SECURITIES OPERATIONS

REGULATORY UPDATE

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IN THIS ISSUE

SEC PROPOSES NEW SHORT SALE DISCLOSURES, ORDER MARKING REQUIREMENTS, CAT AMENDMENTS

On February 25, 2022, the U.S. Securities and Exchange Commission ("SEC" or "Commission") announced that it had voted to propose changes that would increase the public availability of short sale related data. New Rule 13f-2 under the Securities Exchange Act of 1934 ("Exchange Act") and the corresponding Form SHO would require certain institutional investment managers to report short sale related information to the SEC on a monthly basis. The SEC then would make aggregate data about large short positions, including daily short sale activity data, available to the public for each individual security. Specifically, Rule 13f-2 would require institutional investment managers exercising investment discretion over short positions meeting specified thresholds to report on the proposed Form SHO information relating to end-of-the-month short positions and certain daily activity affecting such short positions. The SEC would aggregate the resulting data by security, thereby maintaining the confidentiality of the reporting managers, and publicly disseminate the data to all investors. This new data would supplement the short sale data that is currently publicly available from self-regulatory organizations. "Proposed Rule 13f-2 would make aggregate data about large short positions available to the public for individual equity securities," said SEC Chair Gary Gensler. "This would provide the public and market participants with more visibility into the behavior of large short sellers. The raw data reported to the Commission on a new Form SHO would help us to better oversee the markets and understand the role short selling may play in market events. It's important for the public and the Commission to know more about this important market, especially in times of stress or volatility." The SEC also voted to propose a new provision of Regulation SHO, Rule 205, which would establish a new "buy to cover" order marking requirement for broker-dealers. Regulation SHO, which is the SEC's primary short selling regulation, requires broker-dealers to identify each sale order that it effects as either "long," "short," or "short-exempt," but it does not currently have a corresponding requirement for purchase orders. New Rule 205 would require a broker-dealer to mark a purchase order as "buy to cover" if the purchaser has any short position in the same security at the time the purchase order is entered. The SEC stated that it considers this information as especially useful in reconstructing significant market events and identifying potentially abusive trading practices including short squeezes. The SEC also voted to amend the national market system ("NMS") plan governing the consolidated audit trail ("CAT"). The amendment would require CAT reporting firms to report "buy to cover" information to CAT. The proposed amendments also include a provision that would require each CAT reporting firm to indicate where it is asserting use of the bona fide market making exception under Regulation SHO. Considering its proposed Rule 13f-2, the SEC voted to reopen the comment period for Exchange Act Rule 10c-1. Rule 10c-1 was proposed by the Commission on November 18, 2021, to increase the transparency of the securities lending market by requiring any person that loans a security on behalf of itself or another person to report the material terms of those securities lending transactions and related information to a registered national securities association. The initial comment period for proposed Rule 10c-1 ended on January 7, 2022.

Rule 13f-2 Comments Due: April 26, 2022
Rule 10c-1 Comments Due: April 10, 2022
Proposed Rule 13f-2: https://www.sec.gov/rules/proposed/2022/34-94313.pdf
Proposed CAT Amendments: https://www.sec.gov/rules/proposed/2022/34-94314.pdf
Fact Sheet: https://www.sec.gov/files/34-94314-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-32

SEC TO INCREASE DISCLOSURE REQUIREMENTS FOR PRIVATE FUNDS

On February 9, 2022, the SEC announced that it had proposed new rules and amendments under the Investment Advisers Act of 1940 ("Advisers Act") to augment the regulation of private fund advisers in an effort to increase transparency, competition and efficiency in the private fund market. The proposed rules would increase transparency by requiring registered private fund advisers to provide investors with quarterly statements detailing certain information regarding fund fees, expenses, and performance. Additionally, the proposed rules would prohibit private fund advisers, including those that are not registered with the SEC, from providing certain types of preferential treatment to investors in their funds and all other preferential treatment unless it is disclosed to current and prospective investors. The proposed changes also would create new requirements for private fund advisers related to fund audits, books and records, and adviser-led secondary transactions. The proposals also would prohibit all private fund advisers from engaging in several activities, including: 1) seeking reimbursement, indemnification, exculpation, or limitation of liability for certain activity; 2) charging certain fees and expenses to a private fund or its portfolio investments, such as fees for unperformed services and fees associated with an examination or investigation of the adviser; 3) reducing the amount of an adviser clawback by the amount of certain taxes; 4) charging fees or expenses related to a portfolio investment on a non-pro rata basis; and 5) borrowing or receiving an extension of credit from a private fund client. In addition, the SEC proposed amendments to the Advisers Act compliance rule that would require all registered advisers, including those that do not advise private funds, to document the annual review of their compliance policies and procedures in writing.

Comments Due: April 11, 2022
Proposed Rule: https://www.sec.gov/rules/proposed/2022/ia-5955.pdf
Fact Sheet: https://www.sec.gov/files/ia-5955-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-19

SEC TO MODIFY RULES ON CYBERSECURITY RISK MANAGEMENT FOR REGISTERED FUNDS AND ADVISERS

On February 9, 2022, the SEC announced that it had proposed rules related to cybersecurity risk management for registered investment advisers and funds, as well as amendments to certain rules that govern investment adviser and fund disclosures. The proposed rules would require advisers and funds to adopt and implement written cybersecurity policies and procedures designed to address cybersecurity risks that could harm advisory clients and fund investors. The proposed rules also would require advisers to report significant cybersecurity incidents affecting the adviser or its fund or private fund clients to the SEC on a new confidential form. The proposal would also require advisers and funds to publicly disclose cybersecurity risks and significant cybersecurity incidents that occurred in the last two fiscal years in their brochures and registration statements, and would establish new recordkeeping requirements for advisers and funds to improve the availability of cybersecurity-related information.

Comments Due: April 11, 2022
Proposed Rule: https://www.sec.gov/rules/proposed/2022/33-11028.pdf
Fact Sheet: https://www.sec.gov/files/33-11028-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-20

SEC TO AMEND CLEARANCE AND SETTLEMENT RULES

On February 9, 2022, the SEC announced that it had proposed rule amendments aimed at reducing risks in the clearance and settlement of securities, including by shortening the standard settlement cycle for most broker-dealer transactions in securities from two business days after the trade date ("T+2") to one business day after the trade date ("T+1"). The proposed changes are designed to reduce the credit, market, and liquidity risks in securities transactions faced by market participants and U.S. investors. In addition to shortening the standard settlement cycle, the proposal includes rules directed at broker-dealers and registered investment advisers to shorten the process of confirming and affirming the trade information necessary to prepare a transaction for settlement so that it can be completed by the end of trade date. Further, the proposal includes a new requirement to facilitate straight-through processing, which would apply to certain types of clearing agencies that provide central matching services. Central matching service providers help facilitate the processing of institutional trades between broker-dealers and their institutional customers. The proposed rule would require new policies and procedures directed to straight-through processing and require an annual report on progress with the process. The SEC would require compliance with a T+1 standard settlement cycle, if adopted, by March 31, 2024.

Comments Due: April 11, 2022
Proposed Rule: https://www.sec.gov/rules/proposed/2022/34-94196.pdf
Fact Sheet: https://www.sec.gov/files/34-94196-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-21

SEC TO MODIFY RULES REGARDING BENEFICIAL OWNERSHIP REPORTING AND DISCLOSURE

On February 10, 2022, the SEC announced that it had proposed rule amendments governing beneficial ownership reporting under Exchange Act Sections 13(d) and 13(g). The proposed amendments would update those rules to provide more timely information. In a statement, SEC Chair Gary Gensler noted that "investors can currently withhold market moving information from other shareholders for 10 days after crossing the five percent [ownership] threshold before filing a Schedule 13D, creating an information asymmetry between these investors and other shareholders." The proposed amendments to Regulation 13D-G would: 1) accelerate the filing deadlines for Schedule 13D beneficial ownership reports from 10 days to five days and require that amendments be filed within one business day; 2) generally accelerate the filing deadlines for Schedule 13G beneficial ownership reports, which differ based on the type of filer; 3) expand the application of Regulation 13D-G to certain derivative securities; 4) clarify the circumstances under which two or more persons have formed a group that would be subject to beneficial ownership reporting obligations; 5) provide new exemptions to permit certain persons to communicate and consult with one another, jointly engage issuers, and execute certain transactions without being subject to regulation as a group; and 6) require that Schedules 13D and 13G be filed using a structured, machine-readable data language.

Comments Due: April 11, 2022
Proposed Rule: https://www.sec.gov/rules/proposed/2022/33-11030.pdf
Fact Sheet: https://www.sec.gov/files/33-11030-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-22

SEC TO AMEND CERTAIN WHISTLEBLOWER PROGRAM RULES

On February 10, 2022, the SEC announced that it had proposed two amendments to the rules governing its whistleblower program. The first proposed amendment concerns award claims for related actions that would be otherwise covered by an alternative whistleblower program. The second affirms the SEC's authority to consider the dollar amount of a potential award for the limited purpose of increasing an award but not to lower an award. Specifically, the proposed amendment to Rule 21F-3 would allow the SEC to pay whistleblower awards for certain actions brought by other entities, including designated federal agencies, in cases where those awards might otherwise be paid under the other entity's whistleblower program. The proposed amendments also would affirm the SEC's authority under Rule 21F-6 to consider the dollar amount of a potential award for the limited purpose of increasing the award amount, and it would eliminate the SEC's authority to consider the dollar amount of a potential award for the purpose of decreasing an award.

Comments Due: April 11, 2022
Proposed Rule: https://www.sec.gov/rules/proposed/2022/34-94212.pdf
Fact Sheet: https://www.sec.gov/files/34-94212-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-23

SEC TAPS SAMPSON AS DIRECTOR OF OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

On February 16, 2022, the SEC announced that it had named Rita M. Sampson as Director of the SEC's Office of Equal Employment Opportunity ("OEEO"). OEEO is a neutral and independent office within the SEC that creates and applies best practices to achieve equality in the workplace and compliance with anti-discrimination laws. OEEO specializes in legal and social science analysis, proactive prevention of workplace discrimination and harassment, conflict management, investigative techniques, federal sector equal employment opportunity rules and processes, and program management. Most recently, Ms. Sampson served as the Director of the Office of Diversity, Equity, Inclusion, and Accessibility at the U.S. Office of Personnel Management.

Press Release: https://www.sec.gov/news/press-release/2022-28

SEC APPOINTS PRICE AS ACTING DIRECTOR OF THE OFFICE OF CREDIT RATINGS

On February 1, 2022, the SEC announced that it had appointed Lori H. Price as Acting Director of the Office of Credit Ratings ("OCR"), replacing Ahmed A. Abonamah, who left the SEC at the beginning of February 2022 to serve as Chief Financial Officer for the City of Cleveland, Ohio. OCR is responsible for oversight of nationally recognized statistical rating organizations ("NRSROs"). OCR conducts examinations of NRSROs, develops and administers rules affecting NRSROs, and works to ensure that credit ratings are not unduly influenced by conflicts of interest and that NRSROs provide greater transparency and disclosure to investors. Price joined OCR in August 2020, and previously served in the SEC's Office of the General Counsel in several roles, most recently as Associate General Counsel.

Press Release: https://www.sec.gov/news/press-release/2022-16

SEC NAMES NEW ACTING CO-DIRECTORS OF PHILADELPHIA REGIONAL OFFICE

On February 11, 2022, the SEC announced that Kelly L. Gibson would leave her post as Director of the Philadelphia Regional Office effective immediately, and would be replaced by Joy Thompson and Scott Thompson as Acting Co-Directors. Prior to her appointment, Joy Thompson served as the Associate Regional Director for the SEC's Philadelphia Office's examination program. She joined the SEC in 1986 and has served in various roles in the examinations and enforcement arms of the Commission during her tenure. Prior to his appointment, Scott Thompson served as the Associate Director of Enforcement for the SEC's Philadelphia Office. He joined the SEC in 2007 and previously served as Senior Trial Counsel and an Assistant Regional Director in the SEC's Market Abuse Unit. Prior to her departure from the SEC, Gibson had served as the Director of the SEC's Philadelphia Office since February 2020 and, in 2021, also served as the Acting Deputy Director of the SEC's Division of Enforcement. Gibson joined the SEC in 2008 as a staff attorney in the SEC's Division of Enforcement. Over her 14-year tenure, Gibson also oversaw the SEC's Office of Market Intelligence and Office of the Whistleblower, and also served as a member of the SEC's Market Abuse Unit. In 2016, she received the SEC's Analytical Methods award.

Press Release: https://www.sec.gov/news/press-release/2022-25

FINRA PUBLISHES 2022 REPORT ON EXAM AND RISK MONITORING PROGRAM

On February 9, 2022, the Financial Industry Regulatory Authority, Inc. ("FINRA") announced that it had published its *2022 Report on FINRA's Examination and Risk Monitoring Program*, a report highlighting insights from FINRA's oversight programs of FINRA member firms. FINRA stated that many of the areas addressed in the report represent ongoing core compliance responsibilities that are reviewed as part of FINRA's regular risk-based exam program each year. This year's report included 21 topic areas, including five new sections: 1) firm short positions and fails-to-receive in municipal securities; 2) trusted contact persons; 3) funding portals and crowdfunding offerings; 4) disclosure of routing information; and 5) portfolio margin and intraday trading. Other focus areas of the report included: 1) FINRA's initial findings from its Regulation Best Interest and Form CRS reviews; 2) firms' compliance with certain regulatory obligations related to the CAT, best execution, and Rule 606 of Regulation NMS; 3) problems with some mobile apps' communications with customers and firms' supervision of activity on those apps, particularly controls around account openings; 4) firms' compliance with their regulatory obligations with securities activities involving special purpose acquisition companies ("SPACs"); 5) the increasing number and sophistication of cybersecurity threats faced by firms and their customers; and 6) firms' communications and disclosures made to customers regarding complex products. This year, the report emphasized new material in sections that have appeared in previous iterations, as well as findings that are particularly relevant for firms in their first year of operation. FINRA also pledged to adapt its areas of focus throughout 2022 to address emerging regulatory concerns and risks for investors that may arise throughout the year. The report also identified the applicable rules and related considerations for member firm compliance programs, summarized noteworthy findings from recent examinations, and outlined best practices.

2022 FINRA Report: https://www.finra.org/rules-guidance/guidance/reports/2022-finras-examination-and-risk-monitoring-program
Press Release: https://www.finra.org/media-center/newsreleases/2022/finra-publishes-2022-report-exam-and-risk-monitoring-program

FINRA UNDERTAKES REVIEW OF ARBITRATOR SELECTION PROCESS

On February 18, 2022, FINRA announced that it had hired the law firm Lowenstein Sandler to conduct an independent review of how FINRA Dispute Resolution Services ("DRS") complied with its rules, policies and procedures for arbitrator selection in an arbitration proceeding whose award was recently vacated by an Atlanta, Georgia Superior Court judge. DRS administers an arbitration forum to assist in the resolution of disputes involving investors, securities firms and their registered employees. Although securities firms and investment advisers often include mandatory arbitration clauses in their customer account agreements, FINRA rules do not require the practice. The arbitration forum operates in accordance with rules that have been approved by the SEC, after a finding that the rules are in the public interest. The SEC regularly examines DRS's operations. "We take this matter very seriously" said FINRA President and Chief Executive Officer Robert Cook. "FINRA recognizes the importance of maintaining trust in the system and is committed to ensuring the DRS arbitration forum is operated in a fair and neutral manner."

Press Release: https://www.finra.org/media-center/newsreleases/2022/finra-hires-firm-conduct-independent-review-arbitrator-selection

FINRA SETS FIRST EVALUATION DATE UNDER NEW RULE 4111

On February 1, 2022, FINRA announced that it had set June 1, 2022 as the first evaluation under Rule 4111 (Restricted Firm Obligations). Rule 4111 became effective on January 1, 2022 and was adopted by FINRA in an attempt to address firms with a significant history of misconduct. The rule requires FINRA member firms that are identified as "restricted firms" to deposit cash or qualified securities in a segregated, restricted account, adhere to specified conditions or restrictions, or comply with a combination of such obligations. As previously reported, FINRA outlined in Regulatory Notice 21-34 that the new rule established a multi-step, annual process through which FINRA will determine whether a member firm raises investor protection concerns substantial enough to require that it be designated, or re-designated, as a "restricted firm" and subject to additional obligations, including a "restricted deposit requirement." Each year's Rule 4111 process will begin with a calculation of which member firms meet numeric thresholds based on firm-level and individual-level disclosure events, to identify member firms with a significantly higher level of risk-related disclosures as compared to similarly sized peers. Specifically, for each member firm, FINRA's Department of Member Supervision "will compute annually, on a calendar-year basis, the preliminary identification metrics to determine if the member meets the preliminary criteria for identification." Six preliminary identification metrics are based on six categories of events or conditions, and the date that FINRA will calculate those metrics is considered the "evaluation date." The evaluation date will impact numerous aspects of the annual calculation, including what the evaluation period is, the number of registered persons in-scope, and the number of registered persons associated with previously expelled firms, and which firm-size preliminary identification metrics thresholds apply. FINRA reiterated that the evaluation date is not the date when FINRA would actually perform the annual calculation of whether member firms meet the preliminary criteria for identification. Instead, FINRA stated that it plans to perform the annual calculation at least 30 days after the evaluation date.

Notice Release: https://www.finra.org/rules-guidance/notices/information-notice-020122

FINRA ADOPTS AMENDMENTS TO RULE 2165

On February 15, 2022, FINRA published Regulatory Notice 22-05 to announce that it had adopted amendments to FINRA Rule 2165 (Financial Exploitation of Specified Adults). The amendments, as adopted, permit member firms to: 1) place a hold on a securities transaction, in addition to the already-permitted hold on a disbursement of funds or securities, where there is a reasonable belief of financial exploitation; and 2) extend a temporary hold on a disbursement or transaction for an additional 30 business days, beyond the current maximum of 25 business days, for a total of 55 business days, if the member firm has reported the matter to a state regulator or agency, or a court of competent jurisdiction. Rule 2165 provides member firms and their associated persons with a safe harbor from FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) and 11870 (Customer Account Transfer Contracts) when member firms exercise discretion in placing temporary holds consistent with the requirements of Rule 2165. FINRA stated in the Regulatory Notice that it encourages member firms to take advantage of the Rule 2165 safe harbor where there is a reasonable belief of customer financial exploitation. Since 2018, FINRA member firms have utilized Rule 2165 to prevent seniors from losing at least $320,000 after those seniors were targeted by various fraudulent schemes.

Effective Date: March 17, 2022
Final Rule: https://www.finra.org/sites/default/files/2022-02/rule-2165-notice-attachment-a.pdf
Regulatory Notice 22-05: https://www.finra.org/sites/default/files/2022-02/Regulatory-Notice-22-05.pdf

FINRA MODIFIES THE FINRA/NASDAQ TRF TRANSACTION QUERY FEE

On February 4, 2022, the SEC published for comment a FINRA proposal, effective immediately upon filing, to amend FINRA Rule 7620A, which governs fees related to trade reporting facilities ("TRFs") operated jointly by FINRA and The Nasdaq Stock Market LLC ("Nasdaq"). In its filing, FINRA proposed to modify the query fee applicable to non-retail participants that use the FINRA/Nasdaq Trade Reporting Facility Carteret (the "FINRA/Nasdaq TRF Carteret") and the FINRA/Nasdaq Trade Reporting Facility Chicago (the "FINRA/Nasdaq TRF Chicago") (collectively, the "FINRA/Nasdaq TRF"). Prior to the amendments, FINRA/Nasdaq TRF participants that did not constitute retail participants were required to pay a $0.50 query fee for each FINRA/Nasdaq TRF transaction query. FINRA members used WebLink ACT/Nasdaq Workstation Post Trade ("WebLink"), ACT Workstation ("Workstation"), and Nasdaq WorkXTM ("WorkX") in connection with FINRA/Nasdaq TRF reporting. According to Nasdaq, these products permit members to perform data searches on reported transactions, which members use to monitor large volumes of data in furtherance of performing their regulatory responsibilities. The amendments, as proposed, remove the $0.50 query fee applicable to FINRA/Nasdaq TRF transaction queries performed using WebLink, Workstation, and WorkX. The amendments were designed to allow users to make maximum use of the query tool available in WebLink, Workstation, and WorkX, thereby supporting member compliance efforts. The rule, as amended, became operative on February 1, 2022.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-94156.pdf

SEC APPROVES NASDAQ AMENDMENTS TO LULD ORDER HANDLING RULES

On February 17, 2022, the SEC issued an order approving a Nasdaq proposal to amend its rules at Equity 4, Rule 4754 relating to the handling of late limit-on-close ("LOC") orders in a Limit Up-Limit Down ("LULD") closing cross. Specifically, for purposes of determining whether to accept, reject, or re-price a late LOC order, Nasdaq will now use the first reference price and the second reference price, if any, that was disseminated in the regular closing cross early order imbalance indicator ("EOII") and order imbalance indicator ("NOII"), instead of any first reference price and second reference price that was disseminated in the LULD closing cross EOII and NOII. Under the rule, as amended, if a security entered a LULD trading pause prior or up to 3:50 p.m., Nasdaq will not accept late LOC orders in that security, because that security would not have a regular closing cross first reference price or second reference price. In addition, if a security enters a LULD trading pause after 3:50 p.m. and up to 3:55 p.m., Nasdaq will accept late LOC orders in that security, provided that there is a regular closing cross first reference price. A security that enters a LULD trading pause after 3:50 p.m. and up to 3:55 p.m. could have a regular closing cross first reference price, but would not have a regular closing cross second reference price. Finally, if a security enters a LULD trading pause after 3:55 p.m., Nasdaq will accept late LOC orders in that security, provided there is a regular closing cross first reference price or second reference price. A security that enters a LULD trading pause after 3:55 p.m. could have both a regular closing cross first reference price and a regular closing cross second reference price.

SEC Order: https://www.sec.gov/rules/sro/nasdaq/2022/34-94277.pdf

NASDAQ MODIFIES OPTIONS RULE RELATED TO OBVIOUS ERRORS

On February 1, 2022, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend its rules at Options 3, Section 20 to improve the operation of the rule. In its filing, Nasdaq stated that rule amendments were crafted following discussions with other exchanges, a cross-section of industry participants, and in coordination with the Listed Options Market Structure Working Group. Specifically, Nasdaq: 1) amended section (b)(3) of the rule to permit Nasdaq to determine the theoretical price of a customer option transaction in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening; and 2) amended section (c)(4)(B) of the rule to adjust, rather than nullify, customer transactions in obvious error situations, provided the adjustment does not violate the limit price. Prior to the amendment of the rule, the rule did not permit Nasdaq to determine the theoretical price of a customer option transaction unless there was a narrow quote 10 seconds prior to the transaction. The legacy rule did not address that there is no "10 second period prior to the transaction" in the early seconds of a trade. The rule amendment was designed to address this limitation. In addition, the amended section (b)(3) is more consistent with section (b)(1) of the rule. Under section (b)(1), Nasdaq is permitted to determine the theoretical price of a customer option transaction occurring as part of the opening process if there is no national best bid ("NBB") or national best offer ("NBO") for the affected series just prior to the erroneous transaction. However, under the prior version of section (b)(3), a transaction during regular trading hours could occur in the same wide market, but Nasdaq would not be permitted to determine the theoretical price. Similar rule amendments were recently adopted by NYSE Arca.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94116.pdf

NASDAQ AMENDS SCHEDULE OF CREDITS AT EQUITY 7, SECTION 118

On February 10, 2022, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend its fee schedule at Equity 7, Section 118(a) to modify an existing credit to its members for displayed quotes/orders that provide liquidity to Nasdaq, excluding supplemental orders or designated retail orders. Prior to the amendment, Nasdaq provided a credit of $0.0029 per share executed to a member that: 1) provided shares of liquidity in all securities that represented equal to or greater than 0.65% of consolidated volume during the month; 2) increased its average daily volume of midpoint extended life orders executed by 150% or more during the month relative to the month of January 2021; and 3) executed an average daily volume of at least 750,000 shares in midpoint extended life orders for the month. The amendment provides an additional means to attain the credit. Specifically, Nasdaq modified the first criterion for the credit to state that a member must provide shares of liquidity in all securities that represent equal to or greater than either 0.65% of consolidated volume or an average daily volume of 70 million shares during the month. In its filing, Nasdaq stated that the amended rule was designed to increase the number of members striving for and attaining the credit which, if successful, would increase Nasdaq liquidity and the quality of the market to benefit all market participants.

Comments Due: March 9, 2022
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94218.pdf

NASDAQ MODIFIES SCHEDULE OF FEES AT EQUITY 7, SECTION 115

On February 11, 2022, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend its schedule of fees at Equity 7, Section 115(e). In April 2021, Nasdaq broadened its connectivity, surveillance, and risk management services by launching three re-platformed products, including WorkX. As it rolled out the enhanced products, Nasdaq held the fees for the re-platformed products equal to the fees for the corresponding non-re-platformed products. After the first month of service on WorkX, a member firm was expected to fully migrate to the new product and was charged for any fees incurred for using the new products thereafter. Nasdaq stated that, to date, it continues to assist its members in migrating from Workstation to WorkX. In the amended fee schedule, Nasdaq increased its existing fees for Workstation, WebLink ACT or Nasdaq Workstation Post Trade (“WebLink”), and WorkX from $525 to $625. These fees solely apply to the FINRA/Nasdaq TRF related services. Nasdaq also eliminated the ACT Trade History service fee of $225 for each of these existing products. The ACT Trade History service provides searchable access to a member’s trades, which can be an important tool for users to perform their regulatory responsibilities. Removing the fee will allow users to conduct unlimited scans and queries of their trade history without incurring a separate charge for the ACT Trade History service. In addition, Nasdaq prorated the cost of the first and last month of a user’s subscription to the WebLink, Workstation and WorkX products.

Comments Due: March 10, 2022
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94226.pdf

SEC DELAYS DECISION ON NYSE AMENDMENTS FOR CERTAIN CLOSING ORDER TYPES

On February 8, 2022, the SEC published a notice announcing that it had delayed its decision of whether to approve, disapprove, or commence proceedings regarding a proposal by the New York Stock Exchange ("NYSE") to amend its rules governing certain closing order types. The date for an SEC decision was extended to March 29, 2022 from February 12, 2022. As previously reported in January 2022, the NYSE proposed to amend the provisions of Rule 7.35B relating to the cancellation of market-on-close ("MOC"), limit-on-close ("LOC"), and closing imbalance offset ("CIO") orders before the closing auction. Specifically, the NYSE proposed to modify Rule 7.35B(f)(2), which sets forth rules pertaining to the cancellation of MOC, LOC, and CIO orders before the closing auction imbalance freeze. Legacy Rule 7.35B(f)(2)(A) provides that, between the beginning of the auction imbalance freeze and two minutes before the scheduled end of the core trading hours, MOC, LOC, and CIO orders can be cancelled or reduced in size only to correct a legitimate error. Rule 7.35B(f)(2)(B) specifies that, except as provided for in Rule 7.35B(j)(2)(B), a request to cancel, cancel and replace, or reduce in size a MOC, LOC, or CIO order entered two minutes or less before the scheduled end of the core trading hours will be rejected. The NYSE proposed to modify Rule 7.35B(f)(2) to provide that any requests to cancel, cancel and replace, or reduce in size a MOC, LOC, or CIO orders that are entered between the beginning of the auction imbalance freeze and the scheduled end of core trading hours would be rejected. That is, requests to cancel, replace, and/or reduce in size a MOC, LOC, or CIO order must be received prior to the beginning of the auction imbalance freeze, which commences 10 minutes prior to the scheduled end of core trading hours, even in the case of a legitimate error. The SEC noted that, to date, it has received no comment letters from the public after publishing the proposal for comment in December 2021.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94181.pdf

SEC APPROVES NYSE AMENDMENTS REGARDING STANDARDS OF CONDUCT

On February 10, 2022, the SEC issued an order approving a NYSE proposal to amend NYSE Rule 37 to incorporate standards of conduct for the NYSE's trading floor and add amended NYSE Rule 37 to the list of minor rule violations in NYSE Rule 9217. Amended NYSE Rule 37 provides that all NYSE members are required to act in a manner consistent with a fair and orderly market and with the maintenance of public confidence in the NYSE. The rule further provides that, upon the determination that a NYSE member's conduct on the trading floor is such as to impair the maintenance of a fair and orderly market, or to impair public confidence in the operations of the NYSE, or that a member has otherwise violated the proposed rule, a member may be disciplined in accordance with the NYSE's disciplinary rules. NYSE Rule 37(b), as amended, would also apply to a member's failure to adequately supervise an employee or guest of the member to ensure compliance with the rule. In addition, among several other provisions, the amended rule: 1) establishes a dress code based on "good taste professional standards"; 2) prohibits any NYSE member from acting in a disorderly manner, including the use of abusive or indecorous language and the display or circulation of written material or graphic images that are harassing, inappropriate, offensive, and/or lewd; 3) provides that the entry and consumption of food or drink on the trading will be permitted on a discretionary basis but should only be consumed at the booth or post; and 4) prohibits tobacco use on the trading floor in any form at all times and consumption of alcoholic beverages during business hours.

SEC Order: https://www.sec.gov/rules/sro/nyse/2022/34-94217.pdf

NYSE MODIFIES PRICE LIST

On February 10, 2022, the SEC published for comment a NYSE proposal, effective upon filing, to amend its price list to: 1) align the charges for MOC and LOC orders on MOC/LOC Tiers 1, 2 and 3, revise the requirements for MOC/LOC Tier 3, introduce incremental per share discounts on MOC orders under MOC/LOC Tier 1, 2 and 3, and revise the rate for all other orders swept into the close; 2) introduce new credits for removing liquidity from the NYSE in Tape C securities; and 3) introduce new Tier 1 adding credits in Tape C securities, revise the requirements for adding Tier 2 in Tape B and C securities, and introduce a new adding tier in Tape C securities. Among other provisions, the proposal aligns the fees for MOC and LOC orders by raising the rates for MOC orders to parity with the rates of LOC orders across the tiers. Prior to the amendment, the NYSE charged $0.0004 per share for MOC Tier 1 orders and $0.0007 per share for LOC Tier 1 orders from any member organization in the prior three billing months executing: 1) an average daily trading volume ("ADV") of MOC activity on the NYSE of at least 0.45% of NYSE consolidated ADV ("CADV"); 2) an ADV of total close activity on the NYSE of at least 0.7% of NYSE CADV; and 3) whose MOC activity comprised at least 35% of the member organization's total close activity. The proposal increases the charge for MOC Tier 1 orders to $0.0007, equal to the charge for LOC Tier 1 orders. For MOC Tier 2 and MOC Tier 3 orders, the proposal increases the charges to $0.0008 and $0.0009, respectively, which equal the charges for the LOC orders in those tiers.

Comments Due: March 9, 2022
Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94223.pdf

OCC TO SIMPLIFY MARGIN REQUIREMENT METHODOLOGY

On February 7, 2022, the SEC published for comment an advance notice submitted by the Options Clearing Corporation ("OCC") related to a proposal to simplify the OCC's margin methodology, namely, the System for Theoretical Analysis and Numerical Simulations ("STANS"). In addition, the proposal includes provisions to control procyclicality in volatility modeling, provide natural offsets for volatility products with similar characteristics, and build the foundation for a single, consistent framework to model equity volatility products in margin and stress testing. Further, OCC's proposed change would: 1) implement a new model for incorporating variations in implied volatility within STANS for products based on the S&P 500 Index to provide consistent and smooth simulated volatility scenarios; 2) implement a new model to calculate the theoretical values of futures on indexes designed to measure volatilities implied by prices of options on a particular underlying index to provide consistent and stable coverage across all maturities; and 3) replace OCC's model to calculate the theoretical values of exchange-traded futures contracts based on the expected realized variance of an underlying interest with one that provides adequate margin coverage while providing offsets for hedged positions in the listed options market.

Comments Due: March 4, 2022
Notice Release: https://www.sec.gov/rules/sro/occ-an/2022/34-94166.pdf

Notable Enforcement Actions

This month featured a variety of regulatory actions involving a wide array of compliance failures and rule violations, with several including severe fines and penalties.

A firm was censured and fined $2,600,000 for failing to report, and inaccurately reporting, over-the-counter ("OTC") options positions to the Large Options Positions Reporting System ("LOPR"). The violations were caused by errors in the reporting logic of the firm's internal risk system that it used to compile and submit OTC LOPR reports and it remained undetected for years. The firm also failed to establish and maintain a supervisory system reasonably designed to comply with its LOPR reporting obligations. The firm used supervisory systems to detect inaccurate LOPR reports, but those systems were not designed to detect, and did not detect, instances where the firm failed to report OTC options positions to the LOPR. Further, the firm had no system to review whether contract quantities were reported accurately. In addition, the firm's written supervisory procedures ("WSPs") identified firm principals who were responsible for conducting supervisory reviews of the firm's LOPR reports, but these procedures did not provide any guidance or set forth a process for how these principals should detect instances where the firm failed to report OTC options positions to the LOPR or to confirm the accuracy of reported contract quantities. Ultimately, the firm implemented multiple new surveillance reports and procedures to determine whether its reportable OTC positions had been reported and were accurate.
(**FINRA Case #2017054718901**)
https://www.finra.org/sites/default/files/fda_documents/2017054718901%20RBC%20Capital%20Markets%2C%20LLC%20CRD%2031194%20AWC%20jlg%20%282022-1643934017282%29.pdf

A firm and its affiliate were censured and fined a total of $2,250,000 for failing to store records related to their customer identification program ("CIP")—an integral part of an anti-money laundering ("AML") program—in the required non-erasable and nonwritable format, known as "write once, read many" ("WORM") format. Firm personnel discovered that the firms were storing records related to the firm's CIP on a system that was not WORM-compliant and advised an internal working group dealing with books and records requirements of the issue. The working group concluded that the issue should be escalated to determine if it needed to be reported to FINRA. However, the issue was not escalated to the firms' working group that considered FINRA reporting obligations, and the firms did not report it to FINRA or remediate it at that time. The firms continued to store CIP records on the non-WORM compliant platform for more than three years. Approximately 13 million CIP-related records, pertaining to approximately 8.2 million customers, were stored on the non-WORM compliant platform, with approximately 4 million documents having been stored on the firms' non-WORM compliant platform after the firms discovered the issue. In addition, the firms failed to notify FINRA at least 90 days prior to using the non-WORM compliant platform on which they stored the CIP-related records.
(**FINRA Case #2020066327501**)
https://www.finra.org/sites/default/files/fda_documents/2020066327501%20Wells%20Fargo%20Clearing%20Services%2C%20LLC%20CRD%2019616%20Wells%20Fargo%20Advisors%20Financial%20Network%2C%20LLC%20CRD%2011025%20AWC%20sl%20%282022-1641428412480%29.pdf

A firm and its affiliate were censured, fined $650,000 and ordered to pay $2,458,762.33, plus interest, in restitution to customers for failing to establish and maintain a supervisory system that was reasonably designed to achieve compliance with FINRA Rule 2111, FINRA's suitability rule, as it pertains to early rollovers of unit investment trusts ("UITs"). The findings state that the firms had an automated report that flagged sales of a mutual fund or UIT followed within 25 days by a purchase of any of those same products, and in the ordinary course the firms sent switch letters to customers when this report was generated. That report did not, however, account for the length of time a UIT was held before it was sold. As a result, the firms did not have any automated system to identify when UITs were rolled over significantly in advance of their maturity date even though the firms' WSPs recognized that UITs should generally be held to maturity. As such, the firms failed to detect that their representatives recommended potentially unsuitable early series-to-series rollovers. The firms failed to detect that their representatives repeatedly recommended other potentially unsuitable early UIT rollovers which, even if not series-to-series, caused customers to pay unnecessary sales charges. Collectively, these early UIT rollovers may have caused customers to pay $2,458,762.33 in sales charges that they would not have incurred had they held the UITs until their maturity dates. (**FINRA Case #2016050947801**)

https://www.finra.org/sites/default/files/fda_documents/2016050947801%20Wells%20Fargo%20Clearing%20Services%2C%20LLC%20CRD%2019616%20Wells%20Fargo%20Advisors%20Financial%20Network%2C%20LLC%20CRD%2011025%20AWC%20jlg%20%282022-1642033220526%29.pdf

A firm was censured and fined $1,200,000 for failing to produce timely and complete productions in connection with FINRA's investigations of two brokers at the firm. Three customers alleged in separate arbitrations that one broker had engaged in unauthorized and excessive trading, unsuitable recommendations and other sales practice violations. The firm settled the allegations with these customers. As part of its investigation, FINRA issued a request to the firm seeking, among other things, telephone records, notes of meetings with customers and account opening documents. The firm failed to produce or timely produce responsive telephone records with some of the customers because the firm's vendor destroyed those documents as part of the vendor's policy to periodically delete records older than three years. In addition, the firm failed to timely produce all meeting notes between the broker and a customer because it did not immediately identify the documents as responsive to FINRA's request. More than two years after FINRA's initial request, the firm made a final production that overlapped in part with past production, but also included new, responsive documents, including account opening documents. These documents were material to FINRA's investigation of the alleged misconduct by the broker. The firm also failed to timely produce documents in connection with FINRA's investigation of a second broker at the firm. A customer alleged that the second broker participated in a series of failed investments away from the firm. The firm also settled this allegation with the customer. As part of its investigation, FINRA issued a request to the firm seeking, among other documents, emails related to the second broker's potential selling away as well as records concerning the firm's supervisory review of the broker's emails. The firm produced some responsive emails nearly two years after the date of FINRA's initial request showing that the broker was facilitating outside investments in projects not approved by the firm. FINRA raised concerns about apparent omissions in the firm's production, and the firm produced additional records, including emails sent or received by the broker that were flagged by the firm's supervisory system. The new materials showed that the firm had flagged certain of the broker's emails, which contained red flags for potential misconduct, for supervisory review and thus were relevant to FINRA's investigation. (**FINRA Case #2018058015702**) https://www.finra.org/sites/default/files/fda_documents/2018058015702%20Merrill%20Lynch%2C%20Pierce%2C%20Fenner%20%26%20Smith%20Incorporated%20CRD%207691%20jlg%20%282022-1642724433459%29.pdf

A firm was censured and fined $950,000 for failing to reasonably supervise the transmittal of customer funds via externally initiated automated clearing house ("ACH") transfers. The firm's system to review and monitor the transmittal of customer funds via ACH transfers was not reasonably designed to identify improper transfers from customer accounts by the firm's registered representatives. The firm did not systematically screen ACH transfers to detect instances in which one of its representatives was the beneficiary of a transfer of funds from a customer's account. Rather, the firm monitored ACH transactions through an internal fraud-detection system designed to detect fraud by third parties. Based on the parameters set by the firm, this system flagged ACH transactions for review by the firm's fraud unit. In certain circumstances, the fraud unit was required to compare the customer's name with the payee name and, if the fraud unit could not clear a transaction for processing based on the guidance provided by the firm, it escalated the transaction through an email to the representative assigned to the customer account. The representative was then responsible for validating the transaction had been initiated by the customer. Thus, despite the awareness that one of its representatives had converted customer funds via externally initiated ACH transfers, the firm's supervisory system was not reasonably designed to identify such theft. Subsequently, the firm conducted a review of its controls and developed a tool to monitor externally initiated ACH transfers that are made for the benefit of certain firm personnel, including the representative assigned to the customer's account. When the firm ran the tool for the first time, it discovered a representative's conversion of millions of dollars of customer funds via ACH transfer. As a result, the firm failed to detect that two of its representatives were able, in separate schemes that ran for multiple years, to steal in excess of $6 million from firm customers. (**FINRA Case #2018057201801**)
https://www.finra.org/sites/default/files/fda_documents/2018057201801%20Merrill%20Lynch%2C%20Pierce%2C%20Fenner%20%26%20Smith%20Incorporated%20CRD%207691%20AWC%20sl%20%282022-1642638026468%29.pdf

A firm was censured and fined $225,000 for failing to establish and maintain a supervisory system and WSPs reasonably designed to achieve compliance with its obligation to monitor transmittals of customer funds to third parties. The firm also failed to enforce its existing WSPs relating to such transmittals of customer funds. As a result, a sales assistant associated with the firm converted approximately $390,000 of customer funds through check disbursements and wire transfers. Most of the affected customers were senior citizens. The checks were issued to third parties at addresses associated with the sales assistant's family members and the wire transfers were to accounts controlled by the sales assistant's family members. After the firm enhanced its procedures around wire transfers, the sales assistant ceased using wires and instead used checks to implement her scheme. Most notably, the sales assistant caused checks totaling approximately $340,000 to be issued from customer accounts to the same entity she and her family controlled. In connection

with each third-party check or wire, the sales assistant falsified the customer authorization form and forged the customer's signature. After learning about the theft from a customer's daughter, the firm fired the sales assistant and reimbursed all affected customers. The firm had considered previously, but declined to adopt, an exception report for transmittals from multiple customer accounts to the same third party after it discovered similar misconduct by a registered representative. In addition, the firm failed to enforce its procedures as it did not require or maintain records of signature verification identified in its WSPs, including as it related to the authorization documents falsified by the sales assistant. (**FINRA Case #2018060968102**)
https://www.finra.org/sites/default/files/fda_documents/2018060968102%20American%20Portfolios%20Financial%20Services%2C%20Inc.%20CRD%2018487%20AWC%20sl%20%282022-1641774010898%29.pdf

A firm was censured, fined $550,000 and ordered to pay $456,155, plus interest, in restitution to customers, for failing to establish, maintain and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA and Municipal Securities Rulemaking Board ("MSRB") rules with respect to its registered representatives' recommendations of high-yield corporate and municipal bonds. The findings state that the firm's policies and procedures did not sufficiently address the suitability factors that representatives should consider before recommending high-yield bonds. The procedures did not include guidance as to how much of a customer's portfolio should be invested in these products based on the customer's investor profile. The firm also used two automated alerts, a daily alert and a monthly alert, to identify potentially unsuitable concentrations of high-yield bonds in customer accounts, but neither alert functioned as intended. After the firm changed the tax coding of municipal bonds in its system, it inadvertently disabled the ability of the high-yield bond alerts to identify potential concentration issues for further assessment. In addition, the firm did not detect that these alerts were not working, in part, because the firm did not test its alerts. Once the firm first discovered that the alerts were defective, it did not fix the alerts until 10 months later. During this period, the firm did not adopt alternative measures to identify potentially unsuitable concentrations in high-yield bonds. Furthermore, the firm did not notify supervisors that the alerts were not working as intended and that they could not rely on the alerts for their review. As a result, the firm failed to review customer accounts with conservative profiles for potentially unsuitable concentrations of high-yield bonds. In a number of those accounts, the holdings in high-yield bonds were more than six times the thresholds set by the firm. (**FINRA Case #2017054432703**)
https://www.finra.org/sites/default/files/fda_documents/2017054432703%20RBC%20Capital%20Markets%2C%20LLC%20CRD%2031194%20AWC%20DM%20%282022-1642292407226%29.pdf

A firm was censured and fined $700,000 for failing to establish and maintain a supervisory system, including WSPs, reasonably designed to supervise associated persons with histories of industry and regulatory-related misconduct. The findings state that the firm did not clearly delineate who was responsible for imposing disciplinary action. The firm divided responsibility for imposing discipline between its supervisory and compliance personnel. The firm's supervision regional vice presidents, who supervised associated persons in specific geographic regions, were assigned responsibility in the firm's WSPs to determine discipline and heightened supervision for the associated persons they supervised. However, the firm also maintained other written procedures allowing the

department to make similar decisions without involving supervision regional vice presidents. In practice, the firm's supervision and compliance departments routinely decided how to respond to disciplinary matters without consulting each other. This resulted in a fragmented supervisory system leading, in some instances, to confusion about who would act, such that both field supervision and compliance deferred to the other without either responding reasonably to impose heightened supervision or increased discipline on associated persons who had a history of misconduct. In addition, the firm's disciplinary recordkeeping was haphazard and fragmented. The firm had no written procedures concerning what information to record about internal discipline or where to store such information. In practice, the firm's field supervision and compliance departments tracked internal disciplinary matters in separate databases. Neither department recorded the other's disciplinary actions, and neither could access the other's databases. Furthermore, many firm disciplinary matters were not recorded in those or any other database. Consequently, firm personnel issued discipline without complete information about those associated persons' patterns of disciplinary violations, failures to respond to prior firm discipline, or disregard of firm directives or regulatory requirements. The findings also include that the firm failed to establish and maintain a system reasonably designed to comply with the firm's obligations to report to FINRA multiple instances of violative misconduct by associated persons. The firm's WSPs did not provide any guidance about how to evaluate whether associated persons had engaged in multiple instances of violative conduct, and the firm's fragmented recordkeeping practices precluded accurate assessments of whether multiple instances of such conduct had occurred. (**FINRA Case #2019062873301**)
https://www.finra.org/sites/default/files/fda_documents/2019062873301%20SagePoint%20Financial%2C%20Inc.%20CRD%20133763%20AWC%20jlg%20%282022-1642638025318%29.pdf

A firm was censured and fined $650,000 for failing to establish an AML compliance program reasonably designed to detect, monitor, and cause the reporting of potentially suspicious activity relating to low-priced securities transactions. The findings state that the firm initially had no systems to monitor for suspicious activity involving equity trading. Although the firm later implemented new monitoring systems, these systems were not reasonably designed to detect red flags typically associated with low-priced securities transactions. The findings also state that the firm's written AML procedures did not accurately reflect the firm's actual AML monitoring procedures and also failed to discuss significant red flags associated with low-priced securities trading. In addition, the written AML procedures instructed firm employees to send Suspicious Activity Reports ("SARs") to a third-party site that was no longer in use. Despite red flags indicating suspicious activity, the firm also failed to detect or investigate activity involving low-priced securities transactions or to file SARs when it would have been appropriate to do so. The firm also failed to timely address deficiencies in its AML program identified in audits. An internal audit of the firm's AML program resulted in recommendations that the firm make changes to its AML program, including by updating its written AML procedures to accurately reflect the firm's actual procedures for monitoring suspicious activity and by implementing an enhanced AML program. However, the firm failed to implement these recommendations. A subsequent internal audit rated the firm's AML risk as "high" and reiterated the recommendations made in the initial audit. Nonetheless, the firm failed to revise its written AML procedures or to promptly enhance its AML monitoring procedures. The firm also failed to establish and implement due diligence policies,

foreign financial institutions ("FFIs"). The firm failed to obtain required information concerning the nature of the anticipated trading activity in the accounts of many of its FFI customers. Due to these failures, the firm was unable to reasonably assess the degree of money-laundering risk posed by these accounts. In addition, the firm did not initially complete a formal risk assessment of its customers that were FFIs located in countries or overseas jurisdictions known for heightened money-laundering risk, despite repeated recommendations from its internal auditors to do so. Even after the firm completed risk assessments of its customers, it failed to implement controls over the accounts of FFIs targeted to any specific risk posed by the accounts. The firm also failed to periodically review FFI account activity, including to determine if the activity was consistent with each account's stated purpose. (**FINRA Case #2018058464601**)
https://www.finra.org/sites/default/files/fda_documents/2018058464601%20Intesa%20Sanpaolo%20IMI%20Securities%20Corp.%20CRD%2019418%20AWC%20%20%20%20jlg%20%282022-1642897218171%29.pdf

A firm was censured and fined $250,000 for failing to establish and implement an AML program that could be reasonably expected to detect and cause the reporting of suspicious activity. The firm had written AML procedures that required it to monitor for red flags of potentially suspicious activity. The firm's AML procedures indicated that when the firm detected any red flags of suspicious activity, it would determine whether and how to investigate further and take steps that included gathering additional information internally or from third parties, contacting the government, freezing the account, or filing a Suspicious Activity Report ("SAR"). In certain instances, the firm did not implement those measures which resulted in its failure to reasonably investigate numerous instances of suspicious activity. In addition, the firm opened four accounts deemed to be high-risk by domestic and international AML agencies. However, the firm noted that these accounts were not incorporated in or operated from high-risk locations. Two of the accounts had the same beneficial owner, despite being opened in the name of different entities, both of which were incorporated in high-risk locations. Both accounts had certain wire activity that appeared on one of the firm's daily reports, however the firm failed to reasonably investigate the purpose of the transactions and assess whether the activity was suspicious. Another account triggered several red flags highlighted in the firm's AML procedures. The account's transactions often appeared on two of the firm's reports, however the firm again failed to reasonably investigate the transactions to determine the purpose of the transactions and assess whether the transactions were suspicious. Despite the existence of numerous AML red flags, the firm failed to reasonably investigate or respond to them, as appropriate. (**FINRA Case #2017054878001**)
https://www.finra.org/sites/default/files/fda_documents/2017054878001%20GBM%20International%2C%20Inc.%20CRD%20%2028684%20AWC%20jlg%20%282022-1642810821564%29.pdf

A firm was censured and fined $375,000 for failing to amend, timely or at all, the Uniform Application for Securities Industry Registration or Transfers ("Form U4s") of some of its registered representatives to disclose unsatisfied tax liens and judgments, and failed to establish and maintain a supervisory system and WSPs reasonably designed to ensure that it disclosed unsatisfied liens or judgments of representatives on Form U4s when the firm received a wage garnishment order. The firm failed to conduct a sufficient inquiry to determine if the underlying event triggering each garnishment order involved a disclosable event that should have been

representative's Form U4. The firm failed to file the required Form U4 amendments, or filed them late, because although it had a system in place to determine whether the wage garnishment orders arose from a disclosable lien or judgment, the system was not reasonably designed. When it received a wage garnishment order, the firm would contact the representative and rely on the representative's determination whether the wage garnishment order was the result of a reportable event. The firm did not conduct a further inquiry, nor did it do an independent review to determine if the underlying event triggering each garnishment order involved a disclosable event. (**FINRA Case #2020067388401**)
https://www.finra.org/sites/default/files/fda_documents/2020067388401%20Citigroup%20Global%20Markets%20Inc.%20CRD%207059%20AWC%20jlg%20%282022-1641082862186%29.pdf

A firm was censured and fined $300,000 for making misleading statements and breaching its fiduciary duty, and for compliance failures related to its Shari'ah advisory business. From September 2018 through July 2019, the firm advertised the existence of its own proprietary funds when no such funds existed, and also promised investors that it would periodically rebalance their advisory accounts, but did not do so. When the firm ultimately launched a proprietary exchange-traded fund ("ETF") in July 2019, it used its clients' advisory assets to seed the ETF without prior disclosure to clients of any conflicts of interest. In addition, the firm marketed itself as providing advisory services compliant with Islamic, or Shari'ah law, including marketing the importance of its income purification process on its website. Despite these representations, the order finds that the firm did not adopt and implement written policies and procedures addressing how it would assure Shari'ah compliance on an ongoing basis. In addition to the fine and censure, the firm was required to retain an independent compliance consultant, among other undertakings.
(**SEC File No. 3-20750**) https://www.sec.gov/litigation/admin/2022/ia-5959.pdf

A firm was censured and fined $150,000 for failing to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with the firm's obligation to review correspondence and internal communications. The firm failed to review certain emails flagged for review by the firm's automated system. The firm's email review system had a filter setting that limited the length of time flagged emails remained in the review set for supervisory review, meaning that emails not reviewed within two weeks dropped out of the supervisory review set. After the firm became aware of the electronic communications dropping out of the review set, it expanded the filter setting so that unreviewed emails stayed in the review set for three months. Subsequently, the firm adopted an electronic communications surveillance system that prevented emails flagged for review from dropping out of the review set. The firm also failed to review certain Bloomberg email messages of associated persons. The firm failed to ensure newly onboarded employees' Bloomberg email addresses fed into the email review system, which resulted in the firm failing to review messages from Bloomberg email messaging accounts of associated persons. The firm's WSPs required a regular review for new Bloomberg addresses and submission of a technology ticket to link the Bloomberg account to the associated person's profile. Because the firm did not consistently implement its procedure, the firm failed to include Bloomberg email addresses in the information technology profiles of its associated persons during the onboarding process. This resulted in the firm's email server, which fed into the firm's email review system, not capturing emails from certain Bloomberg email addresses. After discovering instances of the

failure, the firm did not implement new procedures until almost two years later. After conducting an end-to-end review, the firm implemented a weekly reconciliation of email account information from Bloomberg to the firm's email review system. (**FINRA Case #2018056299001**)
https://www.finra.org/sites/default/files/fda_documents/2018056299001%20SunTrust%20Robinson%20Humphrey%2C%20Inc.%20nka%20Truist%20Securities%2C%20Inc.%20CRD%206271%20AWC%20sl%20%282022-1642724431797%29.pdf

A firm was censured, fined $100,000, and ordered to pay disgorgement in the amount of $218,803.52, plus interest, for over-tendering shares in a company because it miscalculated its long position. The findings stated that when tendering shares, the firm manually calculated its long position using several different systems. The firm miscalculated its long position because it missed a short position that was housed in another system, used an incorrect final tender price when calculating share calls required to be deducted from the firm's long position and miscalculated grandfathered calls, giving the firm credit for shares that it should not have included. As a result, the firm received $218,803.52 in ill-gotten gains. The firm also failed to have a supervisory system reasonably designed to achieve compliance with Rule 14e-4 of the Exchange Act. The firm had certain procedures for calculating and reviewing the firm's net long positions, however the procedures were primarily operational and did not include a supervisory review regarding compliance with Rule 14e-4. (**FINRA Case #2019062945201**)
https://www.finra.org/sites/default/files/fda_documents/2019062945201%20Barclays%20Capital%20Inc.%20CRD%2019714%20AWC%20sl%20%282022-1642897218588%29.pdf