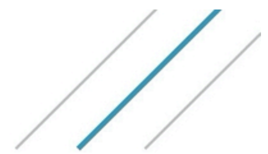
SECURITIES OPERATIONS

REGULATORY UPDATE



October 1, 2021

For more information please contact info@mediantonline.com

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TAKE ACTION NOW

SEC Requests Public Comment on Enhancing Proxy Voting Disclosure and Requiring Disclosure of "Say-on-Pay" Votes for Institutional Investment Managers

On September 29, 2021, the U.S. Securities and Exchange Commission ("SEC" or "Commission") proposed amendments to Form N-PX to:

- enhance the information mutual funds, exchange-traded funds, and certain other funds report about their proxy votes. The proposed rulemaking would require funds to tie the description of each voting matter to the issuer's form of proxy and to categorize each matter by type to help investors identify votes of interest and compare voting records. The proposal also would prescribe how funds organize their reports and require them to use a structured data language to make the filings easier to analyze. Funds would also be required to disclose how their securities lending activity impacted their voting.

- require institutional investment managers to disclose how they voted on executive compensation, or so-called "say-on-pay" matters, which would fulfill one of the remaining rulemaking mandates under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Managers generally would be subject to the same Form N-PX reporting requirements as funds with respect to their say-on-pay votes.

"This proposal will make it easier and more efficient for investors to get crucial information about proxy votes from funds," said SEC Chair Gary Gensler. Since 2003, funds have been required to file Form N-PX reports disclosing how they voted on proxy proposals, but investors may face difficulties analyzing these reports, *e.g.,* funds may report their votes in an inconsistent manner or in a format that is not machine readable. The proposal would make funds' proxy voting records more usable and easier to analyze, improving investors' ability to monitor how their funds vote and compare different funds' voting records.

Comments Due: 60 days after publication in the Federal Register
SEC Request for Comment: https://www.sec.gov/rules/proposed/2021/34-93169.pdf
Press Release: https://www.sec.gov/news/press-release/2021-202-0?utm_medium=email&utm_source=govdelivery
Statement by Chair Gensler: https://www.sec.gov/news/public-statement/gensler-open-meeting-2021-09-29?utm_medium=email&utm_source=govdelivery
Statements by Commissioners: https://www.sec.gov/news/public-statement/roisman-open-meeting-2021-09-29?utm_medium=email&utm_source=govdelivery; SEC.gov | Shining a Light on Corporate Democracy: Statement on Updates to Form N-PX; https://www.sec.gov/news/public-statement/crenshaw-open-meeting-2021-09-29?utm_medium=email&utm_source=govdelivery

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SEC ORDER DENYING STAY IN THE MATTER OF JOINT INDUSTRY PLAN

On August 6, 2021, the SEC issued *Joint Industry Plan; Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data*, Release, No. 34-92586 (the "CT Plan Order"). Later that month, the Nasdaq Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc., Nasdaq PHLX LLC ("Phlx"), New York Stock Exchange LLC ("NYSE"), NYSE American LLC ("NYSE American"), NYSE Arca, Inc., NYSE Chicago, Inc., NYSE National, Inc., Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe Exchange, Inc. (collectively the "Exchanges") filed with the Commission a motion to stay the effect of the CT Plan Order pending final resolution of their petitions for review filed in the U.S. Court of Appeals for the D.C. Circuit that challenge the CT Plan Order and the Order Directing the Exchanges and the Financial Industry Regulatory Authority ("FINRA") to submit a New National Market System Plan Regarding Consolidated Equity Market Data, Release No. 88827, 85 Fed. Reg. 28,702 (May 13, 2020) (the "NMS Governance Order"). On September 17, 2021, the SEC issued an order denying the stay of the CT Plan Order because the Exchanges had not met their burden to demonstrate that the stay was appropriate nor their burden to demonstrate a likelihood of success on the merits. The SEC had previously addressed the three arguments made by the Exchanges, not only on the CT Order itself, but also in denying a stay of the National Market System Governance Order and in the prior litigation challenging that order. The order stated none had merit.

SEC Order: https://www.sec.gov/rules/other/2021/34-93051.pdf

SEC, MSRB, FINRA TO HOLD COMPLIANCE OUTREACH PROGRAM FOR MUNICIPAL ADVISORS

On September 20, 2021, the SEC, the Office of Municipal Securities, the Municipal Securities Rulemaking Board ("MSRB") and FINRA announced the opening of registration for the 2021 Compliance Outreach Program for Municipal Advisors. The virtual program will be held Thursday, October 7, 2021, from 10 a.m. to 5 p.m. ET. Additional information and program materials, including the agenda, are available on the SEC website. Registration is administered by FINRA and is free and open to all.

Press Release: https://www.sec.gov/news/press-release/2021-183

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SEC UPDATES EDGAR FILER MANUAL AND FORM ID

On September 20, 2021, the SEC adopted amendments to Volumes I and II of the Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR") Filer Manual ("Filer Manual") and related rules and forms. Volume I, General Information, of the EDGAR Filer Manual will clarify that information provided on the Form ID may become publicly available and will include a privacy notice that supplements the general Privacy Act Notice available at SEC.gov. The amendments also included that supportive documentation may be required when changing a company name. EDGAR system changes, identified in Release 21.3, and corresponding amendments to Volume II, Edgar Filing, will be made to reflect several new submission form types and changes to existing forms and form filings, reporting requirements, recordkeeping obligations and generally privacy notice updates. Along with the adoption of the updated Filer Manual, amendments were made to Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of the current revisions.

Final Rule: https://www.sec.gov/rules/final/2021/33-10984.pdf

SEC NAMES BERKOVITZ NEW GENERAL COUNSEL

On September 28, 2021, the SEC announced that Commodity Futures Trading Commission (CFTC) Commissioner Dan Berkovitz has been named SEC General Counsel, effective November 1. John Coates will leave the agency in October and return to teaching at Harvard University. Michael Conley, currently the SEC's Solicitor, will serve as Acting General Counsel upon Coates's departure until Berkovitz joins the agency.

Press Release: https://www.sec.gov/news/press-release/2021-198

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FINRA EXTENDS EXPIRATION DATE OF SBS RULE AND IMPLEMENTATION DATE RELATED TO MARGIN REQUIREMENTS FOR CDS

On September 1, 2021, the SEC published for comment a FINRA proposal, effective upon filing, to (i) extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to February 6, 2022, and (ii) extend to April 6, 2022 the implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps) and clarify that the rule does not apply if a member is registered with the SEC as a security-based swap ("SBS") dealer ("SBSD"). The extensions are intended to align with the effective dates of the new rules that will replace them, thereby avoiding undue burdens on market participants and undue market disruption. FINRA Rule 0180, which, with certain exceptions, temporarily limits the application of FINRA rules with respect to SBS, thereby avoiding undue market disruptions resulting from the change to the definition of "security" under the Act to expressly encompass SBS. On May 22, 2009, the Commission approved FINRA Rule 4240, which implements an interim pilot program (the "Interim Pilot Program") with respect to margin requirements for certain transactions in credit default swaps ("CDS") On April 26, 2021, FINRA filed a proposed rule change ("Proposal") to amend FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to clarify the application of its rules to SBS following the SEC's completion of its rulemaking under Title VII of the Dodd-Frank Act regarding SBSDs and major SBS participants. After feedback from members, extensions were proposed via an Amendment to the Proposal. The Amendment (1) extends the effective date of the proposed amendments to FINRA Rules 0180, 4120 and 9610 from October 6, 2021 to February 6, 2022; (2) extends the effective date of the proposed amendments to FINRA Rules 4210, 4220 and 4240 from October 6, 2021 to April 6, 2022; and (3) conforms the proposed definition of "Legacy Swap" in proposed FINRA Rule 4240(d)(12) to reflect the new effective date of April 6, 2022. To avoid potential conflicting obligations between Exchange Act Rule 18a-3 and the Interim Pilot Program, FINRA also amended existing, expiring FINRA Rule 4240 to add Supplementary Material .02 to clarify that the rule does not apply to a member that is registered with the SEC as an SBSD.

Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-92837.pdf

FINRA ESTABLISHES NEW SUPPLEMENTAL LIQUIDITY SCHEDULE

On September 3, 2021, FINRA published Regulatory Notice 21-31 to establish a new Supplemental Liquidity Schedule (SLS) pursuant to FINRA Rule 4524, which grants FINRA the authority to require members to file such additional financial or operational schedules or reports as may be necessary or appropriate for the protection of investors or in the public interest. The new SLS, which members subject to the requirement will need to file as a supplement to the FOCUS Report, is designed to improve FINRA's ability to monitor for events that signal an adverse change in the liquidity risk of the members with the largest customer and counterparty exposures. Generally, the Notice describes the informational categories of required reporting, the types of members to which the SLS applies, and the timing of the filing requirement. FINRA issued the Notice to provide additional information on the new requirement, which will become effective on March 1, 2022. For members subject to the requirement, the first SLS must be completed as of the end of March 2022 and will be due by May 4, 2022. FINRA will make the SLS available through FINRA Gateway.

FINRA Regulatory Notice 21-31: https://www.finra.org/rules-guidance/notices/21-31

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FINRA PROPOSES EXTENDED IMPLEMENTATION DATE OF CERTAIN AMENDMENTS TO RULE 4210

On September 8, 2021, the SEC published for comment a FINRA proposal, effective upon filing, to extend to January 26, 2022, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR-FINRA2015-036, other than the amendments pursuant to SR-FINRA-2015-036 that were implemented on December 15, 2016. The rule change does not make any changes to the text of FINRA rules. FINRA proposed the extension to address ongoing implementation concerns that have included the timing necessary to make and test system changes, the potential impact on smaller and mid-sized firms, and to reduce potential uncertainty in the covered agency transaction market. Further extensive dialogue with industry participants and the staffs of the SEC and Federal Reserve System caused FINRA to propose amendments and the rulemaking is ongoing. Accordingly, FINRA proposed the extension to take action on the proposed amendments.

Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-92897.pdf
Comments Due: October 5, 2021

SEC APPROVES FINRA RULE RELATING TO FILING REQUIREMENTS UNDER RULE 6432

On September 10, 2021, the SEC issued an order approving a FINRA proposal to amend members' filing requirements under FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2-11), including (i) the addition of a requirement that a qualified inter-dealer quotation system ("Qualified IDQS") submit a modified Form 211 filing to FINRA in connection with each initial information review that it conducts; (ii) the addition of a requirement that a Qualified IDQS that makes a certain publicly available determination under Rule 15c2-11 submit a daily security file to FINRA containing applicable summary information for all securities quoted on its system; and (iii) other changes to FINRA Rule 6432 and the Form 211 to further clarify the operation of the rule and conform it to amended Rule 15c2-11. FINRA will publish a Regulatory Notice with technical details on the revised standard Form 211, modified Form 211, and daily file submission process. In addition, the effective date of such rule changes will be the same date as the general compliance date of the Commission's amendments to Rule 15c2-11 (except for paragraph (b)(5)(i)(M) of Rule 15c2- 11), including any extensions to such compliance date.

SEC Approval Order: https://www.sec.gov/rules/sro/finra/2021/34-92932.pdf
FINRA Regulatory Notice 21-33: https://www.finra.org/rules-guidance/notices/21-33

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FINRA REQUESTS COMMENT ON THE ASSIGNMENT OF OTC SYMBOLS

On September 14, 2021, FINRA published Regulatory Notice 21-32 requesting comments on a proposed change to its current policy relating to the assignment of Over-the-Counter ("OTC") symbols to unlisted equity securities. Specifically, FINRA is considering whether it should begin assigning OTC symbols to OTC equity securities and 144A restricted equity securities that do not have a valid CUSIP identifier, in the limited circumstance where a member firm demonstrates its best efforts to obtain a CUSIP identifier and provides documentation sufficient to identify and categorize the security. To demonstrate best efforts at obtaining a CUSIP, FINRA notes that broker-dealers could submit copies of correspondence with the issuer or a written summary of its attempts to work with the issuer. Documentation to identify and categorize the security could include the prospectus or other pertinent offering documents, or a numeric or other publicly available identifier for the security. If documentation provided by a broker-dealer is not sufficient to identify and categorize the security, FINRA states that its staff also may require that a broker-dealer provide an opinion of counsel.

FINRA Regulatory Notice 21-32: https://www.finra.org/rules-guidance/notices/21-32
Comments Due: November 15, 2021

FINRA PROPOSES TO EXTEND TEMPORARY RELIEF TO ALLOW REMOTE INSPECTIONS

On September 15, 2021, the SEC published for comment a FINRA proposal, effective upon filing, to extend temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 to include calendar year 2022 inspection obligations through June 30, 2022, within the scope of the supplementary material. The proposed extension of Rule 3110.17 is necessary to address the continuing operational challenges resulting from the COVID-19 pandemic many member firms face, during the first half of calendar year 2022, including the on-site inspection component of Rule 3110(c) (Internal Inspections) at locations requiring inspection in calendar year 2022.

Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-93002.pdf
Comments Due: October 12, 2021

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SEC APPROVES FINRA REGISTRATION AND CONTINUING EDUCATION CHANGES

On September 21, 2021, the SEC issued an order approving a proposed rule change to amend FINRA Rules 1240 (Continuing Education Requirements) and 1210 (Registration Requirements) to, among other things, (1) require that the Regulatory Element of FINRA's continuing education program be tailored to each registration category and completed annually rather than every three years and (2) permit individuals to maintain their qualifications following the termination of registration through continuing education. The rule change amends FINRA Rule 1240(a) and Rule 1210.07 to require registered persons to complete the Regulatory Element annually by December 31, with some flexibility, and includes five additional elements related to registration and returning to active status, conditions to reregistering, and requirements for persons with disciplinary records. Consistent with current requirements, individuals who fail to complete their Regulatory Element within the prescribed period would be automatically designated as "CE inactive" in the Central Registration Depository system until the requirements of the Regulatory Element have been satisfied. The rule change also amends Rule 1240(b) to allow the successful completion of existing firm training programs relating to the AML compliance program and the annual compliance meeting to satisfy an individual's annual Firm Element requirement; extend the Firm Element requirement to all registered persons, including individuals who maintain solely a permissive registration consistent with Rule 1210.02; and modify the current minimum training criteria under Rule 1240(b) to provide that Firm Element training must cover topics related to the role, activities, or responsibilities of the registered person, as well as professional responsibility. The rule change does not eliminate the two-year qualification period, instead it amends the rules governing requalification of registered representatives who have terminated their registration to provide individuals an alternative means of maintaining their qualifications and staying current on their regulatory and securities knowledge following the termination of a registration, subject to conditions outlined in the approving order. The rule change adopts paragraph (c) under Rule 1240, and Supplementary Material .01 and .02 to Rule 1240, to provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations for up to five years by completing continuing education subject to certain conditions. The rule change also includes a look-back provision and a re-eligibility provision.

SEC Approval Order: https://www.sec.gov/rules/sro/finra/2021/34-93097.pdf

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NASDAQ PROPOSES TO LIST AND TRADE SHARES OF THE VALKYRIE XBTO BITCOIN FUTURES FUND

On September 2, 2021, the SEC published for comment a Nasdaq proposal to list and trade shares of the Valkyrie XBTO Bitcoin Futures Fund under Nasdaq Rule 5711(g) ("Commodity Futures Trust Shares"). The Exchange Traded Fund ("ETF") community has worked for many years to obtain the approval of an exchange tradeable product that provides investors with the important opportunity to gain exposure to digital currencies such as bitcoin. Nasdaq believes that bitcoin and its surrounding ecosystem has evolved sufficiently to support the approval of a Bitcoin Futures ETF because the concerns the Commission has identified previously have been addressed. Additionally, the Nasdaq proposal outlines how its current proposal differs from previous filings recently submitted due to significant developments in the domestic bitcoin futures market.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-92865.pdf

NASDAQ PROPOSES TO AMEND OPTIONS 3 MESSAGE TRAFFIC MITIGATION

On September 20, 2021, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend Nasdaq Options Market ("NOM") Options 3, Section 26, Message Traffic Mitigation, and Options 3, Section 27 Limitation of Liability. The proposal also amends Options 10, Doing Business With The Public: Section 5, Branch Offices, Section 6, Opening of Accounts, and Section 9, Discretionary Accounts. The proposal amends Options 3, Section 26, Message Traffic Mitigation to replace its current rule with a rule identical to Phlx Options 3, Section 26. Pursuant to the proposal, Nasdaq shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when: (1) Nasdaq's disseminated bid or offer price changes; (2) the size associated with Nasdaq's disseminated bid or offer decreases; or (3) the size associated with the Nasdaq's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). The proposal also updates a citation to Rule 4626 that was previously relocated to Equity 2, Section 17 in a prior rule change. Finally, the proposal updates the terminology within Options 10, Sections 5, 6 and 9 to align it with General 4 terminology. The proposed amendments are non-substantive.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-93069.pdf
Comments Due: October 15, 2021

NASDAQ PROPOSES CHANGES TO NOM PRICING SCHEDULE AT OPTIONS 7

On September 14, 2021, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend NOM Pricing Schedule at Options 7, Section 2(1) the (i) Customer and Professional Rebates to Add Liquidity in Penny Symbols, and (ii) Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-92974.pdf
Comments Due: October 12, 2021

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NASDAQ AMENDS EQUITY 7 SCHEDULE OF CREDITS

On September 23, 2021, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend the schedule of credits, at Equity 7, Section 118(a), to eliminate an existing credit of $0.0030 per share for members that meet specified volume requirements on both Nasdaq and the NOM when adding liquidity and that qualify for Tier 4 of the Market Access and Routing Subsidy ("MARS") program on NOM. Nasdaq currently provides a $0.0030 per share executed credit for a member with displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide more than 0.65% of Consolidated Volume on Nasdaq during the month, and the member must also qualify for Tier 4 of NOM's MARS program during the month. Nasdaq proposed to eliminate the credit on all tapes as it has not been effective in accomplishing its intended purpose, which is to incentivize members to increase their liquidity adding activity on both Nasdaq and NOM. No members have received this credit since the credit was last amended, it served to neither meaningfully increase activity nor improve the quality of those markets, and no member currently qualifies for the credit resulting in the proposal to eliminate it.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-93111.pdf
Comments Due: October 20, 2021

NASDAQ EXTENDS DATE OF ITS POST-TRADE RISK MANAGEMENT TOOL

On September 24, 2021, the SEC published for comment a Nasdaq proposal, effective upon filing, to extend the implementation date of its Post-Trade Risk Management tool to Q1 2022. On April 20, 2021, Nasdaq proposed to enhance its connectivity, surveillance, and risk management services by launching three re-platformed products: (i) WorkX, (ii) Real-Time Stats and (iii) Post-Trade Risk Management. Nasdaq initially proposed that WorkX and Real-Time Stats would launch on April 12, 2021, and Post-Trade Risk Management would launch no later than Q3 2021. Due to reprioritization in the Nasdaq product pipeline, Nasdaq has decided to delay the implementation of Post-Trade Risk Management until Q1 2022. Nasdaq will announce the new implementation date in an Equity Trader Alert at least 10 days in advance of implementing the Post-Trade Risk Management product.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-93125.pdf
Comments Due: 21 days after publication in the Federal Register

NYSE PROPOSES TO ADOPT LISTING STANDARDS FOR SUBSCRIPTION WARRANTS

On September 3, 2021, the SEC published for comment a NYSE proposal to amend the NYSE Listed Company Manual ("NYSE Manual") to adopt a new listing standard for the listing of Subscription Warrants. NYSE proposed to adopt a new subsection of Section 102 of the Manual (to be designated Section 102.09) to permit the listing of Subscription Warrants. For purposes of proposed Section 102.09 a Subscription Warrant is a warrant issued by a company organized solely for the purpose of identifying an acquisition target and exercisable into the common stock of such company upon entry into a binding agreement with respect to such acquisition.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-92876.pdf

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NYSE TO ALLOW ACQUISITION COMPANY TO CONTRIBUTE TO NEW ACQUISITION COMPANY AND SPIN-OFF TO SHAREHOLDERS

On September 1, 2021, the SEC published for comment a NYSE proposal to amend the requirements of Section 102.06 of the NYSE Manual for the listing of acquisition companies ("AC") and the provisions of Section 802.01B with respect to the qualification of an acquisition company after its business combination. NYSE proposes to modify Section 102.06 of the NYSE Manual to allow an AC listed under that rule to contribute a portion of the amount held in its trust account to a trust account of a new AC and spin off the new AC to its shareholders in certain situations where the new AC will be subject to all the same requirements as the original AC. The proposal intends to permit a more efficient structure whereby an AC can raise in its initial public offering the maximum amount of capital it anticipates it may need for a business combination transaction and then "right size" itself by contributing any amounts not needed to a new AC (the "SpinCo AC") and spinning off this SpinCo AC to its shareholders. The SpinCo AC will be subject to all the existing provisions of Section 102.06 in the same manner, and subject to the same timeframes, as the original AC. The NYSE also proposes to amend the subsection of Section 802.01B of the NYSE Manual setting forth the continued listing criteria applicable to ACs to specify that those criteria are also applicable in their entirety to SpinCo ACs. In addition, the NYSE proposes to add a new subsection to Section 102.06 stating that the applicable continued listing criteria for both ACs and SpinCo ACs are set forth in Section 802.01B.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-92839.pdf

NYSE PROPOSES TO AMEND BEST QUOTE & TRADES

On September 15, 2021, the SEC published for comment a NYSE proposal, effective upon filing, to amend the content of the NYSE Best Quote & Trades ("NYSE BQT") data feed to identify the current day consolidated high and low prices for all listed equity securities as obtained directly from the securities information processors ("SIPs"). The NYSE BQT data feed provides a unified view of best bid and offer and last sale information for the NYSE and its affiliates. The consolidated high and low price for all equity securities would be disseminated via NYSE BQT after the Consolidated Tape Association and Unlisted Trading Privileges Plan SIP delay period, which is currently 15 minutes. Such information would provide NYSE BQT users with a static benchmark against which to compare price movements shown on NYSE BQT using high and low prices in the consolidated market. Other vendors would be able, if they chose, to create a data feed with the same information included in NYSE BQT, and to distribute it to clients with no greater latency than the NYSE would be able to distribute NYSE BQT. NYSE proposes the change become operative on October 18, 2021 and does not propose to change the fees for NYSE BQT.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-93000.pdf
Comments Due: October 12, 2021

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NYSE PROPOSES TO AMEND RULES RELATING TO CLOSING AUCTION

On September 16, 2021, the SEC published for comment a NYSE proposal to amend Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B (DMM-Facilitated Closing Auctions), 7.35C (Exchange-Facilitated Auctions), 98 (Operation of a Designated Market Maker ("DMM") Unit), and 104 (Dealings and Responsibilities of DMMs) relating to the Closing Auction. The NYSE proposes to amend Rules 7.31, 7.35, and 7.35B to revise the DMM-facilitated Closing Auction process, including modifying how the Closing Auction Price would be determined and how DMMs would be able to participate in the Closing Auction. The proposal does not change DMM Rule 104 obligations to facilitate the Closing Auction, including to supply liquidity as needed, but because the proposal would place new limitations on the DMM, the NYSE also proposes to provide DMMs with different tools to participate in the Closing Auction. Specifically, the Exchange proposes to make the existing Closing D Order type available to DMMs and to change how DMM Interest would be allocated in a Closing Auction. Conforming changes to Rule 7.35C were also proposed to revise the orders eligible to participate in Exchange-facilitated Closing Auctions. In connection with the changes to the process for DMM-facilitated Closing Auctions, the NYSE proposes to amend Rule 104 to, among other changes, eliminate the current restriction on DMMs engaging in "Prohibited Transactions" during the last ten minutes of trading prior to the scheduled close of trading. The NYSE believes that the proposed changes to the Closing Auction process obviate the need for this current restriction and thus proposes to delete the text currently set forth in Rule 104(g)(1)(B) and subparagraph (i) thereto in its entirety. Additionally, the NYSE proposes to make other conforming amendments to Rule 98 by deleting subparagraphs (c)(5) and (c)(5)(A), which would become obsolete if Prohibited Transactions are eliminated. The NYSE anticipates that the substantive changes will be implemented in the first half of 2022.

Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-93037.pdf
Comments Due: 21 days after publication in the Federal Register

MSRB PROVIDES EXTENSION FOR MUNICIPAL ADVISOR PRINCIPAL QUALIFICATION

On September 10, 2021, the SEC published for comment an MSRB proposal, effective upon filing, that amended Supplementary Material .09 of MSRB Rule G-3 to further extend the time period from November 12, 2021, to November 30, 2021, for individuals who meet the definition of a municipal advisor principal to become qualified by passing the Municipal Advisor Principal Qualification Examination, the Series 54 examination. The time extension is being proposed in connection with the MSRB's efforts to facilitate the remote proctoring of the Series 54 examination; and notably, the proposed extension of time roughly coincides with the number of days taken to launch the Series 54 examination online. The MSRB proposes this interim accommodation in recognition of the approaching compliance date for municipal advisors to have at least one person appropriately qualified as a municipal advisor principal; and therefore, the accommodation is offered only with respect to the Series 54 examination. Additionally related proposed rule change to Amend Section 4(c) of Schedule A to assess administration and delivery fees for the Series 54 Examination.

Notice Release: https://www.sec.gov/rules/sro/msrb/2021/34-92938.pdf
Comments Due: October 7, 2021
Related Release: https://www.finra.org/sites/default/files/2021-09/sr-finra-2021-025.pdf

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Notable Enforcement Actions

This month's enforcement actions highlight that regulators will hold principals accountable for the failure to enforce a reasonable supervisory system, which must be tailored to the firm's operations, in addition to continuing to spotlight the importance of an effective AML program.

A firm was censured and fined $1,500,000 and ordered to certify it has reasonably enhanced its supervisory system and written supervisory procedures ("WSPs"). Additionally, a principal of the firm was fined $15,000 and suspended from association with any FINRA member in any principal capacity for two months. The firm and principal consented to findings that the firm failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with federal securities laws and FINRA rules prohibiting market manipulation. The findings stated that the firm did not provide branch managers with reasonable training or guidance regarding how to identify prohibited transactions. The WSPs did not specify the circumstances under which a branch manager should escalate potentially manipulative activity or the manner in which that escalation should occur or be documented. Also, the firm did not provide branch managers with any electronic monitoring tools to detect potential matched trades, cross trades, marking the close or other potential market manipulation. The volume of trading and the branch managers' manual daily review of blotter activity was not reasonably designed to detect and prevent manipulation that spanned multiple days and across the firm's branches. The findings also stated that the firm failed to detect numerous red flags of potential market manipulation involving shares of an investment banking client of the firm, whose shares did not trade on a national exchange and accounted for a substantial percentage of the daily trading volume on numerous days. The findings also included that the firm failed to preserve and maintain certain books and records, and as a result, the firm violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4 thereunder. Firm personnel, including the principal, routinely communicated with each other and with customers regarding firm business by text message using their personal mobile phones. Firm personnel did not send these text messages to their supervisors or the firm's compliance department to be reviewed and retained and the firm did not otherwise retain these business-related electronic communications. **(FINRA Case # 2016049087201)**
https://www.finra.org/sites/default/files/fda_documents/2016049087201%20Laidlaw%20%26%20Company%20%28UK%29%20Ltd%20CRD%20119037%20John%20Coolong%20CRD%205924271%20AWC%20va%20%282021-1628986806807%29.pdf

A firm was censured, fined $1,250,000, of which $405,000 is payable to FINRA and required to retain an independent consultant to conduct a comprehensive review of the adequacy of its compliance with Rule 15c3-5 of the Exchange Act and FINRA Rules 3110, 3120 and 3310. The findings stated that the firm failed to establish, document, and maintain a supervisory system, including WSPs, and regulatory risk management controls reasonably designed to monitor for potentially manipulative trading, such as potential layering, spoofing, wash trades, prearranged trades, marking the close and odd-lot manipulation, by its subscribers and their customers. The firm failed to develop and implement a reasonably designed anti-money laundering ("AML") program, AML testing or training, even after FINRA notified the firm of deficiencies related to the training program. The firm's AML program was not reasonably tailored to the risks of its direct market access business and its AML testing was not reasonable because it failed to assess whether its surveillance reports were reasonably designed to detect potentially suspicious transactions and whether the firm reasonably reviewed the surveillance

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reports and reasonably investigated potentially suspicious transactions. The findings also stated that the firm failed to establish, document, and maintain financial risk management controls and WSPs reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds and erroneous orders. WSPs did not describe the due diligence to be performed or how credit thresholds should be determined according to SEC guidance. The firm failed to establish, document, and maintain a supervisory system reasonably designed to review the effectiveness of its risk management controls and supervisory procedures. Moreover, besides an ad hoc review, the firm did not actually review the effectiveness of its risk management controls and its annual certification records did not describe or document any such reviews. FINRA found that the firm failed to provide annual certifications in compliance with Exchange Act Rule 15c3-5. Specifically, FINRA found that the firm failed to complete its certifications timely, tested its WSPs in two or three subject areas only resulting in a failure to reasonably test its WSPs, and failed to prepare annual reports summarizing the test results. Furthermore, the firm's supervisory controls reports did not include a summary of the test results and significant identified exceptions, nor did they detail any additional or amended supervisory procedures created in response to the test results. **(FINRA Case #2015044078201)**
https://www.finra.org/sites/default/files/fda_documents/2015044078201%20CODA%20Markets%2C%20Inc.%20fka%20PDQ%20ATS%2C%20Inc.%20CRD%2036187%20%20AWC%20va%20%282021-1630110021185%29.pdf

A firm was censured, fined $500,000, ordered to retain an independent consultant to conduct a comprehensive review of the adequacy of its compliance with its supervisory and anti-money laundering (AML) compliance obligations in connection with its market making activities in low-priced securities and sale of low-priced securities for firm customer accounts and subjected to a business line restriction that it shall not accept for deposit for any firm customer account any low-priced security until it certifies to FINRA that it has implemented the recommendations of the independent consultant. Three principals of the firm were also fined and suspended from association with any FINRA member in various capacities and for differing time periods for failing to establish, maintain and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with applicable laws and regulations and FINRA rules. The findings stated that the firm's WSPs did not explain how the firm's trading activity would be supervised to ensure compliance with its obligation to avoid engaging in or facilitating manipulative behavior or what should be done if such activity was detected. The firm's system of reviewing trading activity was limited and not reasonable to detect and prevent manipulative activity in microcap securities, such as Nugene International, Inc. (ticker, "NUGN"), including the failure of its principals to reasonably supervise a firm representative's trading in NUGN. The firm and its principal also failed to detect or otherwise ignored numerous red flags of potentially manipulative activity by the representative and his customers related to trading in NUGN, including failing to reasonably detect and respond to activity identified as indicative of potential manipulation by the firm's WSPs. The findings also stated that the firm failed to establish and implement AML policies and procedures reasonably designed to detect, investigate, and report, if necessary, suspicious activity related to the firm's microcap liquidation business. The firm's AML policies failed to describe how the firm, or its registered representatives, should review or monitor customer stock deposits or subsequent trading activity to detect and investigate various red flags of potentially suspicious activity. Moreover, other than instructing registered representatives to escalate red flags of potentially suspicious activity, the firm's AML policies failed to describe how the firm would investigate red flags or how, if at all, the identification and investigation of

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suspicious activity would be documented by the firm or its registered representatives. Despite that the firm's own AML policies listed many red flags indicative of potentially suspicious activity it failed to detect, investigate, and report activity related to NUGN stock. The findings also included that the firm in response to a request for documents and information, provided FINRA with an inaccurate or misleading spreadsheet purporting to represent a contemporaneous annotated record of the firm's daily review, including handwritten notations, and supervision of the firm's trading activity in NUGN, when, in fact, no such responsive documents evidencing the review existed. **(FINRA Case #2016048837401)** https://www.finra.org/sites/default/files/fda_documents/2016048837401%20Wilson-Davis%20%26%20Co.%2C%20Inc.%20CRD%203777%2C%20et%20al%20Order%20DM%20%282021-1629073215325%29.pdf

A firm was censured, fined $350,000 and required to retain an independent consultant to conduct a comprehensive review of the reasonableness of the firm's policies, systems, procedures (written and otherwise) and training relating to compliance with FINRA Rule 3310, and the requirements of the Bank Secrecy Act and the regulations promulgated thereunder related to monitoring for, identifying, investigating, documenting, and responding to red flags of suspicious activity. The findings stated the firm failed to develop and implement an AML program reasonably designed to achieve and monitor its compliance with the Bank Secrecy Act and the implementing regulations thereunder. The findings stated that the firm did not tailor its AML program to reasonably monitor for and report suspicious activity in light of its business model. The firm lacked reasonable written AML procedures for the surveillance of potentially suspicious transactions in customer accounts. The procedures did not identify any exception reports, did not describe how or how frequently supervisors should use them, did not contain any procedures about documenting the investigation of potentially suspicious activity and the firm did not document the findings of its investigations. The firm's manual review of the daily trade blotter was unreasonable given the volume and complexity of the trading by its customers and did not reflect canceled order data or patterns of trading across accounts or across multiple days. The firm also had a practice of failing to reasonably respond to certain types of red flags of suspicious activity, including not filing suspicious activity reports when customer trading activity was inconsistent with expected trading activity. As a result of the firm's failure to implement a reasonably designed AML program, it failed to timely or reasonably detect, investigate, or respond to potentially suspicious activities by retail customers. **(FINRA Case #2020067467601)** https://www.finra.org/sites/default/files/fda_documents/2020067467601%20Precision%20Securities%20LLC%20CRD%20103976%20AWC%20DM%20%282021-1629418813410%29.pdf

A firm was censured, fined $250,000 and required to retain an independent consultant to conduct a comprehensive review of its compliance with FINRA's suitability rules and the Exchange Act's possession-or-control requirements in connection with the firm's solicited equity and options transactions and stock loan business. The firm failed to establish and maintain a supervisory system reasonably designed to supervise securities transactions and achieve compliance with FINRA's suitability rule. The findings stated that the firm did not conduct any principal review of solicited transactions, had no surveillance system or exception reports to review solicited transactions and the automated surveillance system, when implemented, was not reasonably designed to detect excessive trading and other violative activity. The findings also stated that the firm permitted a broker to function as its trading supervisor even though he did not obtain his general securities principal registration and the firm failed to maintain possession or control over its customer assets consistent with the customer protection rule. Despite the firm's

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significant growth in its stock loan business, it did not update its systems and procedures to adapt to its expanded business line. The firm also treated joint accounts held by a principal officer of the firm and his spouse as non-customer accounts when performing its customer reserve calculation. As a result, the firm included debits to which it was not entitled, thereby understating the amount the firm was required to maintain. Separately, the firm failed to ensure that it accounted for customer funds in transit from branch offices and not promptly processed to the customer's account when making its customer reserve calculations, resulting in hindsight deficiencies. As a result of the foregoing, the firm violated Section 15(c) of the Exchange Act and Rule 15c3-3 thereunder. FINRA found that due to an error that occurred when the firm switched internet domain providers, it failed to archive outgoing email communications sent to non-firm email addresses. The emails in question were not stored in an easily accessible place. As a result, the firm violated Section 17a of the Exchange Act and Rule 17a-4(b)(4) thereunder. **(FINRA Case #2018058595601)**
https://www.finra.org/sites/default/files/fda_documents/2018058595601%20StockCross%20Financial%20Services%2C%20Inc.%20CRD%206670%20AWC%20va%20%282021-1629073214553%29.pdf

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