nasdaq/2021/34-93728.pdf

NYSE AMENDS RULES REGARDING CERTAIN CLOSING ORDER TYPES

On December 22, 2021, the SEC published for comment a NYSE proposal, effective upon filing, to amend the provisions of Rule 7.35B relating to the cancellation of market-on-close ("MOC"), limit-on-close ("LOC"), and closing imbalance offset ("CIO") orders before the closing auction. Specifically, the NYSE proposed to modify Rule 7.35B(f)(2), which sets forth rules pertaining to the cancellation of MOC, LOC, and CIO orders before the closing auction imbalance freeze. Prior to the amendment, Rule 7.35B(f)(2)(A) provided that, between the beginning of the auction imbalance freeze and two minutes before the scheduled end of the core trading hours, MOC, LOC, and CIO orders could be cancelled or reduced in size only to correct a legitimate error. Rule 7.35B(f)(2)(B) specified that, except as provided for in Rule 7.35B(j)(2)(B), a request to cancel, cancel and replace, or reduce in size a MOC, LOC, or CIO order entered two minutes or less before the scheduled end of the core trading hours would be rejected. The NYSE proposed to modify Rule 7.35B(f)(2) to provide that any requests to cancel, cancel and replace, or reduce in size a MOC, LOC, or CIO orders that are entered between the beginning of the auction imbalance freeze and the scheduled end of core trading hours would be rejected. That is, requests to cancel, replace, and/or reduce in size a MOC, LOC, or CIO Order must be received prior to the beginning of the auction imbalance freeze, which commences 10 minutes prior to the scheduled end of core trading hours, even in the case of a legitimate error.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-93849.pdf

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

On December 3, 2021, the SEC issued an order that instituted proceedings to approve or disapprove a NYSE proposal to permit a special purpose acquisition company ("SPAC") to contribute a portion of the amount held in its trust account to a trust account of a new SPAC and spin off the new SPAC to its shareholders in certain situations. Prior to the amendment, NYSE rules required that at least 90% of the proceeds from the initial public offering ("IPO") and any concurrent sale of the SPAC's equity securities be held in a trust account controlled by an independent custodian and that the SPAC complete within three years, or such shorter period specified by the SPAC's constitutive documents or by contract, a business combination having a fair market value of at least 80% of the net assets held in the trust account at the time of the agreement to enter into the initial combination, net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in the trust. Section 102.06 of the NYSE manual further required that each business combination be approved by a majority of the SPAC's independent directors. The NYSE's proposal is meant to address the concern that, because a SPAC cannot identify or select a specific target at the time of its IPO, often the amount raised is not optimal for the needs of a specific target. According to the NYSE, the proposal would allow a SPAC to raise in its IPO the maximum amount of capital it may need for a business combination transaction and then afford the SPAC the ability to right-size itself by contributing any amounts not needed to a spin-off SPAC entity. In the filing, the SEC explained that, among other things, it instituted proceedings regarding the proposal out of concern that the proposal would circumvent the current requirements of Section 102.06 that the SEC previously found were designed to protect investors.

SEC Order: https://www.sec.gov/rules/sro/nyse/2021/34-93714.pdf

NYSE ELIMINATES CERTAIN LIQUIDITY PROVIDER CREDITS

On December 10, 2021, the SEC published for comment a NYSE proposal, effective upon filing, to eliminate the supplemental liquidity provider ("SLP") national best bid and offer ("NBBO") setter tier credit, which the NYSE claimed is underutilized. The NYSE adopted the SLP NBBO setter tier credit in August 2020 for securities with a per share price of $1.00 or above that offered four sets of tiered credits for orders from SLPs that set the NBBO or provided other displayed liquidity in Tape A, B and C Securities, on a monthly basis, in addition to the tiered or non-tiered SLP credit for adding displayed liquidity. The purpose of the change was to incentivize member organizations that are SLPs to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO, thereby encouraging higher levels of liquidity that would support the quality of price discovery on the NYSE consistent with the overall goal of enhancing market quality. The NYSE proposed to eliminate and remove the SLP NBBO setter tier credits, in part, because only one SLP has achieved any of the four tiers since the tiers were adopted and that firm's volume has declined over time. Moreover, according to the NYSE, no SLP achieved the higher levels of liquidity or sent in additional liquidity to support the quality of price discovery on the NYSE that the NYSE expected when it adopted the tiers. The NYSE also stated in the filing that it did not anticipate that any additional member organization in the near future would qualify for the tiered credits that are the subject of its proposed rule change.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-93748.pdf

NYSE AMERICAN TO PUBLISH HISTORICAL DATA REPORT ON OPTIONS ACTIVITY

On December 16, 2021, the SEC published for comment a proposal by the NYSE American LLC ("NYSE American") to adopt a new historical market data product to be known as the NYSE Options Open-Close Volume Summary, which will be available to subscribers and is based on market data products currently available on most other options exchanges. The NYSE Options Open-Close Volume Summary will be a volume summary of options trading activity on the NYSE American by origin (i.e., customer, professional customer, firm, broker-dealer, and market maker), side of the market, contract volume and transaction type. The customer, professional customer, firm, broker-dealer and market maker volume will further be broken down into three trade size buckets (less than 100 contracts, 100-199 contracts, and greater than 199 contracts). Moreover, the volume summary would include: 1) the aggregate number of buy and sell transactions in the affected series; 2) the aggregate volume traded electronically on the NYSE American in the affected series; 3) the aggregate number of trades effected on the NYSE American to open a position; 4) the aggregate number of trades effected on the NYSE American to close a position; and 5) the origin of the orders and quotes involved in trades on the NYSE American in the affected series during a particular trading session. The volume summary will not be a real-time data feed, and will not feature historical data of trading volume on any exchanges other than the NYSE American. The NYSE American plans to introduce the volume summary during the first quarter of 2022.

Comments Due: January 12, 2022
Notice Release: https://www.sec.gov/rules/sro/nyseamer/2021/34-93803.pdf

OCC INCREASES OPERATIONAL LOSS FEE

On December 23, 2021, the SEC published for comment a proposal, effective upon filing, by the Options Clearing Corporation ("OCC") to update the maximum contingent Operation Loss Fee ("OLF") in accordance with OCC's capital management policy. The changes take effect on January 1, 2022. The OLF is designed to replenish capital to comply with Rule 17Ad-22(e)(15) of the Exchange Act in the unlikely event that OCC's shareholders' equity falls below certain thresholds defined in OCC's capital management policy. In that event, pursuant to the OCC's capital management policy, the OCC will charge an OLF in equal share among its clearing members in order to raise the capital needed. Prior to the proposal, the OLF was $143,066,667 less the aggregate amount of Operational Loss Fees previously charged and not refunded as of the date calculated, divided by the number of clearing members at the time of charge. The proposal increases the amount of the OLF from $143,066,667 to $157 million while leaving in place the previous OLF terms and conditions.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/occ/2021/34-93867.pdf

DTC TO MODIFY CAPITAL REQUIREMENTS FOR FIRST TIME IN OVER 20 YEARS

On December 22, 2021, the SEC published for comment a proposal by the Depository Trust Company LLC ("DTC") to amend its rules in order to: 1) enhance DTC's capital requirements for participants; 2) redefine DTC's watch list and eliminate DTC's enhanced surveillance list; and 3) make certain other clarifying, technical and supplementary changes to its rules, including definitional updates. DTC's capital requirements are designed to manage and mitigate the counterparty credit risk exposure it inherently bears as a central securities depository. In its filing, DTC stated that its capital requirements for participants have not been updated in more than 20 years and that, since that time, there have been significant changes to the financial markets that warrant revisiting its capital requirements. In addition, the regulatory environment within which DTC and its participants operate has undergone various changes. The implementation of the Basel III standards, the designation of many banks as systemically important by the Financial Stability Board ("FSB"), as well as the designation of DTC as a systemically important financial market utility ("SIFMU") by the Financial Stability Oversight Council ("FSOC"), have significantly increased the regulatory requirements, including capital requirements, of many financial institutions, including DTC. Moreover, DTC noted that various mergers and new market entrants have changed the credit risk profiles it must manage, and that transaction values at DTC have increased significantly since DTC last updated its capital requirements. Among other changes, DTC's proposal would: 1) modify the measure of capital requirements for U.S. banks and trust companies that are banks from equity capital to common equity tier 1 capital; 2) raise the minimum capital requirements for U.S. banks and trust companies that are banks; and 3) require U.S. banks and trust companies that are banks to be "well capitalized," as defined in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation ("FDIC").

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/dtc/2021/34-93854.pdf

Notable Enforcement Actions

This month regulators imposed significant penalties for a variety of compliance failures, including a $200 million penalty for recordkeeping violations involving personal devices.

A firm was censured and fined a total of $200 million by U.S. civil authorities for widespread and longstanding failures in maintaining and preserving written communications, resulting in violations of Section 17(a) of the Exchange Act and Rules 17a-4(b)(4) and 17a-4(j) thereunder. The firm also failed to reasonably supervise its employees in order to detect and/or prevent certain of its employees' aiding and abetting violations. From at least January 2018 through November 2020, the firm's employees often communicated about securities business matters on their personal devices, using text messages, WhatsApp, and personal email accounts. None of these records were preserved by the firm as required by the federal securities laws. The firm admitted that these failures were firm-wide and that practices were not hidden within the firm. Supervisors, including managing directors and other senior supervisors, used their personal devices to communicate about the firm's securities business. In addition, the firm frequently did not search for relevant records contained on the personal devices of its employees in response to government subpoenas and regulatory requests, which, the government asserted, deprived it of timely access to evidence and potential sources of information for extended periods of time and in some instances permanently. As such, the firm's actions significantly impacted the effective investigations of potential violations of the federal securities laws. In addition to the severe monetary penalty, the firm agreed to implement robust improvements to its compliance policies and procedures and retain a compliance consultant to, among other things, conduct a comprehensive review of its policies and procedures relating to the retention of electronic communications found on personal devices and the firm's framework for addressing non-compliance by its employees with those policies and procedures. It should be noted that the SEC has advised that it is currently undertaking investigations of record preservation practices at financial firms. Firms that believe that their record preservation practices do not comply with the securities laws can contact the SEC at BDRecordsPreservation@sec.gov.
(**SEC File No. 3-20681**)
https://www.sec.gov/litigation/admin/2021/34-93807.pdf

A firm was censured and fined $1.5 million for failing to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with MSRB and Exchange Act rules, or to prevent the consequences of short positions in municipal securities. The findings state that the firm's failure to implement supervisory systems and procedures designed to detect and resolve short positions in municipal securities, and to prevent their consequences and take prompt steps to bring short positions in municipal securities within its control, was not reasonable considering the municipal securities business the firm conducted. Subsequently, the firm began enhancements to its supervisory systems, written supervisory procedures ("WSPs") and customer disclosures, amended its processes to address short positions when created, and communicated its revised processes and WSPs to its registered representatives. The findings also state that the firm's notice to purchasers of municipal securities did not comply with MSRB Rule

G-17's fair dealing requirement. The firm provided customers who received substitute interest with a gross-up payment each year to address any resulting federal taxes. The customers' account statements and Form 1099s described the substitute interest and gross-up payments associated with the municipal securities held by the customers as miscellaneous income. The firm updated the language in its customers' account statements to include a specific reference to the taxable nature of these substitute interest payments. Until then, the firm did not provide these customers with express notice that the substitute interest paid to them was taxable. As a result, customers receiving these payments prior to the updated language were unable, among other things, to render an informed decision on whether they wished to continue holding the security, cancel the trade, or purchase a comparable security so as to avoid receiving taxable interest. The firm eventually provided customers with notice that their receipt of substitute interest may also create state and local tax liability, and how the gross-up payment aimed to cover any federal, state, or local tax liabilities customers may have incurred. In addition to the fine and censure, the firm was required to certify that its supervisory systems and written procedures are reasonably designed to achieve compliance with MSRB Rules G-17 and G-27 and Rule 15c3-3(d)(4) of the Exchange Act and that its revised WSPs have been distributed to all firm personnel with responsibilities for compliance with these rules. (**FINRA Case #2016050801701**)

https://www.finra.org/sites/default/files/fda_documents/2016050801701%20Merrill%20Lynch%2C%20Pierce%2C%20Fenner%20%26%20Smith%20Incorporated%20CRD%207691%20AWC%20sl%20%282021-1635985222715%29.pdf

A firm was censured and fined approximately $1.2 million for unlawfully distributing nearly 100 million unregistered shares of more than 50 different low-priced microcap companies and failing to file suspicious activity reports ("SARs") pertaining to those transactions, resulting in violations of the registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") and the recordkeeping requirements of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. From January 2017 through September 2018, the firm engaged in unregistered offers and sales of large blocks of low-priced securities that were part of the unlawful, unregistered distribution of securities by a former offshore customer of the firm. The firm failed to conduct a reasonable inquiry into the facts surrounding the sales and, therefore, the firm's offers and sales did not qualify for the usual exemption from registration that applies to brokers' transactions. Despite the presence of numerous red flags that the firm had identified in its written guidance to employees, the firm failed to file SARs for certain suspicious transactions that it executed on behalf of its former customer while the account was active, as broker-dealers are required to do when transactions are suspected to involve fraudulent activity. In addition to the fine and censure, the firm was required to engage an independent compliance consultant to undertake a broad review of the firm's supervisory, compliance, and other policies and procedures reasonably designed to prevent violations of the federal securities laws by the firm and its employees.

(**SEC File No. 3-20679**)

https://www.sec.gov/litigation/admin/2021/33-11015.pdf

A firm was censured and fined $850,000 for violating Rule 204 of the SEC's Regulation SHO by improperly netting the trading activity of affiliated broker-dealer customers when determining their close-out obligations and claiming pre-fail credit. The firm netted the trading accounts of the affiliated broker-dealer customers and then calculated the fail-to-deliver positions attributable to their trading on a collective basis. The firm also combined the affiliated broker-dealer customers' pre-settlement date purchases and used the combined positions to calculate the pre-fail credit available under Rule 204(e). The firm then applied the resulting pre-fail credit to reduce the number of shares it bought to close out fail-to-deliver positions resulting from the affiliated broker-dealer customers' trading. The firm's application of the multi-day approach applied pre-fail credit without regard to the affiliated broker-dealer customers' respective pre-settlement purchases and short positions and allowed them to use purchases made by another to reduce their close-out obligations when they had a short position in the purchased security. The firm also violated Rule 200(f) of Regulation SHO by including securities positions held by the firm's foreign and non-broker-dealer affiliates when calculating the net positions of two independent trading units. In addition, the firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with Rule 200(f) of Regulation SHO.
(**FINRA Case #2016050801702**)
https://www.finra.org/sites/default/files/fda_documents/2016050801702%20Merrrill%20Lynch%2C%20Pierce%2C%20Fenner%20%26%20Smith%20Inc.%20CRD%207691%20AWC%20jlg%20%282021-1636158009040%29.pdf

A firm was censured, fined $200,000 and ordered to pay $63,347 in restitution to customers for failing to establish, maintain and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA's suitability requirements as it pertains to mutual fund and cross-product switches. The firm's supervisory system and procedures were not reasonably designed or enforced to detect and prevent unsuitable mutual fund switching. The firm surveilled for mutual fund switches on a weekly basis, identifying transactions that it deemed "letterable," such as a switch from one mutual fund to another where accounts incurred front-end sales charges. These switches resulted in a letter to customers that disclosed the mutual fund purchase and sale at issue but did not disclose the sales charges incurred on either transaction. The firm did not have WSPs and did not adequately train supervisors on how to determine whether clients benefitted from mutual fund switch transactions or whether the transactions were suitable. As a result of the broker's short-term trades, customers paid approximately $175,000 in unnecessary front-end sales charges, with the broker earning approximately $116,000 in commissions. The firm also failed to maintain a reasonable surveillance system for mutual fund and cross-product switches. As a result of a software upgrade, a database connectivity issue caused incomplete information to flow to the firm's mutual fund switching reports and cross-product switching reports. While the firm conducted limited spot checks for mutual fund switching activity in the 90 days following the software upgrade to check whether the system was properly functioning, the firm did not continue to monitor the system. Further, the firm did not conduct any tests on its cross-product switching for more than four years. **(FINRA Case #2017056197102**)
https://www.finra.org/sites/default/files/fda_documents/2017056197102%20NYLIFE%20Securities%20LLC%20CRD%205167%20AWC%20jlg%20%282021-1637799612274%29.pdf