SECURITIES OPERATIONS

REGULATORY UPDATE

A PUBLICATION OF mediant

July 1, 2021

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SEC Announces Annual Regulatory Agenda

On June 11, 2021, the U.S. Securities and Exchange Commission ("SEC" or "Commission") released its annual rulemaking agenda as a part of the Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions. The notable proposed and final SEC rulemaking actions in the report included:

a. disclosure relating to climate risk, human capital, including workforce diversity and corporate board diversity, and cybersecurity risk
b. market structure modernization within equity markets, treasury markets, and other fixed income markets
c. transparency around stock buybacks, short sale disclosure, securities-based swaps ("SBSs") ownership, and the stock loan market
d. investment fund rules, including money market funds, private funds and ESG funds
e. 10b5-1 affirmative defense provisions
f. unfinished work directed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), including, among other things, SBSs and related rules, incentive-based compensation arrangements, and conflicts of interest in securitizations
g. enhancing shareholder democracy
h. special purpose acquisition companies
i. mandated electronic filings and transfer agents

- **SEC Agenda:** https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=7CE97CC2D49C9B6B70868F7B2752E582C86F1945A4A46F34426C18AF1ABE101E611318F64B67159C3A36E7556BD0FB872C8F

- **Press Release:** https://www.sec.gov/news/press-release/2021-99

SEC CHAIR, COMMISSIONERS, COMMENT ON NEW PROXY VOTING ADVICE RULES

On June 1, 2021, SEC Chair Gary Gensler announced his direction to SEC staff that they consider whether to recommend further regulatory action regarding proxy voting advice. The SEC had previously released guidance regarding the new proxy rules, entitled *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice* ("2019 Interpretation and Guidance"), in September 2019. The Commission then adopted amendments to SEC Rules 14a-1(l), 14a-2(b) and 14a-9, all concerning proxy voting advice, in July 2020 (the "2020 Proxy Rule Amendments"). The 2020 Proxy Rule Amendments became effective on November 2, 2020; however, the Commission deferred the compliance date to December 1, 2021. Specifically, Gensler stated that the staff should consider whether to recommend that the Commission revisit its 2020 codification of the definition of solicitation as encompassing proxy voting advice, the 2019 Interpretation and Guidance regarding that definition, and the conditions on exemptions from the information and filing requirements in the 2020 Rule Amendments. In a parallel announcement, the SEC's Division of Corporation Finance stated that it would not recommend enforcement action based on the 2019 Interpretation and Guidance or the 2020 Rule Amendments during the period in which the Commission is considering further regulatory action in this area. In addition, in the event that new regulatory action leaves the 2020 exemption conditions in place with the current December 1, 2021 compliance date, the SEC pledged that its staff would not recommend enforcement action based on those conditions for a reasonable period of time after any resumption by Institutional Shareholder Services Inc. ("ISS") of its litigation challenging the 2020 Proxy Rule Amendments and the 2019 Interpretation and Guidance. In a separate statement, SEC Commissioners Hester Pierce and Elad Roisman doubted the necessity to revisit the issue, stating it was "difficult to imagine what has changed in the roughly 10 months since the SEC last considered this issue that would call into question such recently adopted requirements."

Gensler Statement: https://www.sec.gov/news/public-statement/gensler-proxy-2021-06-01
SEC CorpFin Statement: https://www.sec.gov/news/public-statement/corp-fin-proxy-rules-2021-06-01
Pierce/Roisman Statement: https://www.sec.gov/news/public-statement/peirce-roisman-response-statements-application-proxy-rules-060121

SEC UPDATES LIST OF FIRMS USING INACCURATE INFORMATION TO SOLICIT INVESTORS

On June 9, 2021, the SEC announced that it had updated its list of unregistered entities that use misleading information to solicit primarily non-U.S. investors. The list is known as the Public Alert: Unregistered Soliciting Entities ("PAUSE") list. The SEC added 55 soliciting entities, four impersonators of genuine firms and five bogus regulators in its update and included firms that the SEC 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. The SEC publishes the PAUSE list to alert investors to firms falsely claiming to be registered. In addition, the PAUSE list flags those impersonating registered securities firms and bogus regulators who falsely claim to be government agencies or affiliates.

Recent Adds to PAUSE List: https://www.sec.gov/files/public-alert-unregistered-soliciting-entities.pdf
Full PAUSE List: https://www.sec.gov/enforce/public-alerts

SEC CHAIR GENSLER ANNOUNCES ADDITIONS TO EXECUTIVE STAFF

On June 8, 2021, the SEC announced the appointments of Amanda Fischer, Lisa Helvin, Tejal Shah, Angelica Annino, Liz Bloom, Basmah Nada and Jahvonta Mason as members of SEC Chair Gary Gensler's executive staff. Fischer now serves as Gensler's Senior Counselor, Helvin as Legal Counsel, Shah as Enforcement Counsel, Annino as Director of Scheduling and Administration, Bloom as Speechwriter to the Chair, Nada as Digital Director and Mason as Special Assistant to the Chief of Staff. Prior to her role as Senior Counselor, Fischer was the Policy Director at the Washington Center for Equitable Growth, a non-partisan research organization focused on economic policy. Prior to that, she worked for more than a decade on Capitol Hill in roles related to financial services policymaking, including as Chief of Staff for Congresswoman Katie Porter, Professional Staff on the Senate Committee on Banking, Housing and Urban Affairs, as a Policy Advisor for Sen. Catherine Cortez Masto, and as Deputy Staff Director for the House Committee on Financial Services. In her new role, she will advise Chair Gensler on rulemaking and interagency work. Helvin rejoined the SEC from the Office of General Counsel at the House of Representatives, where she served as Special Litigation Counsel. Prior to that, she served as Counsel to the General Counsel and a Senior Counsel in the Office of General Counsel's Appellate Group at the SEC. Prior to her appointment as Gensler's Enforcement Counsel, Shah had served as a staff attorney in the SEC's New York Regional Office. "I'm excited to work closely with Amanda, Lisa, Tejal, Angelica, Liz, Basmah and Jahvonta on priorities essential to the mission of the SEC," added Gensler. "These exceptional individuals provide well-rounded and diverse experience from across multiple sectors, and I will rely on their counsel and support in rulemaking, enforcement and communicating our work to the public."

Press Release: https://www.sec.gov/news/press-release/2021-96

SEC ADOPTS FINAL RULE RELATED TO UPDATED EDGAR FILER MANUAL

On June 21, 2021, the SEC adopted amendments to Volumes I and II of the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") System Filer Manual, following an upgrade to EDGAR on June 18, 2021. The amendments to Volume I of the EDGAR Filer Manual require filers to upload specified supporting documentation to demonstrate the relationships between the entity requesting access and the existing EDGAR account, and the entity requesting access and the individual acting for that entity. Filers who seek access to an existing EDGAR account for which they have neither the access codes nor the current contact email address are now required to submit documents with the request for access, and additional documents as requested by SEC staff. The amendments also provide that filers who seek access under this process must allow at least five business days for processing of the request, and must respond to requests from SEC staff for additional information and documents. The amendments to Volume II of the EDGAR Filer Manual update submission forms S-1, S-1/A, S-3, S-3/A, F-1, F-1A, F-3 and F-3/A to include "exchange traded vehicle securities" as a new security type. Previously, on April 8, 2020, the Commission amended these forms to allow issuers of exchange-traded vehicle securities to register either: 1) an indeterminate number of shares and pay fees annual on net issuances, or 2) register a fixed amount of securities and pay the associated fees. The amendments to Volume II of the EDGAR Filer Manual also update submission form types N-CEN and N-CENA based on the SEC's previous rulemaking regarding fund-of-fund arrangements.

Effective Date: Date of Publication in the Federal Register
Press Release: https://www.sec.gov/rules/final/2021/33-10948.pdf

SEC NAMES SALTIEL AS ACTING DIRECTOR OF TRADING AND MARKETS

On June 3, 2021, the SEC announced that David Saltiel had been appointed as Acting Director of the SEC's Division of Trading and Markets, replacing Christian Sabella, who concluded his tenure as Director on June 2, 2021. Saltiel joined the SEC in 2016 as the head of the Office of Analytics and Research in the Division of Trading and Markets. Since the beginning of 2021, Sabella has served as both Acting Director and Deputy Director for the SEC's Division of Trading and Markets. Prior to his SEC tenure, he was Chief Economist at the Municipal Securities Rulemaking Board ("MSRB").

Press Release: https://www.sec.gov/news/press-release/2021-92

SEC APPOINTS JONES AS CorpFin DIRECTOR AND COATES AS GENERAL COUNSEL

On June 14, 2021, the SEC announced that Renee Jones had been appointed as Director of the SEC's Division of Corporation Finance and that it had tapped John Coates, who had been the Acting Director of the Division of Corporation Finance, to serve as the SEC's General Counsel. Both appointments became effective on June 21, 2021. Prior to her appointment, Jones served as Professor of Law and Associate Dean for Academic Affairs at Boston College Law School, where she taught courses in corporations, securities regulation, startup company governance, and financial regulation. Prior to that, she represented private and public companies on corporate and securities matters at the Hill & Barlow law firm. Jones is a member of the American Law Institute and has served as the Co-Chair of the Securities Law Committee of the Boston Bar Association. Coates had served as the Acting Director of the Division of Corporation Finance since February 2021. Prior to that, he served as the John F. Cogan Professor of Law and Economics at Harvard University, where he also was Vice Dean for Finance and Strategic Initiatives. Prior to that, Coates was a Partner at Wachtell, Lipton, Rosen & Katz, specializing in mergers and acquisitions and financial institutions. In addition, Coates previously served on the SEC's Investor Advisory Committee, during which time he chaired the Investor-as-Owner Subcommittee.

Press Release: https://www.sec.gov/news/press-release/2021-101

SEC REMOVES PCAOB CHIEF DUHNKE, APPOINTS DESPARTE AS ACTING CHAIR

On June 4, 2021, the SEC announced that it had removed William D. Duhnke III as Chair of the Public Company Accounting Oversight Board ("PCAOB") and had appointed Duane M. DesParte as Acting Chair, effective immediately. DesParte, a Certified Public Accountant ("CPA"), was appointed as a member of the PCAOB by the SEC in December 2017 and was sworn in on April 9, 2018. Prior to joining the PCAOB, DesParte served as the Corporate Controller at Exelon Corporation, among other financial roles, over a 15-year tenure. Prior to that, DesParte worked for 18 years as an audit assurance professional. The SEC also announced that it is seeking candidates to fill all five board positions on the PCAOB and that additional information about that process would be provided in the coming weeks.

Press Release: https://www.sec.gov/news/press-release/2021-93

SEC, FINRA AND NASAA DEPLOY FREE TOOL TO ASSIST FIRMS WITH SENIOR SAFE ACT COMPLIANCE

On June 15, 2021, the SEC, the Financial Industry Regulatory Authority ("FINRA") and the North American Securities Administrators Association ("NASAA") announced a new resource intended to assist securities firms in implementing the training requirements of the Senior Safe Act. The Senior Safe Act was included as Section 303 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which was signed into law on May 24, 2018. The legislation addresses barriers that financial professionals face in reporting suspected senior financial exploitation or abuse to authorities. Specifically, the law protects "covered financial institutions," which include investment advisers, broker-dealers, and transfer agents, as well as their eligible employees, affiliated persons, and associated persons, from liability in any civil or administrative proceeding for reporting a case of potential exploitation of a senior citizen to a covered agency. The immunity established by the law is provided on the condition that employees receive training on how to identify and report exploitative activity against seniors before making a report. In addition, reports of suspected exploitation must be made in good faith and with reasonable care. This immunity applies to both individuals and firms. The training program released by the SEC, FINRA and NASAA, entitled *Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors*, can be used by firms to train associated persons on how to detect, prevent and report financial exploitation of senior and vulnerable adult investors. The presentation serves as a resource for firms implementing the requirements of the Senior Safe Act and certain state training requirements relating to senior investment protection.

Senior Safe Act Training: https://www.investor.gov/additional-resources/information/seniors
Press Release: https://www.sec.gov/news/press-release/2021-104

SEC APPROVES FINRA RULE TO TERMINATE OTCBB, ESTABLISH REQUIREMENTS FOR MEMBER IDQSs

On June 3, 2021, the SEC announced that it had approved a FINRA-proposed rule that would rescind the rules related to the OTC Bulletin Board ("OTCBB"), cease the OTCBB's operation, and adopt new Rule 6439 that establishes requirements for FINRA-member inter-dealer quotation systems ("IDQSs") that disseminate quotations in equity securities traded over-the-counter ("OTC"). Prior to its termination, the OTCBB had been an IDQS, operated by FINRA since 1990, for use by broker-dealers to publish quotations in eligible OTC equity securities. In its filing, FINRA stated that, due to technological advancements since 1990 and the increase in alternative electronic venues with more extensive functionality than the OTCBB, the level of quotation activity occurring on the OTCBB has continued to decline over the past several years and is now nonexistent. FINRA represented that, as of the date that it filed the proposed rule change, the OTCBB did not display or widely disseminate quotation information on any OTC equity security. Instead, all quotation activity in OTC equity securities now occurs on FINRA-member-operated IDQSs, rather than the OTCBB. FINRA Rule 6439 establishes minimum standards for FINRA-member IDQSs. Among the many requirements of new Rule 6439, FINRA-member IDQSs must have: 1) written supervisory procedures ("WSPs") relating to the collection, dissemination and quotation of OTC equity securities, 2) non-discriminatory written standards for granting access to quoting and trading in OTC equity securities on their systems, and 3) transparency and reporting requirements surrounding order, quotation and execution information. FINRA stated that it would announce the effective date of Rule 6439 within one year following SEC approval.

Final Rule: https://www.sec.gov/rules/sro/finra/2021/34-92105.pdf

FINRA TO TERMINATE OATS EFFECTIVE SEPTEMBER 1, 2021

On June 23, 2021, the SEC published for comment a FINRA proposal to terminate the Order Audit Trail System ("OATS"). As previously reported, FINRA filed its initial proposal to terminate OATS during the latter half of 2020 and intended to proceed with the termination of OATS once member firms were effectively reporting to the Consolidated Audit Trail ("CAT") and the CAT's accuracy and reliability met certain standards. Specifically, FINRA proposed that, before OATS would be retired, the CAT must generally achieve a sustained error rate for industry member reporting in five categories for a period of at least 180 days of 5% or lower on a pre-correction basis, and 2% or lower on a post-correction basis, measured at T+5. In addition to the maximum error rates and matching thresholds, FINRA's use of CAT data must confirm that: 1) there are no material issues that have not been corrected, 2) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and 3) the plan processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of the initial phase of reporting ("Phase 2a") for industry member data. These requirements were previously approved by the SEC. In its June 2021 filing, FINRA stated that it had determined that the CAT meets the accuracy and reliability standards that the SEC had previously approved. Through a Regulatory Notice, FINRA announced that the effective date for the termination of OATS and its related rules would be September 1, 2021.

Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-92239.pdf
FINRA Regulatory Notice 21-21: https://www.finra.org/rules-guidance/notices/21-21

FINRA REQUESTS COMMENT ON POTENTIAL SHORT INTEREST AND SHORT SALE REPORTING ENHANCEMENTS

On June 3, 2021, FINRA published Regulatory Notice 21-19 to request comment on potential enhancements to its short sale reporting program. Currently, FINRA collects short sale-related information from firms to support FINRA's oversight of member compliance with Regulation SHO and other short sale obligations, and to provide market participants with insight into short sale activity and position information. Pursuant to FINRA Rule 4560, firms are required to report to FINRA their aggregate short position in each equity security twice a month. The short interest data collected by FINRA includes the reporting firm's current aggregate short interest position for the security and any short position changes at the firm since the prior reporting period, among other things. For OTC equity securities, FINRA aggregates and publishes the collected short interest data, aggregated across all firms, per symbol, on the FINRA website along with additional FINRA-calculated metrics relating to short sale activity in the security. For exchange-listed securities, FINRA provides the reported short interest data to the applicable listing exchange for processing and publication. In an effort to improve the usefulness of short sale-related information to FINRA, other regulators, investors and other market participants, FINRA is considering, and requested comment regarding: 1) modifications to its short interest reporting requirements in FINRA Rule 4560, 2) a new rule to require that participants of a registered clearing agency report to FINRA information on allocations to correspondent firms of fail-to-deliver positions, and 3) other potential enhancements related to short sale activity.

Comments Due: August 4, 2021
FINRA Regulatory Notice 21-19: https://www.finra.org/rules-guidance/notices/21-19

FINRA REMINDS FIRMS OF BEST EXECUTION, PAYMENT FOR ORDER FLOW OBLIGATIONS

On June 23, 2021, FINRA published Regulatory Notice 21-23 to remind FINRA member firms of SEC and FINRA rules and guidance concerning best execution and payment for order flow. The SEC has explained best execution of customer orders as a duty derived from common law agency principles and fiduciary obligations, and which is incorporated both in self-regulatory organization ("SRO") rules and in the antifraud provisions of the federal securities laws. FINRA codified the duty of best execution in FINRA Rule 5310, which provides that a FINRA member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions, in any transaction with a customer or a customer of another broker-dealer. In using reasonable diligence in such a transaction, the firm must consider: 1) the character of the market for the security, 2) the size and type of the transaction, 3) the number of markets checked, 4) accessibility of the quotation, and 5) the terms and conditions of the order which resulted in the transaction as communicated to the FINRA member firm. FINRA noted that the SEC defined payment for order flow broadly to refer to a wide range of practices, including monetary payments and discounts, rebates, or other fee reductions and/or credits, but that longstanding SEC guidance generally holds that a broker-dealer would not violate its best execution obligation solely because it received payment for order flow or traded as principal with customer orders. FINRA further noted, however, that SEC and FINRA guidance ultimately advise that broker-dealers must not let payment for order flow interfere with their duty of best execution. FINRA directed its member firms to previously published Regulatory Notice 15-46 for additional, detailed guidance on the execution review standards imposed by FINRA Rule 5310.

FINRA Regulatory Notice 21-23: https://www.finra.org/rules-guidance/notices/21-23
FINRA Regulatory Notice 15-46: https://www.finra.org/rules-guidance/notices/15-46

SEC SUSPENDS NASDAQ CAT NMS PLAN FEE SCHEDULE IMPLEMENTATION

On June 17, 2021, the SEC issued an order suspending rule changes by The Nasdaq Stock Market LLC ("Nasdaq") that adopt a fee schedule establishing fees for industry members related to the CAT NMS Plan. Nasdaq's proposed rule changes were previously filed with the SEC in April 2020 and became effective upon filing. While the SEC received no comment letters on the proposed rule changes, it stated that it would temporarily suspend the proposed rule changes and institute proceedings to determine whether to approve or disapprove the proposals. Specifically, the Commission is considering whether Nasdaq's proposed rule changes are consistent with the requirement of the CAT NMS Plan that the CAT NMS Plan's operating committee establish fixed fees to be payable by industry members that include message traffic generated by: 1) an alternative trading system ("ATS") that does not execute orders that is sponsored by an industry member; and 2) routing orders to and from any ATS sponsored by an industry member. In addition, the Commission is considering whether the proposed rule changes are consistent with the requirement of the CAT NMS Plan that the CAT NMS Plan's operating committee establish a tiered fee structure whereby industry members are charged fees based on message traffic for non-ATS activities. As proposed, Nasdaq's rule changes include all ATS message traffic in calculating industry member CAT fees.

SEC Order: https://www.sec.gov/rules/sro/bx/2021/34-92207.pdf
Comments Due: July 15, 2021
Rebuttal Comments Due: July 29, 2021

NASDAQ ALIGNS WITH FINRA ON PAYMENT FOR MARKET MAKING RULE

On June 23, 2021, the SEC published for comment a Nasdaq proposal, effective on filing, to amend its rules at General 9, Section 18 to align its payment for market making rules with corresponding FINRA Rule 5250, which governs payment for market making for FINRA members. Specifically, the change replaces the text of General 9, Section 18 with an incorporation by reference to FINRA Rule 5250 and an incorporation by reference to the definition of "affiliate" in FINRA Rule 5121 for purposes of FINRA Rule 5250. FINRA Rule 5250 explicitly prohibits any payment by issuers or issuers' affiliates and promoters, directly or indirectly, to a FINRA member or person associated with a member, for publishing a quotation, acting as a market maker, or submitting an application in connection therewith. FINRA Rule 5250 and Nasdaq General 9, Section 18 are intended to prohibit members from receiving compensation or other payments from an issuer for quoting or making a market in the issuer's securities, and to assure that members act in an independent capacity when publishing a quotation or making a market in an issuer's securities. The change by Nasdaq removes a material difference between its former rule at General 9, Section 18 and FINRA Rule 5250 in that FINRA Rule 5250 provided that members are not precluded from accepting any payment expressly provided for under the rules of a national securities exchange that are effective after being filed with, or filed with and approved by, the SEC pursuant to the requirements of the Exchange Act.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-92242.pdf
Comments Due: 21 days after publication in the Federal Register

NASDAQ MODIFIES PRICING SCHEDULE

On June 9, 2021, the SEC published for comment a Nasdaq proposal, effective on filing, to amend its pricing schedule at Equity 7, Section 114(f) applicable to the Designated Liquidity Provider ("DLP") program. The amendment modifies the rebates applicable for DLPs in Nasdaq-listed securities with monthly incentives that are directly tied to meeting market quality metrics ("MQMs"). Specifically, the proposal: 1) adds exchange-traded fund shares listed on Nasdaq pursuant to Nasdaq Rule 5704, proxy portfolio shares listed on Nasdaq pursuant to Nasdaq Rule 5750, and managed portfolio shares listed on Nasdaq pursuant to Nasdaq Rule 5760, to the list of securities that may be designated as a qualified security, as long as it has at least one DLP, 2) amends Equity 7, Section 114(f)(4) to revise the monthly performance criteria related to the specific rebates provided under Equity 7, Section 114(f)(5), as well as to address secondary DLPs ("Secondary DLPs"), 3) changes the current schedule under Equity 7, Section 114(f)(5) from three tiers to five tiers and establishes both standard rebates and enhanced rebates for those tiers; and 4) changes the existing additional Tape C exchange-traded products ("ETPs") incentives in Equity 7, Section 114(f)(5)(B), and adds a new tier to the schedule. In its filing, Nasdaq stated that it believes these changes will encourage DLPs to maintain better market quality in Nasdaq-listed securities, and, in particular, in lower volume securities where transaction-based compensation or rebates may not be sufficient. Nasdaq currently offers a DLP program, which applies to transactions in a qualified security by one of its DLPs associated with its DLP program market participant identifier ("MPID").

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-92134.pdf

SEC DESIGNATES LONGER PERIOD TO CONSIDER NYSE FEES, TERMS FOR FORWARDING PROXY MATERIALS

On June 11, 2021, the SEC issued notices designating a longer period of time to approve or disapprove proposals by the New York Stock Exchange ("NYSE") to: 1) delete the maximum fee rates for forwarding proxy and other materials to beneficial owners of securities and establish, in their place, a requirement for member organizations to comply with any schedule of approved charges set forth in the rules of any other national securities exchange or association of which such organization is a member, and 2) amend its rules to prohibit 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. As previously reported, the proposals were published for comment in the Federal Register on December 21, 2020. On February 1, 2021, the Commission designated a longer period of time within which to approve or disapprove the proposals, or institute proceedings to determine whether to approve or disapprove the proposals. On March 18, 2021, the Commission instituted such proceedings and is now extending the time period for approving or disproving the proposals for an additional 60 days to August 18, 2021.

SEC Order (Delete Maximum Fees): https://www.sec.gov/rules/sro/nyse/2021/34-92154.pdf
SEC Order (Reimbursement Prohibition): https://www.sec.gov/rules/sro/nyse/2021/34-92155.pdf

NYSE AMENDS PRICE LIST

On June 11, 2021, the SEC published for comment a NYSE proposal, effective on filing, to amend its price list to: 1) introduce adding credits at Tiers 3, 5 and 6 and re-number current Tier 3, and 2) relocate and modify certain fees, and introduce new fees, for transactions that remove liquidity from the NYSE in Tape A, B and C securities. In its filing, the NYSE discussed how Regulation NMS has fostered a fragmented market structure where trading in a single stock can occur across multiple trading centers, while also enhancing competition among exchanges. Equity trading in the U.S. markets is currently dispersed across 16 exchanges, 31 ATSs and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Publicly available information indicates that no single exchange has more than 20% market share and, therefore, no exchange possesses significant pricing power in the execution of equity order flow. In addition, member organizations can choose from any one of the numerous registered exchanges when routing non-marketable order flow that would provide displayed liquidity to the NYSE. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange. The ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. The NYSE stated that the proposed changes respond to this competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional liquidity to the NYSE.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-92160.pdf
Comments Due: July 8, 2021

NYSE AMERICAN MODIFIES OPTIONS FEE SCHEDULE

On June 7, 2021, the SEC published for comment a proposal by the NYSE American LLC ("NYSE American"), effective on filing, to modify its options fee schedule regarding the charges applicable to manual transactions by NYSE American options market makers, specialists and e-specialists. Currently, NYSE American options market makers are charged $0.25 per contract for manual transactions, and specialists and e-specialists are charged $0.18 per contract for manual transactions. NYSE American's proposal modifies the rates charged for manual transactions to $0.35 per contract for market makers and $0.30 per contract for specialists and e-specialists. In its filing, the NYSE American stated that the proposed rate for market makers is intended to align competitively the NYSE American's fees for manual transactions by market makers with those charged by other markets. The proposed rate for specialists and e-specialists would reduce the existing disparity between rates charged to specialists and market makers from $0.07 to $0.05. In addition, the NYSE American's proposal enables market makers to qualify for a $0.02 per-contract fee discount on manual transactions if they participate in a prepayment program, while specialists and e-specialists that participate in the prepayment program qualify for a $0.01 per-contract discount.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2021/34-92122.pdf

NYSE AMERICAN AMENDS PRICE LIST

On June 11, 2021, the SEC published for comment in NYSE American proposal, effective on filing, to amend its price list and fee schedule to establish pricing for orders designated as retail orders, defined for purposes of the proposal as an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the NYSE American by an ETP holder, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. ETP holders that send retail orders to the NYSE American qualify for a credit of $0.003 per displayed share for retail orders that add liquidity. ETP holders will be charged a fee of $0.001 per displayed share for orders designated as retail orders that remove liquidity, and a fee of $0.0005 per displayed share for orders designated as retail orders executed in an opening auction, unless a more favorable rate applies. For an ETP holder to access the NYSE's retail order pricing, it must designate an order as a retail order, submit an attestation that the order meets substantially all the criteria of a retail order, and have written policies and procedures reasonably designed to ensure that the ETP holder will only designate retail orders if substantially all of the criteria of a retail order are met. The pricing is only available for transactions in securities priced at or above $1.00. In its filing, the NYSE American stated that the proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct retail orders by offering further incentives for ETP holders to send such orders to the NYSE American.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2021/34-92153.pdf
Comments Due: July 8, 2021

Notable Enforcement Actions

This month regulators announced severe penalties in enforcement actions addressing a wide variety of compliance failures, some relating to longstanding regulatory requirements.

A firm was censured and fined $525,000 for negligently misrepresenting cost basis information on customer account statements and Forms 1099, as well as making and preserving inaccurate customer account statements. The findings state that the individual who supervised the group that operated the firm's database system in which it maintained cost basis information, as well as information about the taxable gain or loss resulting from its customers' securities transactions, did not understand the regulations applicable to post-settlement cost basis changes. As a result, the firm regularly granted requests to change cost basis information in the case of partial liquidations of securities positions, even when requests to change the tax lot sold were made after the settlement date. Each such instance resulted in the firm issuing at least one Form 1099 in which it misrepresented the adjusted basis, and also resulted in the firm sending to the customer one or more monthly account statements in which it misreported adjusted basis and related realized and unrealized gain or loss information. Emails and documents that pertained to these changes, where and when they existed, showed that the firm's registered representatives and other operations personnel, for the most part, lacked a proper understanding of the regulations applicable to post-settlement cost basis changes. The firm's database system that was supposed to have kept track of manual changes to cost basis lacked basic information about cost basis changes, including the reason for the changes. This database system also contained fields that could be overwritten after the date of the change. As a result, there were numerous instances in which information concerning manual cost basis changes had been overwritten and could not be retrieved. In addition to the fine and censure, the firm was required to retain an independent consultant to conduct a comprehensive review of the adequacy of its procedures, systems and controls to track and report cost basis information relating to updates and changes made to cost basis information for customer securities transactions. (**FINRA Case #2018057952801**)
https://www.finra.org/sites/default/files/fda_documents/2018057952801%20Oppenheimer%20%26%20Co.%20Inc.%20CRD%20249%20AWC%20jlg%20%282021-1621815610176%29.pdf

A firm was censured and fined $345,000 for failing to establish and maintain a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to monitor its employees' outside brokerage accounts. The findings state that the firm had no automated system for tracking whether new hires made the required disclosures, firm employees were not required to certify on an annual basis that they had disclosed all their outside brokerage accounts and the firm's personal account trading team often worked from incomplete or inaccurate new-hire lists, which were then used by the firm to notify employees of their disclosure obligations. The firm's supervisory deficiencies led to its failure to timely monitor thousands of employees' outside brokerage accounts for compliance with the firm's trading restrictions designed to identify self-dealing and other potentially deceptive trading practices. (**FINRA Case #2018060780401**)
https://www.finra.org/sites/default/files/fda_documents/2018060780401%20Credit%20Suisse%20Securities%20USA%20LLC%20CRD%20816%20%20AWC%20va%20%282021-1620260411669%29.pdf

A firm was censured, fined $250,000 and required to retain an independent consultant to conduct a comprehensive review of the reasonableness of the firm's policies, systems, training and WSPs relating to compliance with FINRA Rule 3310 and the requirements of the Bank Secrecy Act, for failing to establish and implement an anti-money laundering ("AML") program that could reasonably be expected to detect and cause the reporting of suspicious transactions. The findings state that the firm lacked reasonable WSPs related to AML surveillance of potentially suspicious trading and money movements in customer accounts. Although the firm's written procedures required the use and review of exception reports to assist with the identification of red flags for suspicious trading and suspicious money movements, they did not identify any exception reports that the firm would use and did not describe how the supervisors should use them. The firm's written procedures stated that the firm would perform additional monitoring of accounts in which suspicious trading was identified but did not describe steps for performing that monitoring or state how often the monitoring should occur. The WSPs also required that the firm periodically monitor transaction activity in foreign accounts but did not describe the frequency or the manner in which such monitoring should occur. In addition, the firm relied almost exclusively on a manual review of the daily trade blotter to identify suspicious trading, which did not reflect patterns of trading across accounts or across multiple days. Although the firm implemented an automated surveillance system from a third-party vendor, it failed to timely review alerts generated by the new system. In addition, the firm did not identify accounts that had high levels of money movements with very low levels of securities transactions. Furthermore, the firm had a practice of failing to reasonably respond to AML red flags. The firm's practice was to observe whether suspicious trading continued over a period of weeks or months, rather than timely consideration of whether to file a Suspicious Activity Report ("SAR"). Additionally, the firm's WSPs did not contain any procedures about documenting the analysis or records regarding the investigation of potentially suspicious activity and the firm did not document the findings of its investigations. The findings also state that the firm failed to establish and implement a reasonable customer identification program regarding foreign retail customers and failed to conduct due diligence on foreign financial institutions. The firm's procedures also failed to describe the documents required to be collected from the firm's foreign customers, or how the firm would address red flags during the account opening process. (**FINRA Case #2020067466901**)

https://www.finra.org/sites/default/files/fda_documents/2020067466901%20Score%20Priority%20Corp.%20fka%20Just2Trade%2C%20Inc.%20CRD%2011826%20AWC%20sl%20%282021-1621124464977%29.pdf

A firm was censured and fined $125,000 for failing to accurately calculate its required customer reserve on three separate occasions, resulting in nine hindsight deficiencies ranging from approximately $4 million to $29.8 million and totaling approximately $126 million. The findings state that six of the hindsight deficiencies resulted from inaccurate pricing from a third-party industry pricing source for Treasury Inflation-Protected Securities ("TIPS") that were used as collateral in the margin account of a firm customer. Because the value of the pledged collateral was understated due to the mispriced TIPS, the credit applied by the firm when calculating its reserve formula was also understated. Two of the hindsight deficiencies occurred due to an overdraft in a foreign bank account the firm erroneously excluded from its reserve formula computation. Another hindsight deficiency resulted from the firm's inadvertent deposit of

securities not eligible for use as collateral into its reserve account. The firm's failure to accurately calculate its customer reserve obligations caused it to maintain inaccurate books and records and to make Financial and Operational Combined Uniform Single ("FOCUS") filings inaccurately reporting its customer reserve. In addition, the firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to ensure its compliance with customer reserve requirements. The firm had no supervisory system or WSPs designed to ensure that TIPS pricing was accurate or that any errors in TIPS pricing would be escalated to allow the firm to investigate and assess the impact on its business activities. The firm had no supervisory system or WSPs designed to ensure that overdrawn bank balances were identified and captured for the purposes of its customer reserve calculation, or that only eligible securities were used as collateral for purposes of satisfying its customer reserve requirement. (**FINRA Case #2019063767301**)
https://www.finra.org/sites/default/files/fda_documents/2019063767301%20CF%20Secured%2C%20LLC%20CRD%20285841%20AWC%20sl%20%282021-1620951601212%29.pdf

A firm was censured and fined $100,000 and a principal of the firm was fined $15,000, suspended by FINRA from association with any FINRA member in any principal capacity for two months, and required to complete 16 hours of AML-related continuing education, for failing to establish and implement an AML compliance program reasonably designed to detect and cause the reporting of potentially suspicious transactions. The findings state that the firm's principal knew the firm's anti-money laundering compliance officer ("AMLCO") lacked AML oversight experience relevant to his duties and did not take corrective action after becoming aware that the AMLCO had not performed his AML duties in a reasonable manner. The firm's AML procedures did not provide meaningful guidance regarding how the AMLCO was to identify or review red flags specific to the customer account business. The firm did not use any exception reports or automated tools to monitor customer account activity for suspicious transactions, including customer transactions in microcap securities. The firm's review for potentially suspicious transactions was limited to the AMLCO's manual review of transactions. This manual review was unreasonable given that the AMLCO had no experience with customer account business and no training in reviewing for AML red flags in customer accounts. In addition, the firm's clearing firm contacted it about suspicious transactions that had not been flagged by the firm. Nonetheless, the firm did not tailor its AML procedures to its business or promptly act to strengthen its AML program and procedures. The findings also state that the firm failed to establish and maintain a supervisory system reasonably designed to avoid becoming a participant in the unregistered sale of securities. Pursuant to the firm's WSPs, the firm's principal delegated the responsibility for reviewing and approving microcap stock deposits and associated documentation to ensure compliance with applicable securities laws. The AMLCO failed to ensure that reasonable inquiries were conducted to determine whether securities deposited into customer accounts for resale were registered or exempt from registration. The AMLCO repeatedly permitted deposits and resales of microcap securities despite missing documentation, such as proof of payment, appropriate legal opinions, and other documents critical to determining whether microcap securities deposited were freely tradeable.
(**FINRA Case #2018056458301**)
https://www.finra.org/sites/default/files/fda_documents/2018056458301%20Alternative%20Execution%20Group%20CRD%20167830%20Richard%20Alter%20CRD%202697740%20AWC%20va%20%282021-1620606009072%29.pdf

A firm was censured, fined $80,000 and required to revise its supervisory system and WSPs for engaging in a pattern and practice of distributing or publishing unsupported throw-away bids in illiquid municipal securities that were not based on the firm's best judgment of the fair market value ("FMV") of the securities. The findings state that shortly after responding to requests for quotes at prices well below FMV of the bonds, the firm re-offered the bonds at significantly higher prices that were consistent with independent market activity. No market news or other relevant event justified the spread between the firm's bid and re-offer prices. In addition, the firm's end-of-day inventory valuations for the municipal bonds held overnight differed meaningfully from the firm's throw-away bid prices but aligned closely with previously reported market pricing and subsequent re-offer and sale prices. The firm also failed to establish, maintain and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with MSRB Rule G-13.
(**FINRA Case #2016052118001**)
https://www.finra.org/sites/default/files/fda_documents/2016052118001%20NatAlliance%20Securities%2C%20LLC%20CRD%2039455%20AWC%20sl%20%282021-1621037998800%29.pdf

A firm was censured and fined $70,000 for failing to transmit reportable order events to OATS. The findings state that the firm routed orders to multiple broker-dealers but failed to report any reportable order events to the OATS. The firm believed, incorrectly, that because each corporate client's orders were routed exclusively to a single broker-dealer, the firm would not be considered a reporting member. The firm nonetheless routed orders to multiple broker-dealers and thus was not excluded from the definition of a reporting member. The findings also state that the firm did not have a system or written procedures in place that were reasonably designed to achieve compliance with its OATS reporting obligations.
(**FINRA Case #2019063386201**)
https://www.finra.org/sites/default/files/fda_documents/2019063386201%20Solium%20Financial%20Services%20LLC%20CRD%20147933%20AWC%20jlg%20%282021-1621642799919%29.pdf

A firm was censured and fined $45,000 for failing to immediately display, route, execute, or cancel sampled exceptions of customer limit orders, including orders that would have locked or crossed a displayed quote. The firm operated a trading desk where a group of traders reviewed and handled some order flow manually, resulting in delays of certain OTC orders. The findings also state that the firm's supervisory system was not reasonably designed to achieve compliance with limit order display obligations. Although the firm utilized exception reports that identified limit orders that were displayed more than 30 seconds after the order became eligible, its supervisory reviews only focused on whether an exception involved a financial disadvantage to a client, rather than simply whether the exception indicated a violation of FINRA Rule 6460. In addition, the firm used surveillance reports that assessed amended orders for compliance with FINRA Rule 6460 based on the time the amendment was accepted by the firm, instead of the time of the actual amendment request by the client.
(**FINRA Case #2018058600001**)
https://www.finra.org/sites/default/files/fda_documents/2018058600001%20Maxim%20Group%20LLC%20CRD%2012078%20AWC%20va%20%282021-1621815609306%29.pdf