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IN THIS ISSUE

SEC ANNOUNCES MORE PERSONNEL CHANGES AMID TRANSITION

From February 1, 2021 through February 5, 2021, the U.S. Securities and Exchange Commission ("SEC" or "Commission") announced several notable personnel changes. Kelly Gibson was named Acting Deputy Director of the Division of Enforcement; John Coates was named Acting Director of the Division of Corporation Finance; and Katherine Martin left her position as an Associate Director in the Office of International Affairs. In addition, Acting SEC Chair Allison Herren Lee announced her executive staff, including: Prashant Yerramalli as Chief of Staff; Frank Buda as Deputy Chief of Staff; Eric Juzenas as Chief Counsel; Adrien Anderson as Director of Administration; Peter Gimbrere as Acting Managing Executive; Hugh Beck as Senior Advisor of Regulatory Reporting; Justin Slaughter as Senior Advisor and Director, Office of Legislative and Intergovernmental Affairs; Nancy Sumption, Senior Advisor for Cybersecurity; Andrew Feller and Katherine Kelly as Senior Policy Advisors; Satyam Khanna as Senior Policy Adviser for Climate and Environmental, Social and Governance ("ESG"); Andrea Orr as Senior Advisor; Sharon Freeman as Program Support Specialist; Andrew Nguyen as IT Specialist; and Awilda Santiago as Correspondence Coordinator.

Gibson: https://www.sec.gov/news/press-release/2021-27
Coates: https://www.sec.gov/news/press-release/2021-19
Martin: https://www.sec.gov/news/press-release/2021-26
Lee Executive Staff: https://www.sec.gov/news/press-release/2021-21

SEC HALTS PRACTICE OF CONTINGENT SETTLEMENT OFFERS

On February 11, 2021, Acting SEC Chair Allison Herren Lee announced that the SEC would no longer consider settlement offers conditioned on the granting of a waiver. Issuers seek waivers as a part of settlement offers due to the automatic disqualifications from certain privileges that commonly arise from enforcement actions, including several that ease the capital raising process. "Today I am taking action to reinforce the critical separation between the Commission's enforcement process and its consideration of requests for waivers from automatic disqualifications that arise from certain violations or sanctions. This return to the [Division of Enforcement's] long-standing practice ensures that the consideration of waivers is forward looking and focused on protecting investors, the market, and market participants from those who fail to comply with the law," said Lee. On February 12, 2021, SEC Commissioners Hester Pierce and Elad Roisman published a joint statement in support of continuing to accept contingent settlement offers, which noted that the practice is an effective tool in bringing enforcement actions which, in turn, is integral to achieving the SEC's tripartite mission of protecting investors, facilitating capital formation, and maintaining fair and orderly markets. "We disagree with Acting Chair Lee's attempt to rescind [the policy of accepting contingent settlement offers] by directing the Division of Enforcement to decline to recommend contingent settlement offers to the Commission for consideration. This change marks a return to an unwieldy process that treats as completely separate what is in fact interrelated," Pierce and Roisman said. Despite the difference of opinion between the SEC Commissioners and the Acting Chair, it appears that the Acting Chair's policy change will govern the SEC settlement process moving forward.

Lee Public Statement: https://www.sec.gov/news/public-statement/lee-statement-contingent-settlement-offers-021121
Pierce and Roisman Joint Statement: https://www.sec.gov/news/public-statement/peirce-roisman-statement-contingent-settlement-offers-021221

SEC ACTING CHAIR GRANTS ENFORCEMENT SENIOR OFFICERS ENHANCED INVESTIGATIVE AUTHORITY

On February 9, 2021, Acting SEC Chair Allison Herren Lee announced that she had reinstituted a previous SEC policy under which senior officers in the SEC's Division of Enforcement could approve Formal Orders of Investigation. Effectively, the officers can now authorize SEC Enforcement staff to subpoena documents and take sworn testimony. "This delegation of authority will enable investigative staff to act more swiftly to detect and stop ongoing frauds, preserve assets, and protect vulnerable investors. Returning this authority to the [Division of Enforcement's] experienced senior officers, who have a proven track record of executing it prudently, helps to ensure that investigative staff can work effectively to protect investors in an era when the pace of fraud, like the pace of markets themselves, is ever more rapid," said Lee.

Lee Public Statement: https://www.sec.gov/news/public-statement/lee-statement-empowering-enforcement-better-protect-investors

FINRA PUBLISHES REPORT ON EXAMINATION AND RISK MONITORING PROGRAM

On February 1, 2021, the Financial Industry Regulatory Authority ("FINRA") published its *2021 Report on FINRA's Examination and Risk Monitoring Program ("2021 Report")*. FINRA designed the report to provide its member firms' compliance programs with insights gleaned from FINRA's examinations and risk monitoring conducted throughout the previous calendar year. The report combined and replaced two reports that FINRA had previously published on an annual basis, the *Report on Examination Findings and Observations* and the *Risk Monitoring and Examination Program Priorities Letter*. The *2021 Report* summarized noteworthy findings from FINRA exams and risk monitoring activities, identified the FINRA rule applicable to the findings, and key related considerations for member firms' compliance programs. It also outlined effective practices that FINRA observed during its oversight and provided additional resources that may be helpful to member firms in fulfilling their compliance obligations. Specifically, the *2021 Report* addressed 18 regulatory areas across four broad categories: firm operations, communications and sales, market integrity, and financial management. Among the regulatory topics included in the *2021 Report* were: Regulation Best Interest and Form CRS, Consolidated Audit Trail ("CAT") compliance, cybersecurity, communications with the public, best execution, variable annuities, and anti-money laundering ("AML"), inter alia. FINRA stated that it intends to publish the *2021 Report* annually on a go-forward basis, as it did with its two previous reports that were replaced. "FINRA continues to identify new ways to provide member firms with information they can use to assess and strengthen their compliance, supervisory and risk management programs. This report is designed to give member firms a single, authoritative source that provides insights derived both from the last year's examinations and risk assessments, from where we have identified emerging issues for the coming year," said Bari Havlik, Executive Vice President of FINRA Member Supervision.

2021 FINRA Examination/Risk Monitoring Report: https://www.finra.org/sites/default/files/2021-02/2021-report-finras-examination-risk-monitoring-program.pdf

FINRA DIRECTS FIRMS TO REVIEW POLICIES AND PROCEDURES RELATED TO LOW-PRICED SECURITIES

On February 10, 2021, FINRA published Regulatory Notice 21-03 to provide information that may help member firms that engage in low-priced securities transactions assess and strengthen their controls to identify and mitigate the risks of fraud. FINRA cited several potential red flags related to issuers with low-priced securities that it urged firms to look out for, including: 1) abrupt or frequent changes of issuer name, ticker symbol or business model, or abrupt expansion of an existing business model, often to benefit from the latest trend, such as COVID-19 cures; 2) currently or previously a shell company; 3) engaging in recapitalization or reorganization activities (*e.g.*, reverse mergers); 4) hiring executive or control persons or service providers with criminal histories; 5) not providing current and adequate publicly available financial information in SEC filings; and 6) making claims about projected scale and revenue targets that are not supported by the issuer's experience, among other things. FINRA also cited several red flags related to third-party promotional activities that are commonly associated with fraudulent activity, including hyped promotional emails, advertisements or social media posts where the information cannot be reliably confirmed. Among other recommendations for monitoring and control, FINRA recommended that firms enhance their supervision of registered representatives who invest and/or have customers who invest in low-priced securities, or who have outside business activities associated with companies with low-priced securities. FINRA also encouraged firms to immediately report potential fraud involving low-priced securities via FINRA's regulatory tip webform or whistleblower hotline, the SEC's tips, complaints, and referrals ("TCR") system, their local Federal Bureau of Investigation ("FBI") field office, or their state securities regulator.

FINRA Regulatory Tip: https://www.finra.org/contact-finra/file-tip
Regulatory Notice 21-03: https://www.finra.org/sites/default/files/2021-02/Regulatory-Notice-21-03.pdf

FINRA MODIFIES TRACE DISSEMINATION PROTOCOLS FOR CERTAIN ASSET-BACKED SECURITIES

On February 2, 2021, FINRA published Regulatory Notice 21-02 announcing modifications to the Trade Reporting and Compliance Engine ("TRACE") protocols for agency pass-through mortgage-backed securities and Small Business Administration-backed securities traded in specified pool transactions to increase the granularity of its rounding methodology. In lieu of individual CUSIPs for specified pool transactions, FINRA disseminates a Reference Data Identifier for these securities that represents approximated (or rounded) values for data elements underlying the security, such as the original loan-to-value ("LTV") ratio of the security. The protocols, as modified, provide that for a security with an LTV ratio up to 20 percent, the LTV ratio shown in TRACE will be 20 percent (*e.g.*, an LTV ratio of 12 percent will be rounded up and shown as 20 percent); an LTV ratio between 21 percent and 40 percent will be rounded up and shown as 40 percent; and so on through LTV ratios of 120 percent or below. For an LTV ratio of 121 percent or above, the LTV ratio will be rounded down and shown as 121 (*e.g.*, an LTV ratio of 130 percent will be rounded down and shown as 121 percent).

Effective Date: May 17, 2021
Regulatory Notice 21-02: https://www.finra.org/sites/default/files/2021-02/Regulatory-Notice-21-02.pdf

SEC GRANTS FINRA REQUEST FOR 30-DAY FILING EXTENSION FOR SMALL BROKER-DEALERS

On February 12, 2021, the SEC issued an order approving a FINRA request to extend for 30 days the filing deadline pursuant to the Securities Exchange Act of 1934 ("Exchange Act") for the annual reports of specific FINRA member firms. Under the Exchange Act's Rule 17a-5(d)(1)(i), every broker or dealer registered under Section 15 of the Exchange Act must file annual reports not more than 60 calendar days after the end of the fiscal year of the broker or dealer. The SEC's order responded to a FINRA request intended to ease the potential burdens that smaller member firms may face in obtaining audit services in the current environment under the timing constraint promulgated in the Exchange Act. FINRA members who meet the following conditions are eligible: 1) the member was in compliance with Exchange Act 15c3-1 and had total capital and subordinated liabilities of less than $50 million as of its most fiscal year end; 2) the member was permitted to file an exemption report as part of its most recent fiscal year end annual reports; and 3) the member files its annual reports electronically with the SEC using an appropriate process. In addition, the member must submit written notification to its FINRA Risk Monitoring Analyst of its intent to avail itself of the 30-day extension. On February 18, 2021, FINRA published Regulatory Notice 21-05 with specific instructions for notification.

SEC Approval Order: https://www.sec.gov/rules/other/2021/34-91128.pdf
Regulatory Notice 21-05: https://www.finra.org/sites/default/files/2021-02/Regulatory-Notice-21-05.pdf

NASDAQ MODIFIES PROCEDURES FOR CERTAIN ON-OPEN ORDERS

On February 10, 2021, the SEC published for comment a proposal by The Nasdaq Stock Market LLC ("Nasdaq") to modify its procedures related to certain on-open orders. Specifically, Nasdaq proposed to: 1) disseminate abbreviated order imbalance information prior to the dissemination of the order imbalance indicator; 2) amend certain cutoff times for on-open orders entered for participation in the Nasdaq opening cross; and 3) extend the time period for accepting certain limits on-open orders. The proposed changes to the Nasdaq opening cross mirror similar changes previously undertaken by Nasdaq for its closing cross process. Nasdaq stated in its filing that the changes improved price stability and discovery in the closing cross and believes the opening cross would benefit from similar modifications. With respect to the order imbalance information, Nasdaq proposed to establish an early order imbalance indicator ("EOII") for the opening cross and disseminate the EOII data every 10 seconds. Currently, Nasdaq begins disseminating what is known as the net order imbalance indicator ("NOII") at 9:28 a.m. and continues to disseminate it every second until market open. Nasdaq then initiates an opening cross in all system securities for which there are orders that will execute against contra-side orders at 9:30 a.m., at which time the opening book and the Nasdaq continuous book are brought together to create single Nasdaq opening prices for system securities. According to the filing, the NOII is useful because it helps participants to identify at what price and size the opening cross will commence, as well as the number of shares required to offset any order imbalances to optimize an auction. The EOII proposed by Nasdaq would begin disseminating at 9:25 a.m. and would continue disseminating a subset of NOII data until the NOII itself begins to be disseminated. Nasdaq stated that it believes the EOII would offer market participants additional time and flexibility to react to imbalance information in advance of the NOII at 9:28 a.m.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-91096.pdf
Comments Due: March 10, 2021

SEC APPROVES NASDAQ AMENDMENTS TO RESERVE ORDERS RULES

On February 11, 2021, the SEC approved a Nasdaq proposal to amend its rules governing reserve orders. The SEC had previously published the proposal for comment and had received no comments. Pursuant to Nasdaq rules, a reserve size is an order attribute that permits a participant to stipulate that an order type that is displayed may have its displayed size replenished from an additional non-displayed size. When a participant enters an order with reserve size ("reserve order"), the full size of the order will be presented for potential execution in compliance with Regulation National Market System ("NMS") and thereafter, unexecuted portions of the order will be processed as a displayed order and a non-displayed order. When a reserve order is posted, if there is an execution against the displayed order that causes its size to decrease below a normal unit of trading, a new displayed order will be entered and receive a new timestamp, while the size of the non-displayed order will be reduced by the same amount and will not receive a new timestamp. The new rules, as amended, provide that if the new displayed order would lock an order that posted to the Nasdaq book before replenishment can occur, the displayed order would post at the locking price if the resting order is non-displayed, or would be repriced, ranked, and displayed at one minimum price increment lower or higher than the locking price if the resting order to sell or buy is displayed. The proposed functionality would also apply to a reserve order that does not execute fully upon initial order entry if the displayed order portion of the reserve order would lock a resting order upon entry. Nasdaq established the reserve order with the intention that the order would always act as a provider of liquidity upon replenishment. Nasdaq stated that new rule, as amended, would eliminate any ambiguity under its existing rules as to whether a reserve order would take liquidity when a locking order posts to the Nasdaq book prior to the reserve order completing its replenishment.

Approval Order: https://www.sec.gov/rules/sro/nasdaq/2021/34-91109.pdf

NASDAQ AMENDS TRANSACTION CREDITS FOR LIQUIDITY PROVIDERS

On February 11, 2021, the SEC published for comment a Nasdaq proposal, effective on filing, to amend its transaction credits set out in Equity 7. Currently, in Equity 7, Section 114, Nasdaq offers several special pricing programs that are based, in part, upon its members' activities in securities priced at or more than one dollar relative to total consolidated volume. Among them is a program that provides rebates to qualified market makers ("QMMs"). Pursuant to Equity 7, Section 114(e), a member that qualifies as a QMM is entitled to receive a rebate per share executed with respect to all displayed orders in securities priced at one dollar or more per share that provide liquidity in each of Tapes A, B, and C. Such a rebate is in addition to any rebate payable under Equity 7, Section 118(a). For the month of December 2020 only, Nasdaq amended the definition of "consolidated volume" in Equity 7, Section 114 to account for an unexpected rise in sub-dollar trading which stood to adversely impact its members' qualifications for its tiered credit programs – including the QMM credit program – because such qualifications depend upon members achieving threshold percentages of volumes as a percentage of dollar-plus consolidated volume, and the rise in sub-dollar volume had diluted these percentage calculations. Nasdaq's proposal would make permanent the definition of consolidated volume that was implemented in December 2020.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-91107.pdf
Comments Due: March 11, 2021

SEC DESIGNATES LONGER PERIOD FOR ACTION ON NYSE PROPOSAL TO DELETE MAXIMUM PROXY FEE

On February 1, 2021, the SEC designated a longer period of time to either approve, disapprove or institute proceedings with respect to a proposal by the New York Stock Exchange LLC ("NYSE") to delete the maximum fees for processing and forwarding proxy and other materials to beneficial owners of stock set forth under NYSE rules, 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 organization or association of which such member organization is a member. NYSE rules require member organizations that hold securities for beneficial owners in street name to solicit proxies from, and deliver proxy and issuer communication materials to, beneficial owners on behalf of issuers. For this service, issuers would reimburse NYSE member organizations for out-of-pocket, reasonable clerical, postage and other expenses incurred for a particular distribution. This reimbursement structure stems from SEC Rules 14b-1 and 14b-2. The NYSE's fee schedule had been in place since 2013 prior to the proposed change. The NYSE stated in its original filing from December 2020 that it does not believe that it is best positioned to retain its proxy-fee setting responsibility going forward, given that all the brokers who hold shares on behalf of street name account holders are FINRA members, while only a subset of them are members of the NYSE. Furthermore, a large and increasing number of the affected issuers are listed on Nasdaq or other exchanges, or are traded solely over the counter, while the development of the mutual fund industry has led to the existence of a huge number of issuers who are not listed on any exchange. The date by which the SEC will take further action is March 21, 2021.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-91025.pdf

NYSE AMENDS PRICE LIST FOR LIQUIDITY PROVIDERS

On February 12, 2021, the SEC published for comment an NYSE proposal, effective on filing, to amend its price list to: 1) introduce a new step-up adding tier; and 2) modify the incremental step-up tier for supplemental liquidity providers ("SLPs"). The NYSE stated that its proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the NYSE. As the basis for its proposal, the NYSE stated in its filing that the equity marketplace is competitive but also fragmented. Trading in a single stock can occur across multiple trading centers, and equity trading is currently dispersed across 16 exchanges, 31 alternative trading systems, and numerous broker-dealer internalizers and wholesalers, all competing for order flow. No single exchange has more than 16% market share, thus, no exchange possesses significant pricing power in the execution of equity order flow. In addition, the NYSE stated that its market share of trading in Tape A, B and C securities combined is less than 10%. As such, the NYSE stated that it believes the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow or discontinue or reduce the use of certain categories of products, in response to fee changes. The NYSE fee changes took effect on February 1, 2021.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-91123.pdf
Comments Due: March 12, 2021

NYSE AMENDS PRICE LIST RELATED TO CO-LOCATION SERVICES

On February 1, 2021, the SEC published for comment an NYSE proposal to add two partial cabinet solutions ("PCS") bundles, options E and F, to its basket of co-location services. Prior to the change, the NYSE's price list had four PCS bundles, options A through D. Each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts ("kw"); access to the liquidity center network ("LCN") and internet protocol ("IP") networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two feeds. In May 2020, the NYSE amended PCS bundle options C and D to each include two 10 Gb connections to the NMS network, an alternate dedicated network connection that users could use to access the NMS feeds for which the Securities Industry Automation Corporation ("SIAC") is engaged as the securities information processor ("SIP"). The two 10 Gb NMS network connections were added to the option C and D bundles at no additional cost. The addition of PCS bundle options E and F come in response to customer interest, according to the NYSE, and are substantially similar to options C and D, respectively. The difference between them is that each connection included in the option E and F bundles would be upgraded to 40 Gb from 10 Gb. Options E and F would include a 1 kw (option E) or 2 kw (option F) partial cabinet, one 40 Gb LCN connection, one 40 Gb IP network connection, two 40 Gb NMS network connections, and either the network time protocol feed or the precision timing protocol. Users selecting an option E or F bundle would be charged the same initial charge of $10,000 that currently applies to options C and D. In addition, users would be charged monthly recurring charges of $18,000 for an option E bundle and $19,000 for an option F bundle.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-91034.pdf

NYSE AMENDS PRICE LIST TO EXTEND THE WAIVER OF CERTAIN FEES AND CHARGES

On February 9, 2021, the SEC published for comment an NYSE proposal, effective on filing, to amend its price list to extend the waiver of equipment and related services charges and trading license fees for NYSE trading floor-based member firms. The waiver will extend through the earlier of the first full month of a full reopening of the NYSE trading floor facilities to floor personnel or March 2021. Under the waiver, 50% of the telephone system and service charges, except for the internet equipment monthly hosting fee, and trading license fees for member organizations that meet the waiver criteria set forth in the price list are waived. The NYSE originally implemented the fee waivers in response to the closure of the NYSE trading floor in March 2020 due to the COVID-19 pandemic. Although the NYSE trading floor has since reopened on a limited basis, the NYSE kept the certain fee waivers in place, including those related to telephone system service charges and trading license fees, through January 1, 2021. As the pandemic has not abated nor have the NYSE's efforts to mitigate its spread, such as the limited headcount on the NYSE trading floor, the NYSE stated that it believes it appropriate to extend these fee waivers.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-91082.pdf
Comments Due: March 9, 2021

NYSE AMERICAN TO ELIMINATE THE USE OF DARK SERIES

On December 15, 2020, the SEC published for comment a proposal by the NYSE American LLC ("NYSE American") to eliminate the exclusion of inactive or "dark" series when disseminating options series quotes. Under NYSE American rules, an "active" series for which the NYSE American would disseminate a quote is any series that: 1) has traded on any options exchange in the previous 14 calendar days; 2) is solely listed on the NYSE American; 3) has been trading 10 days or less; or 4) is a series in which the NYSE American has an order. Any options series that falls outside of the above categories of "active" series are deemed to be "dark" series. NYSE American Rule 970NY describes the obligations of the NYSE American to collect, process and make available to quotation vendors the best bid and best offer for each option series that is a reported security, but the rule only requires the NYSE American to send active series to the Options Price Reporting Authority ("OPRA"). In its filing, the NYSE American stated that it believes that discontinuing the suppression of dark series quotes would increase market transparency and enhance price discovery. Further, as the market has vastly evolved since the rule was first implemented, the NYSE American noted that it believes OPRA now has the capacity to accommodate the increase in quote traffic that would arise from the NYSE American's publication of quotes in dark series.

Press Release: https://www.sec.gov/rules/sro/nyseamer/2021/34-91039.pdf

MSRB EXTENDS COMPLIANCE DATE FOR NEW FORM G-32 REQUIREMENTS

On February 22, 2021, the SEC published for comment a Municipal Securities Rulemaking Board ("MSRB") proposal, effective on filing, to extend the compliance date of previously approved amendments to its Form G-32 from March 31, 2021 to August 2, 2021. As previously reported, the SEC approved the amendments to Form G-32 in October 2020. The amendments to Form G-32 clarified that brokers, dealers, and municipal securities dealers acting as underwriters in the primary offering of municipal securities have an obligation to manually complete three data fields on Form G-32 when such fields are applicable to a primary offering: 1) a bank qualified flag, a yes/no question that indicates whether a bank can deduct a portion of the interest cost of the carry for the municipal securities; 2) a planned amortization class bond flag, a yes/no question that indicates whether the offering is an asset-backed bond payable with a fixed sinking fund schedule; and 3) a put end date entry, a relevant date for offerings of puttable securities.

Notice Release: https://www.sec.gov/rules/sro/msrb/2021/34-91175.pdf
Comments Due: 21 days after publication in the Federal Register

Notable Enforcement Actions

This month saw an increasing number of enforcement actions, several with significant fines, that focused on a wide range of compliance issues, from recordkeeping failures to OATS and TRACE reporting deficiencies.

A firm was censured and fined $6.5 million for failing to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with regulatory obligations regarding record retention, fingerprinting and screening of associated persons, and supervision of consolidated reports. As part of the regulatory action, the firm was also required to retain a third-party consultant to conduct a comprehensive review of compliance in these areas. The findings state that, among other things, the firm failed to retain electronic records in the required format, preserve certain electronic records, and notify its regulator prior to employing electronic storage media. The firm's failure affected at least 87 million records and led to the permanent deletion of more than 1.5 million customer communications maintained by a third-party data vendor. The firm also failed to send account notices, which are required to be sent to customers at 36-month intervals for each account in which a suitability determination had been made, to more than one million customers. The findings also state that the firm failed to fingerprint non-registered associated persons and thus failed to screen these persons for statutory disqualification based on criminal convictions. The failure arose from the firm's failure to maintain a reasonable supervisory system and procedures to identify and properly screen all persons who became associated with the firm in a non-registered capacity. The firm self-reported this failure and undertook a remedial review. Separately, the firm permitted a non-registered associated person, who was subject to statutory disqualification, to remain associated with the firm. The firm also failed to establish and maintain a supervisory system reasonably designed to supervise certain consolidated reports. The firm was not aware of, and therefore failed to reasonably supervise, certain tools that its approved third-party vendors provided to the firm's registered representatives to create and disseminate consolidated reports. In particular, the firm's vendors created non-finalized consolidated reports, which, although intended for internal use, could be sent to customers. The firm's vendors also allowed representatives and customers to directly access consolidated reports on the vendors' websites, and the firm did not receive or review consolidated reports that its representatives disseminated in this manner. The firm also failed to review assets that were manually entered by representatives on consolidated reports when the representatives categorized them as non-securities related, even when the manually entered assets were evidently securities related. A former representative of the firm exploited these supervisory deficiencies in perpetrating a Ponzi scheme through which he converted at least $1 million of the firm's customers' money.
(**FINRA Case #2018059192701**)
https://www.finra.org/sites/default/files/fda_documents/2018059192701%20LPL%20Financial%20LLC%20CRD%206413%20AWC%20va%20%282021-1612052398183%29.pdf

A firm was censured, fined $4.4 million, and ordered to pay an additional $4,354,160 in customer restitution and interest for failing to reasonably supervise its registered representatives' variable annuity recommendations and for making disclosures that contained materially inaccurate information, or omitting material information in connection with variable annuity exchange recommendations. The findings state that the firm and its representatives received compensation from new variable annuity sales, trails and subsequent contributions in the form of gross dealer commissions in excess of $591 million, representing more than 40 percent of the firm's total revenue. The firm failed to provide adequate training to its representatives regarding how to complete disclosure forms that were required when recommending a variable annuity exchange and failed to provide adequate training to supervisors regarding how they should verify the information on the disclosure forms, or how they should use that information to conduct a meaningful comparison of old and new variable annuities. As a result, certain firm principals approved variable annuity exchanges based on disclosure forms that contained inaccurate or missing information, which had the effect of making the exchanges appear to be more favorable than actually was the case. In certain instances, these misstatements or omissions prevented the firm's reviewing principals from having a reasonable basis to approve these transactions. In addition, the firm failed to reasonably surveil representatives' rates of variable annuity exchanges and failed to reasonably supervise representatives' variable annuity share-class recommendations. The firm failed to provide reasonable training and guidance to its representatives on the features, fees and surrender charges of the various share classes. As a result, certain representatives lacked the information necessary to compare share classes in making suitability determinations. Similarly, the firm failed to provide adequate training or guidance to its supervisors regarding variable annuity share classes. Consequently, supervisors did not identify common red flags. The firm also lacked a reasonably designed system to detect red flags of inappropriate share-class recommendations. Even when the firm became aware of red flags regarding representatives' variable annuity share-class recommendations, it failed to take appropriate action. The findings also state that the firm failed to reasonably supervise mutual fund sales to ensure that eligible customers who purchased mutual fund shares received the benefit of applicable sales charge waivers. The firm relied on its representatives to determine the applicability of sales charge waivers to customers' mutual fund purchases, but it failed to provide guidance to the representatives to assist them in making this determination and failed to establish a system to verify whether waivers were properly applied. As a result, the firm failed to apply sales charge waivers to certain mutual fund purchases made by eligible customers causing the firm to overcharge accounts a total of $438,239. The firm later reimbursed each of these accountholders. The firm also failed to establish and maintain a supervisory system, and failed to establish, maintain and enforce written procedures reasonably designed to supervise the suitability of 529 savings plan share-class recommendations. The firm did not provide adequate guidance to representatives regarding the importance of considering share-class differences when recommending 529 plans and did not provide supervisors with the information necessary to properly evaluate the suitability of the share-class recommendations.
(**FINRA Case #2015048250401**)
https://www.finra.org/sites/default/files/fda_documents/2015048250401%20Transamerica%20Financial%20Advisors%2C%20Inc.%20CRD%2016164%20AWC%20sl%20%282021-1611188411999%29.pdf

A firm was censured and fined $2.5 million for failing to establish and maintain a supervisory system reasonably designed to achieve compliance with its record retention obligations under Rule 17a-4(f) of the Exchange Act. The firm did not assign responsibility for achieving compliance with its recordkeeping obligations to any particular department, team or individual. Although the firm's written supervisory procedures ("WSPs") for certain business units included a reference to Rule 17a-4(f), they did not include guidance to firm personnel about compliance. In addition, the firm failed to comply with the requirements of Rule 17a-4(f) with respect to storing certain records electronically. The firm stored millions of required records electronically including its general ledger, supervisory procedures, customer statements and onboarding documents, and notices to customers, but it did not notify its examining authority 90 days prior to storing records electronically. The firm also did not have an audit system providing for accountability regarding inputting of records to electronic storage media and inputting of any changes made to every original and duplicate record, nor did it retain a third-party vendor with access to and the ability to download information from the broker-dealer's electronic storage media to an acceptable medium. The firm did not obtain an undertaking from any vendor that it would provide requested electronic records to the SEC, FINRA or any other regulatory authority in the event the firm was unable to provide the records itself. Furthermore, the firm did not store the records in a non-rewriteable, non-erasable format, as required by Rule 17a-4(f). (**FINRA Case #2017055691901**)
https://www.finra.org/sites/default/files/fda_documents/2017055691901%20Deutsche%20Bank%20Securities%20Inc.%20CRD%202525%20AWC%20sl.pdf

A firm was censured, fined $1 million and required to revise its WSPs for failing to establish and maintain a supervisory system, including written procedures, reasonably designed to comply with its recordkeeping requirements. The findings state that the firm's written procedures did not address any of the requirements of Rule 17a-4(f) of the Exchange Act. The firm's procedures did not identify any system, location or database where documents should be stored, describe any process for auditing the integrity of such documents, or identify the individuals responsible for achieving compliance with record retention requirements. The firm also failed to comply with the requirements with respect to storing certain required records electronically. The firm electronically stored millions of required records, including general ledger records, records related to Financial and Operational Combined Uniform Single ("FOCUS") reports, bank statements, customer confirmations and statements, and trade records, but did not notify its regulator 90 days prior to storing these records electronically or have an audit system providing for accountability regarding the inputting of records to electronic storage media and the inputting of any changes made to every original and duplicate record. Nor did the firm retain a third-party vendor with access to and the ability to download information from the broker-dealer's electronic storage media to any acceptable medium and to obtain an undertaking from the vendor that it would provide requested electronic records to the SEC, FINRA or any other regulatory authority in the event the firm was unable to provide the records itself. The firm also failed to store the required records in a form and manner reasonably designed to safeguard them from loss, alteration or destruction. The firm did not store the records in a non-rewriteable, non-erasable format, as required by Rule 17a-4(f).
(**FINRA Case #2018059384901**)
https://www.finra.org/sites/default/files/fda_documents/2018059389401%20SG%20Americas%20Securities%2C%20LLC%20CRD%20128351%20AWC%20sl%20%282021-1612052398130%29.pdf

A firm was censured, fined $650,000 and required to revise its WSPs for failing to timely report to TRACE transactions in TRACE-eligible corporate bonds and agency debt securities. The findings state that the majority of the late corporate transactions were caused by manual trade amendments by the trader or salesperson entering the trade late. The firm later addressed these issues through technological and supervisory enhancements. The agency debt reporting issues were primarily caused by mapping, which is the coding that allows certain fields to be automatically populated, and technological issues, which the firm also addressed. The findings also state that the firm over-reported treasury transactions to TRACE. The over-reporting occurred in connection with treasury transactions executed between the firm and its affiliate. The firm often offset transactions with customers or other dealers with a transaction with the affiliate. If the firm was short, it would purchase an offsetting amount from the affiliate, or if it was long, it would sell that position to the affiliate. Due to a coding error, the firm erroneously reported both legs of the transaction to TRACE as if it were simultaneously buying and selling the same security at the same price which generated false alerts in FINRA's regulatory surveillance patterns. The firm later remediated the issue. The findings also state that the firm reported the incorrect time of execution for corporate transactions to TRACE. In addition, the firm failed to show the correct time of execution on the memoranda of brokerage orders. The firm did not timely enter the transactions into the order management system, which incorrectly reported the transactions' execution time as the time the transaction was entered into the order management system. FINRA found that the firm's supervisory system, including its WSPs, was not reasonably designed to achieve compliance with TRACE reporting rules. The firm primarily supervised TRACE reporting by requiring supervisors to review weekly and monthly reports of TRACE reporting, which included individual transactions that were reported late and statistics of late reporting. When a supervisor did escalate issues, it was sent to an operations team and there was no individual or individuals with supervisory authority tasked with reviewing for larger patterns of TRACE reporting issues that affected multiple traders or salespeople. The firm also had no supervisory system, including WSPs, in place that enabled it to identify its over-reporting of treasury transactions. The firm's procedures for the identification of over-reporting of transactions only applied to interdealer transactions, not transactions with the firm's affiliate, and because the affiliate was not a broker-dealer, these transactions were not included in supervisory reviews. (**FINRA Case #2017054054501**)
https://www.finra.org/sites/default/files/fda_documents/2017054054501%20Barclays%20Capital%20Inc.%20CRD%2019714%20AWC%20%20va%20%282020-1609460398973%29.pdf

A firm was censured and fined $65,000 for failing to develop and implement a written Identity Theft Prevention Program ("ITPP") reasonably designed to detect, prevent and mitigate identity theft in connection with opening or maintaining customer accounts. As part of the regulatory action, the firm was also required to notify customers whose identifying information was transmitted to an unauthorized email account, revise and address deficiencies with its ITPP to comply with Regulation S-ID of the Exchange Act, and enhance its email security systems. The findings state that the firm's program failed to include reasonable policies and procedures to identify or detect red flags of identity theft, and its procedures for responding to suspected identity theft were not tailored to its business. Although not formally titled ITPP, the firm had written procedures in place to respond to red flags of identity theft, but these procedures failed to provide associated persons any guidance regarding steps to take if an incident of identity theft had occurred or was suspected.

The firm's program consisted of generic policies and procedures and was not tailored to its actual business model. The findings also state that, upon learning of an email security breach involving the firm email account of its Chief Executive Officer ("CEO") and Chief Compliance Officer ("CCO"), the firm failed to implement the procedures set forth in its program to mitigate the risk of identity theft due to the exposure of its customers' identifying information to an unauthorized third-party. After an outside email vendor informed its CEO and CCO that their firm's email accounts had likely been compromised, the firm failed to take steps to mitigate the risk of identity theft resulting from the incident. A regulatory cycle examination prompted the firm to inquire about email communications with this external email address. Prior to that, the firm had not attempted to determine the scope of the breach. To date, the firm has not notified any customers whose identifying information was exposed because of the incident. Some of the emails contained identifying information relating to the firm's customers, including customers' social security numbers, account numbers, driver's license numbers and dates of birth. (**FINRA Case #2019062898302**)
https://www.finra.org/sites/default/files/fda_documents/2019062898302%20Supreme%20Alliance%20LLC%20CRD%2045348%20AWC%20sl%20%282021-1611188411528%29.pdf

A firm was censured, fined $55,000, and required to certify that it had established and implemented policies, procedures and internal controls reasonably designed to achieve compliance with FINRA Rule 3310, for failing to establish and implement an anti-money laundering ("AML") program reasonably designed to detect and cause the reporting of potentially suspicious activity relating to transactions in low-priced securities. The findings also state that the firm's procedures failed to address the process for assessing potential red flags associated with transactions in low-priced securities and did not provide reasonable guidance about how to utilize the reports and tools the firm had at its disposal to monitor for potentially suspicious trading in low-priced securities. In addition, the surveillance reports and tools the firm actually used were not reasonably designed to detect and cause the reporting of potentially suspicious activity relating to transaction involving low-priced securities. In particular, the firm relied on its branch managers and compliance personnel to conduct a manual review of daily and five-day trade blotters for potentially suspicious activity. These blotters, however, did not include sufficient information to reasonably identify potentially suspicious activity, either on a transaction-by-transaction basis or over time. The firm also used automated exception reports to detect and cause the reporting of potentially suspicious activity; however, the reports were not reasonably designed and failed to flag purchases of low-priced securities that should have triggered one or more of the reports' parameters. The exception reports did not flag deposits or sales of low-priced securities, or other red flags for potentially suspicious activity. The findings also state that although the firm received alerts from its clearing firm relating to potentially suspicious activity in low-priced securities, it did not reasonably respond to these red flags. The firm failed to create any written analyses or to compile other records indicating that it investigated this potentially suspicious activity and did not take steps to determine why its own AML program had failed to detect the potentially suspicious transactions that the clearing firm flagged. The firm also failed to establish a due diligence program including policies, procedures and controls reasonably designed to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving correspondent accounts or foreign

financial institutions ("FFIs"). The firm failed to identify all its FFI accounts because it had no system or processes in place to do so. The firm had no system or procedure for performing risk-based reviews of FFIs and, as a result, did not review those customers' trading activity against any defined risk assessment or to determine if the trading was consistent with the customers' expected account activity. Although the firm's policies and procedures required it to conduct annual reviews of foreign accounts, it did not conduct any annual periodic reviews of correspondent accounts for FFIs. (**FINRA Case #2018056487101**)
https://www.finra.org/sites/default/files/fda_documents/2018056487101%20Joseph%20Gunnar%20%26%20Co.%20LLC%20CRD%2024795%20AWC%20va%20%20%282021-1609719594150%29.pdf

A firm was censured and fined $55,000 for failing to maintain order memoranda that accurately reflected whether trades were solicited in customer accounts. The findings state that, rather than maintaining physical order tickets or other internal records as a memorandum of each brokerage order, the firm relied on records generated by its clearing firms that included a field indicating whether each trade was solicited or unsolicited. However, one of the clearing firms regularly failed to indicate whether these trades were solicited or unsolicited. The firm's order memoranda and other books and records lacked any other information indicating whether the trades were solicited or unsolicited. The findings also state that the firm failed to establish and maintain a supervisory system, and failed to enforce WSPs, reasonably designed to achieve compliance with applicable recordkeeping laws, regulations and rules pertaining to review and retention of order memoranda. The firm allowed individual representatives, when entering customer trades in the order management systems maintained by its clearing firms, to select whether they had solicited the trades. The firm then retained just the information it received from its clearing firms in its own books and records but maintained no supervisory system to ensure the accuracy of its order memoranda. To the contrary, when firm supervisory personnel became aware of inaccurate solicitation information in the firm's books and records, they treated the trades as unsolicited for purposes of supervisory review. Firm operations personnel occasionally asked representatives about trades in customer accounts with an inaccurate solicitation indicator and, when that happened, on an ad hoc basis, would correct the order memoranda or add a comment to the blotter to show the trades as either solicited or unsolicited. The firm did not, however, correct all or even most of these trades and took no other remedial steps. (**FINRA Case #2016047634501**)
https://www.finra.org/sites/default/files/fda_documents/2016047634501%20R.F.%20Lafferty%20%26%20Co.%2C%20Inc.%20CRD%202498%20AWC%20sl%20%282021-1610324396697%29.pdf

A firm was censured, fined $40,000, and required to revise its WSPs related to the review of electronic communications of its senior management. Without admitting or denying the findings, the firm consented to the sanctions and to the entry of findings that it failed to have a reasonable supervisory system to review the electronic correspondence of its associated persons. The findings state that the firm excluded the electronic communications of certain senior management from its supervisory review process. In excluding members of senior management from monitoring, the firm did not have a process in place for the review of communications of those senior management associated persons relating to its securities business. Nor did the firm establish a separate process

by which it might effectively review sensitive information in the communications of senior management. (**FINRA Case #2018057735701**)
https://www.finra.org/sites/default/files/fda_documents/2018057735701%20Mizuho%20Securities%20USA%20LLC%20CRD%2019647%20AWC%20va%20%282021-1609978798722%29.pdf

A firm was censured and fined $30,000 for failing to transmit Reportable Order Events ("ROEs") to the Order Audit Trail System ("OATS"). The findings state that nearly all these ROEs were associated with a specific trading desk at the firm. The firm failed to report those ROEs because it was not aware that its vendor stopped reporting to OATS when it was sold to a third-party. The firm failed to report the remaining ROEs that were associated with a different trading desk because its OATS trade reporting agreements did not cover the desk's reportable trades, which were limited in volume. Consequently, the firm failed to timely report ROEs associated with this desk. The desk had begun manually reporting trades, however its volume of OATS reportable trades increased substantially, leading to some ROEs reported late. The findings also state that the firm failed to designate an OATS supervisor and as a result it failed to supervise OATS reporting. The supervisor of the firm's retail trading desk had been the firm's OATS supervisor, however, the supervisor retired when the firm sold the retail trading desk and his supervisory duties were not transferred until nearly a year later. As a result, the firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA rules concerning OATS reporting. The firm's supervisory system and WSPs failed to provide for a periodic comparison of OATS data to its underlying books and records to verify the accuracy and completeness of OATS reports. In addition, the firm's WSPs were not reasonably tailored to its business.
(**FINRA Case #2019061563601**)
https://www.finra.org/sites/default/files/fda_documents/2019061563601%20B.C.%20Ziegler%20and%20Company%20CRD%2061%20AWC%20sl%20%282021-1611793190204%29.pdf

A firm was censured, fined $18,000, and required to revise its WSPs for incorrectly reporting to TRACE customer allocation transactions in TRACE-eligible securitized products that should have been reported as 95 block transactions. The firm entered fixed income transactions it executed into its clearing firm's system for reporting to TRACE. The firm entered the transactions as principal and, for certain transactions, also included a fee to offset the clearing costs associated with the trade. The firm used a unique principal designation offered by its clearing firm to report such clearing cost fees in the commission field. TRACE does not allow the submission of principal transactions with commissions. Due to this restriction, and unbeknownst to the firm, the firm's clearing firm changed the principal capacity for these transactions to agent in the relevant TRACE reports. As a result, the publicly disseminated TRACE reports inaccurately reported the firm as having acted in an agency capacity in connection with these transactions when, in fact, it had acted in a principal capacity. In some of those transactions, the firm also inaccurately reported clearing cost fees as commissions. The findings also state that the firm failed to establish and maintain a system, including WSPs, to supervise the activities of each associated person that was reasonably designed to achieve compliance with applicable securities laws rules, and regulations, specifically those concerning the firm's compliance with TRACE reporting rules. The WSPs failed to describe the supervisory steps to be taken by the designated supervisor to review for, among other things, the accuracy of the firm's

TRACE reports. The WSPs also failed to describe what TRACE notices and/or reports any such supervisor should consult in conducting reviews. The firm did not include a review of the accuracy of the TRACE reports, or the accuracy of its capacity/commission entries. Also, the firm's frontline supervision of its TRACE report amounted to a review of reports generated by its clearing firm, yet none of those reports contained information that would have allowed the firm to verify the accuracy of its TRACE reports. (**FINRA Case #2019062882101**)
https://www.finra.org/sites/default/files/fda_documents/2019062882101%20Calton%20%26%20Associates%2C%20Inc.%20CRD%2020999%20AWC%20sl%20%282021-1611188411587%29.pdf