SECURITIES OPERATIONS

REGULATORY UPDATE

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IN THIS ISSUE

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SEC Requests Public Comment on "Gamification" Use by Broker-Dealers and Investment Advisers

On August 27, 2021, the U.S. Securities and Exchange Commission ("SEC" or "Commission") announced that it is requesting information and public comment on matters related to the use of digital engagement practices by broker-dealers and investment advisers. These tools, referred to as digital engagement practices ("DEPs"), include behavioral prompts, differential marketing, game-like features, commonly referred to as gamification, and other design elements or features designed to engage with retail investors on digital platforms such as websites, portals and applications, as well as other analytical and technological tools and methods. In its announcement, the SEC stated its goals in issuing this request for comment, in part, are to:

- assist the SEC and its staff in better understanding and assessing the market practices associated with the use of DEPs by firms, including: 1) the extent to which firms use DEPs; 2) the types of DEPs most frequently used; 3) the tools and methods used to develop and implement DEPs; and 4) information pertaining to retail investor engagement with DEPs, including any data related to investor demographics, trading behaviors, and investment performance;

- provide a forum for market participants, including investors and other interested parties, to share their perspectives on the use of DEPs and the related tools and methods, including potential benefits that DEPs provide to retail investors, as well as potential investor protection concerns; and

- facilitate an assessment by the Commission and its staff of existing regulations and consideration of whether regulatory action may be needed to further the Commission's mission, including protecting investors and maintaining fair, orderly, and efficient markets in connection with firms' use of DEPs and related tools and methods.

Comments Due: 30 days after publication in the Federal Register
SEC Request for Comment: https://www.sec.gov/rules/other/2021/34-92766.pdf
Press Release: https://www.sec.gov/news/press-release/2021-167

SEC TO REQUIRE MORE DISCLOSURE REGARDING CHINA-BASED OPERATING COMPANIES

On July 30, 2021, Gary Gensler, Chair of the SEC, advised that he has asked SEC staff to seek certain disclosures from offshore issuers associated with China-based operating companies before their registration statements will be declared effective. In several sectors in China, companies are not allowed to have foreign ownership and cannot directly list on exchanges outside of China. To raise money on such exchanges, many China-based operating companies are structured as Variable Interest Entities ("VIEs"). In such an arrangement, a China-based operating company typically establishes an offshore shell company in another jurisdiction, such as the Cayman Islands, to issue stock to public shareholders. That shell company enters into service and other contracts with the China-based operating company, then issues shares on a foreign exchange like the New York Stock Exchange ("NYSE") or The Nasdaq Stock Market ("Nasdaq"). Neither the investors in the shell company's stock, nor the offshore shell company itself, has stock ownership in the China-based operating company. For accounting purposes, however, the shell company can consolidate the operating company into its financial statements. Accordingly, Chair Gensler proposed that such shell companies prominently and clearly disclose, inter alia: 1) that investors are not buying shares of a China-based operating company but instead are buying shares of a shell company issuer that maintains service agreements with the associated operating company; 2) the description of the shell company's management services as clearly distinguished from the description of the China-based operating company; 3) that the China-based operating company, the shell company issuer, and investors face uncertainty about future actions by the government of China that could significantly affect the operating company's financial performance and the enforceability of the contractual arrangements; and 4) detailed financial information, including quantitative metrics, so that investors can understand the financial relationship between the VIE and the issuer. In addition, Gensler advised that he has asked SEC staff to engage in targeted additional reviews of filings for companies with significant China-based operations.

Gensler Statement: https://www.sec.gov/news/public-statement/gensler-2021-07-30

SEC ENHANCES ACCESS TO FINANCIAL DISCLOSURE DATA

On August 19, 2021, the SEC announced open data enhancements that provide public access to financial statements and other disclosures made by publicly traded companies on its Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"). For the first time, the SEC is releasing Application Programming Interfaces ("APIs") that aggregate financial statement data, making corporate disclosures quicker and easier for developers and third-party services to use. The SEC's intention is to encourage developers to create web or mobile apps that directly serve retail investors by making that process easier. The free APIs provide access to EDGAR submission history by filer as well as eXtensible Business Reporting Language ("XBRL") data from financial statements, including annual and quarterly reports, Forms 8-K, 20-F, 40-F and 6-K. The SEC stated that it anticipates adding more datasets in the future. According to the SEC, it updates APIs in real time throughout the day as EDGAR submissions are made public. In addition, a bulk ZIP file, making it possible to download all the API data, is updated and republished nightly.

SEC API Documentation Website: https://www.sec.gov/edgar/sec-api-documentation
Press Release: https://www.sec.gov/news/press-release/2021-159

SEC PUBLISHES FEE RATE CHANGES FOR FISCAL YEAR 2022

On August 23, 2021, the SEC published changes to the fees that public companies and other issuers pay to register their securities with the Commission. In fiscal year 2022, the fees will be set at $92.70 per million dollars. The securities laws require the Commission to make annual adjustments to the rates for fees paid under Section 6(b) of the Securities Act of 1933 and Sections 13(e) and 14(g) of the Securities Exchange Act of 1934 ("Exchange Act"). The Commission must set rates for the fees paid under Section 6(b) to levels that the Commission projects will generate collections equal to annual statutory target amounts. The Commission's projections are calculated using a methodology developed in consultation with the Congressional Budget Office and the Office of Management and Budget. As directed by the statute, the Commission determined the statutory target amount for fiscal year 2022 to be $747,806,372 by adjusting the fiscal year 2021 target collection amount of $709,554,300 for the rate of inflation. The annual adjustment to the fee rate under Section 6(b) also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g). By law, the annual rate changes for fees paid under Section 6(b) of the Securities Act of 1933 and Sections 13(e) and 14(g) of the Exchange Act must take effect on the first day of each fiscal year. Therefore, effective Oct. 1, 2021, the Section 6(b) fee rate applicable to the registration of securities, the Section 13(e) fee rate applicable to the repurchase of securities, and the Section 14(g) fee rates applicable to proxy solicitations and statements in corporate control transactions will decrease to $92.70 per million dollars from $109.10 per million dollars. The Section 6(b) rate is also the rate used to calculate the fees payable with the Annual Notice of Securities Sold Pursuant to Rule 24f-2 under the Investment Company Act of 1940.

SEC Order: https://www.sec.gov/rules/other/2021/33-10965.pdf
Press Release: https://www.sec.gov/news/press-release/2021-160

SEC, EUROPEAN CENTRAL BANK SIGN MOU ON SECURITY-BASED SWAP ENTITIES

On August 16, 2021, the SEC and European Central Bank ("ECB") announced the signing of a memorandum of understanding ("MOU") to consult, cooperate and exchange information in connection with the supervision, enforcement and oversight of certain security-based swap ("SBS") dealers and major SBS participants that are registered with the SEC and supervised by the ECB. This is the first MOU between the SEC and ECB. The MOU is intended to facilitate the SEC's oversight of all SEC-registered SBS entities in European Union ("EU") member states participating in the system of banking supervision in the EU, or the Single Supervisory Mechanism ("SSM"). According to the SEC, the MOU will support the SEC's oversight of the operation of substituted compliance orders that the Commission has issued for SBS entities in France and Germany, as well as any future substituted compliance orders for such firms in other EU member states that participate in the SSM. Substituted compliance orders allow an SBS entity to comply with particular U.S. requirements under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd Frank Act") through compliance with comparable EU and EU member state laws. According to the SEC, the MOU also enhances the ability of the SEC and the ECB to consult, coordinate and share information with each other with respect to these entities, including in connection with cross-border inspections.

MOU: https://www.sec.gov/files/8162021-executed-ecb-mou-redacted-annex-signatures-secured.pdf
Press Release: https://www.sec.gov/news/press-release/2021-152

SEC CHIEF ENFORCEMENT COUNSEL BRENNER RETIRES

On August 23, 2021, the SEC announced that Joseph Brenner had retired as the Chief Counsel of the Division of Enforcement, a role he held since January 2011. As Chief Counsel, Brenner served as the head of the SEC's Division of Enforcement's Office of Chief Counsel, where he oversaw the process of providing legal and policy advice on potential enforcement actions and other critical issues. "It has been my honor and the highlight of my career to provide legal analysis and counsel to the [SEC's] Division of Enforcement," said Brenner. "I will greatly miss working alongside the dedicated staff to enforce securities laws, investigate possible violations, and prosecute federal civil suits on behalf of the SEC." During his time as Chief Counsel, Brenner was also an Adjunct Professor at the Columbus School of Law, Catholic University of America. Prior to joining the SEC, Brenner was a partner at WilmerHale, where he focused on securities enforcement, internal corporate investigations, and related civil and criminal litigation. Before that, Brenner was a law clerk for the U.S. Court of Appeals for the District of Columbia Circuit. Brenner received his JD cum laude from Georgetown University Law Center and his undergraduate degree from Cornell University.

Press Release: https://www.sec.gov/news/press-release/2021-161

SEC APPOINTS WADHWA AS DEPUTY DIRECTOR OF ENFORCEMENT

On August 18, 2021, the SEC announced the appointment of Sanjay Wadhwa as Deputy Director of the SEC's Division of Enforcement. Wadhwa most recently served as the Senior Associate Director of the Division of Enforcement in the SEC's New York Regional Office ("NYRO"), where he managed more than 150 personnel in enforcing federal securities laws. "It has been an honor to serve alongside the SEC's esteemed Enforcement staff for the past 18 years," said Wadhwa. "I look forward to working with Gurbir [Grewal, the SEC's Director of Enforcement] and the entire [SEC] Enforcement Division to oversee investigations and litigation matters to help protect investors and promote integrity in the marketplace by holding wrongdoers accountable." Wadhwa joined the SEC as a staff attorney in 2003. As co-head of Enforcement in the SEC's NYRO, he was responsible for the day-to-day functions of that office's enforcement program. He also previously served in additional roles in the SEC's Enforcement Division, including Deputy Chief of the Market Abuse Unit and Assistant Director in the SEC's NYRO. Prior to joining the SEC in 2003, Wadhwa served as a tax associate at Cahill Gordon & Reindel LLP and Skadden, Arps, Slate, Meagher & Flom LLP. Mr. Wadhwa has a B.B.A. from Florida Atlantic University, a J.D. from South Texas College of Law Houston, and an LL.M. in taxation from New York University School of Law.

Press Release: https://www.sec.gov/news/press-release/2021-157

SEC APPOINTS ROPER TO CHAIR GENSLER'S SENIOR STAFF

On August 25, 2021, the SEC announced the appointment of Barbara Roper as Senior Advisor to Chair Gary Gensler. Roper's focus will be on issues relating to retail investor protection, including matters relating to policy, broker-dealer oversight, investment adviser oversight, and examinations. She is currently the Director of Investor Protection for the Consumer Federation of America ("CFA"). Roper has worked at the CFA for 35 years and has been a leading consumer spokesperson on investor protection issues, particularly the standards that apply to investment professionals.

Press Release: https://www.sec.gov/news/press-release/2021-165

FINRA ANNOUNCES CLOSURE OF OTCBB, ADOPTS RULE 6439

On August 16, 2021, the Financial Industry Regulatory Authority ("FINRA") announced that it would delete its Rule 6500 series and other rules related to the OTC Bulletin Board ("OTCBB"), a FINRA-operated inter-dealer quotation system. The permanent closure of the OTCBB will not occur prior to October 1, 2021; FINRA will announce the effective date of the deletion of the OTCBB-related rules and its closure of the OTCBB at a later date. FINRA also announced that it had adopted new Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems), which implements additional requirements for firms that operate systems that regularly disseminate the quotations of identified broker-dealers in OTC equity securities, each an inter-dealer quotation system or ("IDQS"). Specifically, Rule 6439 requires a covered IDQS to: 1) establish and prominently disclose to subscribers its written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities; 2) establish and prominently disclose to subscribers its nondiscriminatory written standards for granting access to quoting and trading on its system; 3) establish written policies and procedures addressing subscriber unresponsiveness with respect to the display of firm quotations in OTC Equity Securities; 4) submit reports to FINRA on a monthly basis that include specified aggregate and order-level information for OTC Equity Securities; 5) make available to customers a written description of each OTC Equity Security order- or quotation-related data product offered by such firm and related pricing information; and 6) provide FINRA with specified information concerning the integrity of its systems. Rule 6439 will become effective on October 1, 2021, except for paragraph (d)(1)(B), which relates to the collection of order-level information. The effective date for paragraph (d)(1)(B) will be announced at a later date to better coordinate, and avoid regulatory duplication, with reporting obligations to the Consolidated Audit Trail ("CAT") under Rule 6830 (Industry Member Data Reporting).

FINRA Regulatory Notice 21-28: https://www.finra.org/sites/default/files/2021-08/Regulatory-Notice-21-28.pdf

FINRA ALERTS FIRMS TO FRAUDULENT EMAIL PHISHING CAMPAIGN

On August 13, 2021, FINRA published a notice to warn firms of an ongoing phishing campaign involving fraudulent emails purporting to be from FINRA using one of at least three imposter domain names: 1) @finrar-reporting.org; 2) @Finpro-finrar.org; and 3) @gateway2-finra.org. The contents of the email mimic the organization and display of information that firms receive when they receive a regulatory request from FINRA through the FINRA Gateway. The email provides an icon within the message to "View Request" and provide information to "complete" the request, noting that a "late submission may attract penalties." In the Regulatory Notice, FINRA recommended that anyone who clicked on any link or image in the phony email immediately notify the appropriate individuals in their firm of the incident. FINRA confirmed that none of the aforementioned domain names are connected to FINRA and that firms should delete all emails originating from any of these domain names. FINRA also reminded firms to verify the legitimacy of any suspicious email prior to responding, opening any attachments or clicking on any embedded links. FINRA stated that it has requested the relevant internet domain registrars suspend services for all three of the bogus domain names.

FINRA Regulatory Notice 21-30: https://www.finra.org/sites/default/files/2021-08/Regulatory-Notice-21-30.pdf

SEC REVIEWING FINRA PROPOSALTO AMEND MARGIN REQUIREMENTS FOR COVERED AGENCY TRANSACTIONS

On August 20, 2021, the SEC published for comment Amendment No. 1 to a FINRA proposal to modify the margin requirements for covered agency transactions under FINRA Rule 4210, and the SEC instituted proceedings to determine whether to approve or disapprove FINRA's proposal. Specifically, FINRA's proposed amendments to Rule 4210, as modified by Amendment No. 1, would: 1) eliminate the two percent maintenance margin requirement that applies to non-exempt accounts under FINRA Rule 4210; 2) permit FINRA members to take a capital charge in lieu of collecting margin for excess net mark to market losses on covered agency transactions, subject to specified conditions and limitations; 3) make revisions designed to streamline, consolidate and clarify the covered agency transaction rule language; 4) modify the definition of "non-margin counterparty" to exclude small cash counterparties and other exempted counterparties; and 5) define a FINRA member's "specified net capital deductions" as the net capital deductions required by paragraph (e)(2)(H)(ii)d.1 of FINRA Rule 4210 with respect to all unmargined excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close of business on the fifth business day after they arose. In the filing, FINRA indicated that, if the proposal receives SEC approval, it will announce the effective date of the amended rule no later than 60 days following SEC approval.

Comments Due: September 16, 2021
Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-92713.pdf

FINRA EXTENDS CERTAIN COVID-RELATED RELIEF THROUGH DECEMBER 31, 2021

On August 17, 2021, the SEC published for comment a FINRA proposal, which became effective immediately upon filing, to extend temporary relief from certain timing, method of service and other procedural requirements in FINRA rules due to the persistence of the COVID-related pandemic. The expiration of the temporary relief was originally set to expire on April 30, 2021, and later was extended to August 31, 2021. FINRA's latest proposal extended the expiration date of the relief through December 31, 2021. FINRA noted in the filing that the vast majority of its staff continue to work remotely, which can complicate compliance with certain operational and administrative requirements of its rules. As an example, FINRA stated that working remotely makes it difficult to send and receive hard copy documents, as may be required by rule in certain circumstances, and conduct in-person oral arguments. The temporary amendments aim to address these concerns by easing logistical and other issues, and providing needed flexibility during the COVID-19 outbreak. Accordingly, the extension allows FINRA's Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") to continue to conduct hearings, on a temporary basis, by video conference. FINRA indicated in the filing that its health and safety consultant and its own assessment of COVID-related data and guidance issued by public health authorities led it to conclude that in-person hearings continue to pose an unreasonable risk to the safety of its staff and the parties involved. FINRA stated that it expects the need for temporary rule relief to persist "for several months" beyond August 31, 2021.

Comments Due: September 13, 2021
Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-92685.pdf

SEC REVIEWING FINRA PROPOSED RULE AMENDMENTS REGARDING SBS ENTITIES

On August 9, 2021, the SEC published for comment Amendment No. 1 to a FINRA proposal to amend FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to clarify the application of FINRA rules to SBS entities, following the SEC's completion of its rulemaking in this area. In addition to publishing the proposal, as amended, for comment, the SEC instituted proceedings to determine whether to approve or disapprove FINRA's proposal. SBS entities are expected to begin registering with the SEC on October 6, 2021. Specifically, FINRA's proposal would: 1) adopt a new FINRA Rule 0180, to replace expiring current FINRA Rule 0180, that would generally apply FINRA rules to members' activities and positions with respect to SBS, while providing limited exceptions for those activities and positions in circumstances where FINRA believes such exceptions are appropriate; 2) amend FINRA's financial responsibility and operational rules for SBS entities and broker-dealers to conform to the SEC's amendments to its capital, margin and segregation requirements, and to otherwise take into account FINRA members' SBS activities; and 3) adopt a new margin rule specifically applicable to SBSs, which would replace the expiring interim pilot program establishing margin requirements for credit default swaps. Amendment No. 1 to the proposal would: 1) extend the effective date of the proposed amendments to FINRA Rules 0180, 4120 and 9610 from October 6, 2021 to February 6, 2022; 2) extend the effective date of the proposed amendments to FINRA Rules 4210, 4220 and 4240 from October 6, 2021 to April 6, 2022; and 3) conform the proposed definition of "legacy swap" in proposed FINRA Rule 4240(d)(12) to reflect the new effective date of April 6, 2022.

Comments Due: September 3, 2021
Notice Release: https://www.sec.gov/rules/sro/finra/2021/34-92617.pdf

NASDAQ TO SUSPEND OPTIONS REGULATORY FEE

On August 6, 2021, the SEC published for comment a Nasdaq proposal, effective immediately upon filing, to amend the Nasdaq Options Market LLC's ("NOM") pricing schedule at Options 7, Section 5 related to the Options Regulatory Fee ("ORF"). Currently, NOM assesses an ORF of $0.0020 per contract side. Once the proposal becomes operative, Nasdaq will waive its ORF until January 31, 2022, and then recommence the ORF on February 1, 2022. In its filing, Nasdaq stated that the options industry has recently experienced extremely high options trading volumes and volatility. The historical anomaly of persistent increased options volumes has impacted NOM's ORF collection. Nasdaq stated that this has caused it to revisit its financial forecast to reflect the sustained elevated options volumes and volatility. As it continues to monitor the amount of revenue collected from the ORF to ensure that its ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs, Nasdaq stated that it has found it difficult to determine when volumes will return to more normal levels. In order to avoid iterative rule changes to amend its ORF, Nasdaq stated that it believes the prudent approach is to waive its ORF from October 1, 2021 to January 31, 2022. This action, according to Nasdaq, will allow Nasdaq to plan future forecasts without the need to account for any ORF collection during that timeframe. On the operative date, October 1,2021, Nasdaq will waive its ORF until January 31, 2022, and then recommence the ORF on February 1, 2022.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-92600.pdf

NASDAQ DECOMMISSIONS “KILL SWITCH” FUNCTIONALITY

On August 18, 2021, the SEC published for comment a Nasdaq proposal, effective on filing, to decommission Nasdaq’s quote removal functionality at Options 3, Section 17, labelled the “kill switch.” The kill switch is an optional tool that allows market makers to initiate a message to Nasdaq to promptly remove their quotes from the market. Market makers can submit a request to Nasdaq to remove quotes based on certain identifiers on either a user or group level. If quotes are cancelled by the market maker using the kill switch functionality, it results in the removal of all quotes requested for the identifiers. The market maker is then unable to enter any additional quotes for the affected identifiers until the market maker sends a re-entry request to Nasdaq. In its filing, Nasdaq stated that it plans to decommission the kill switch functionality, primarily due to the lack of demand by market makers for the tool.

Comments Due: September 14, 2021
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2021/34-92697.pdf

SEC APPROVES NYSE PROPOSAL TO PROHIBIT CERTAIN REIMBURSEMENTS FOR FORWARDING PROXY MATERIALS

On August 13, 2021, the SEC approved a NYSE proposal to amend its rules to prohibit member organizations from seeking reimbursement from issuers for forwarding proxy and other materials to beneficial owners who received shares from their broker at no cost or at a price substantially less than the market price in connection with a promotion by the broker. As previously reported, the proposal was published for comment in the Federal Register on December 21, 2020. On February 1, 2021, the Commission designated a longer period of time within which to approve or disapprove the proposals, or institute proceedings to determine whether to approve or disapprove the proposals. On March 18, 2021, the Commission instituted such proceedings, and extended the period for approving or disproving the proposal to August 18, 2021.

SEC Approval Order: https://www.sec.gov/rules/sro/nyse/2021/34-92667.pdf

SEC REJECTS NYSE PROPOSAL TO CANCEL MAXIMUM REIMBURSEMENT RULES FOR FORWARDING PROXY MATERIALS

On August 18, 2021, the SEC issued an order disapproving a NYSE proposal to delete its rules that set maximum reimbursement rates for members seeking repayment from issuers for certain expenses incurred in connection with distributing proxy and other materials to beneficial owners, and instead require members to comply with any schedule of approved charges set forth in the rules of any other self-regulatory organization (“SRO”) of which such member is also a member. As previously reported, on February 1, 2021, the Commission designated a longer period of time within which to approve or disapprove the proposals, or institute proceedings to determine whether to approve or disapprove the proposal. On March 18, 2021, the Commission instituted such proceedings, and extended the period for approving or disproving the proposal to August 18, 2021. In its order, the SEC stated that the NYSE had not met its burden to demonstrate that the proposal would promote just and equitable principles of trade, and protect investors and the public interest. The SEC added that the proposal would effectively make the reimbursement rates set forth in FINRA rules the industry standard and establish FINRA as the lead SRO in this area.

SEC Disapproval Order: https://www.sec.gov/rules/sro/nyse/2021/34-92700.pdf

NYSE MODIFIES PRICE LIST

On August 9, 2021, the SEC published for comment a NYSE proposal, effective immediately upon filing, to amend its price list to eliminate the: 1) underutilized monthly rebate payable to designated market makers ("DMMs") with 30 or fewer assigned securities, and 2) expired waivers for equipment and related service charges and trading license fees for NYSE trading floor-based member organizations. Prior to the rule change, the NYSE paid a DMM with 30 or fewer assigned securities a monthly rebate of $1,500 per security, up to a maximum of $10,000, for each security assigned to such a DMM in the previous month for which that DMM provides quotes at the National Best Bid ("NBB") and National Best Offer ("NBO") (together, the "NBBO") at least 25% of the time in the applicable month. The monthly rebate is in addition to the current rate on transactions and is prorated to the number of trading days in a month that an eligible security is assigned to a DMM. The NYSE noted in its filing that no DMMs with 30 or fewer assigned securities have qualified for the rebate in the past six months. With respect to the waivers for equipment, service and trading license fees, the NYSE noted that the waivers were implemented in response to the trading floor shutdown resulting from the COVID-related lockdowns of 2020, and that the waivers expired in June 2021 and are now obsolete.

Comments Due: September 3, 2021
Notice Release: https://www.sec.gov/rules/sro/nyse/2021/34-92615.pdf

NYSE AMERICAN AMENDS FEE SCHEDULE AND PRICE LIST

On August 6, 2021, the SEC published for comment a proposal by the NYSE American LLC ("NYSE American"), effective immediately upon filing, to amend its fee schedule and price list to offer an optional monthly per security credit to electronic designated market makers ("eDMM") that elect to receive a lower transaction credit per share for adding liquidity to the NYSE American exchange. Specifically, the proposal adds an optional monthly credit per security to eDMMs, up to a maximum credit of $550 per month across all assigned securities, provided that the eDMM agrees to a lower transaction credit of $0.0030, from $0.0045 currently, for adding displayed liquidity for all assigned securities. An eDMM electing the additional credit per security must notify the NYSE American prior to the start of a month if the eDMM elects to change its credit either to or from the credit per security for all the eDMM's assigned securities. The credit per security will be available for the following month for each assigned security where the eDMM meets the following quoting requirements: 1) an eDMM quoting at the NBBO for a minimum average of 25% of the time would be entitled a $100 credit per security per month, or 2) an eDMM quoting at the NBBO for a minimum average of 40% of the time would be entitled a $250 credit per security per month, or 3) an eDMM quoting at the NBBO for a minimum average of 50% of the time would be entitled to the maximum $550 credit per security per month. In its filing, the NYSE American stated its belief that providing eDMMs with the option to receive a lower per share transaction credit for increased quoting and adding displayed liquidity in exchange for monthly rebates per assigned security would foster liquidity provision in the marketplace and lessen eDMM reliance on transaction fees. In addition, the NYSE American stated that the changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders.

Comments Due: September 3, 2021
Notice Release: https://www.sec.gov/rules/sro/nyseamer/2021/34-92592.pdf

Notable Enforcement Actions

This month's enforcement actions highlight the need for effective supervisory controls carefully crafted to align with regulatory requirements, including thorough systems testing in those areas where compliance controls are embedded in automated systems.

A firm was censured, fined $575,000 and ordered to pay $816,618.75, plus interest, in restitution to customers for failing to provide best execution to orders from its clients on behalf of their customers in OTC securities by failing to use reasonable diligence to ascertain the best market for the subject securities and by failing to buy or sell in such a market so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. In certain instances, the firm missed better priced messages and did not execute the customer's order at the best available price due to its manual process for comparing customer orders it received in OTC securities. The firm also failed to establish and maintain a supervisory system reasonably designed to achieve best execution for customer orders in OTC securities. The supervisory system failed to account for price opportunities available through its electronic messaging service when evaluating the execution quality of the customer orders. Since the firm's supervisory system excluded reviews of prices available in the messages, it had no way to determine if its customer orders received an inferior execution to one available via the messages. The firm also either failed to make reasonable efforts to execute against the market maker's quotation within 30 seconds of receipt of the customer's order, which would have allowed the firm to display the customer limit order, or take alternative steps of immediately routing, executing or canceling the customer order for orders that would have locked or crossed the firm's quote or another firm's quote. The firm also failed to immediately display sample customer orders that did not lock or cross a displayed quote due to technology issues. The firm's supervisory system was not reasonably designed to achieve compliance with limit order display obligations because its daily exception reports did not include orders that would have locked or crossed the market, orders that had an initial action taken within 30 seconds, or orders that were received before a specific time. As a result, potentially violative orders were not being reviewed.
(**FINRA Case #2014041944901**)
https://www.finra.org/sites/default/files/fda_documents/2014041944901%20G1%20Execution%20Services%2C%20LLC%20CRD%20111528%20AWC%20va%20%282021-1625876409583%29.pdf

A firm was censured and fined $350,000 because its supervisory system was not reasonably designed to ensure that employees timely uploaded PDF statements and the firm timely reviewed employees' personal trading. The firm failed to promptly request statements appearing on missing statement exception reports and failed to formally discipline employees who were significantly and repeatedly delinquent in uploading their PDF statements. As a result of these delays, the firm had incomplete records from which to conduct its review, resulting in its failure to timely identify instances where employees did not appropriately pre-clear transactions, in violation of its personal employee trading policy. In addition, there were significant delays in the firm's internal compliance risk management group's assignment of PDF statements to analysts for supervisory review and in the analysts' completion of their reviews. This was due in substantial part to a staffing shortage that existed in the compliance group and resulted in a significant back-log of PDF statements that were uploaded and awaiting review. The firm also failed to reasonably ensure that the employees' supervisors reviewed PDF statements on a timely basis. Some of the supervisory delays were due to a technological mapping error in the firm's employee due diligence system that, in certain circumstance, caused it to fail to notify supervisors that they had pending PDF statements requiring review. The mapping error existed from the time of the firm's implementation of the system to when the firm identified the problem in connection with responding to regulatory inquiries. (**FINRA Case #2019064316401**)

https://www.finra.org/sites/default/files/fda_documents/2019064316401%20Citigroup%20Global%20Markets%20Inc.%20CRD%207059%20AWC%20sl%20%282021-1626394817497%29.pdf

A firm was censured and fined a total of $300,000 for violating Rule 203(b)(1) of Regulation SHO of the Exchange Act by effecting principal short sales without obtaining locates to facilitate client short sale orders on a riskless principal basis. The firm incorrectly believed that it did not have to obtain a locate, so long as its clients obtained locates for their short sale orders. While trading as riskless principal, the firm, upon receipt of a client short sale order, effected a principal short sale in the same security on an exchange or other execution venue and then satisfied the client order by buying the security as principal at the same price. However, the firm had a separate locate obligation with respect to the short sales it effected for its own account. The firm effected the short sale orders for its own account without borrowing the securities, entering into bona-fide arrangements to borrow the securities, or having reasonable grounds to believe that the securities could be borrowed so that they could be delivered on the date delivery was due. The firm also reported short sale transactions to the FINRA/NYSE trade reporting facility without a short sale indicator. When the firm satisfied client short sale orders as riskless principal, it bought securities from a client that was selling short. The firm incorrectly believed a short sale indicator was not required in this circumstance. The findings also include that the firm violated section 17(a) of the Exchange Act and Rule 17a-3(a)(1) thereunder by failing to maintain accurate blotters of its purchases and sales of securities. When the firm purchased a security from its client to satisfy a client sale order, it inaccurately recorded the execution of a client sale order, rather than a purchase for its own account. Likewise, when the firm sold a security to its client to satisfy a client buy order, it inaccurately recorded the execution of a client buy order, rather than a sale for its own account. (**FINRA Case #2016048613101**)

https://www.finra.org/sites/default/files/fda_documents/2016048613101%20Clearpool%20Execution%20Services%2C%20LLC%20CRD%20168490%20AWC%20sl%20%282021-1626913228937%29.pdf

A firm was censured and fined $125,000 for causing registered representatives being recruited by the firm to take nonpublic personal customer information from the broker-dealers where the representatives were then registered and to disclose it to a third-party vendor without the other broker-dealers' or the customers' knowledge or consent. As a result, those broker-dealers violated the SEC's Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Information. The firm understood that the vendor would collect information about recruited representatives' customers, including nonpublic personal information such as customers' social security numbers,

driver's license numbers and birth dates, as well as information pertaining to their customers' financial positions. Once a recruited representative became registered through the firm, the vendor used the customers' information to automatically pre-populate new account forms. The firm directly reimbursed the newly affiliated registered representatives for their use of the vendor. The firm failed to take any steps to verify whether the recruited representatives or their broker-dealers at the time had notified customers about the disclosure of their nonpublic personal information. Nor did the firm take any steps to verify whether customers had been given an opportunity to opt-out of having their information disclosed. (**FINRA Case #2020066875501**)
https://www.finra.org/sites/default/files/fda_documents/2020066875501%20Cetera%20Advisor%20Networks%20LLC%20CRD%2013572%20AWC%20rjr%20%282021-1627518019734%29.pdf

A firm was censured and fined $105,000 for publishing research reports in which it failed to accurately disclose certain information required by FINRA Rule 2241 (Research Analysts and Research Reports). The firm failed to accurately disclose key details of its relationship with certain companies about which it published research reports, including: 1) investment banking and other compensation it received from such companies; 2) that it had acted as an underwriter or selling agent for public offerings of securities issued by such companies; and 3) the percentage of companies within each of the buy, hold and sell rating categories for which the firm provided investment banking services. The firm's disclosure issues resulted from its failure to establish and maintain a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to achieve compliance with its research disclosure obligations. The WSPs did not assign to one or more individuals within the firm responsibility for obtaining and inputting into its internal disclosure database used to prepare the disclosures timely and accurate information related to investment banking services provided to, and investment banking and other compensation received from, subject companies. The WSPs also did not specify who would review the research reports to ensure that the disclosures were present or provide guidance as to how such a review would be conducted, when it would occur and how it would be documented. The firm, as part of its supervisory system, also did not reasonably monitor and review the database that was used to prepare the disclosures or the reports themselves to ensure that the disclosures were included. In addition to the fine and censure, the firm was ordered to certify to FINRA that it had completed a review of its systems and written procedures regarding required disclosures in research reports and that its systems and written procedures were reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules. (**FINRA Case #2019061155401**)
https://www.finra.org/sites/default/files/fda_documents/2019061155401%20Sidoti%20%26%20Company%2C%20LLC%20CRD%20102860%20AWC%20va%20%282021-1627258813295%29.pdf

A firm was censured and fined $50,000 for failing to implement policies and procedures to reasonably prevent the display of locking or crossing quotations in OTC equity securities. In certain situations, the firm locked or crossed quotations in OTC equity securities and either did not contact other market participants prior to locking or crossing the market, or otherwise failed to take reasonable steps to unlock or uncross the market. The firm's policies and procedures designed to avoid locking and crossing quotations in OTC equity securities did not provide its traders with reasonable guidance for how to avoid or resolve a locked or crossed market. The firm also failed to establish, maintain and enforce WSPs that were reasonably designed to achieve compliance

with FINRA Rule 6437 (Prohibition from Locking or Crossing Quotations in OTC Equity Securities). The firm's supervisory manual, although it required a supervisor to review reports that identified instances of locked or crossed markets in OTC equity securities, did not specify the process by which the supervisor was required to review such instances. In addition, while the firm updated its WSPs, it still failed to provide any guidance on how to perform a supervisory review for whether a trader was locking or crossing the market. (**FINRA Case #2016050863601**)
https://www.finra.org/sites/default/files/fda_documents/2016050863601%20Cantor%20Fitzgerald%20%26%20Co.%20CRD%20134%20AWC%20va%20%282021-1626394817117%29.pdf

A firm was censured and fined $30,000 for submitting inaccurate data to the Order Audit Trail System ("OATS") in certain Reportable Order Events ("ROEs") sampled for review. The inaccurate OATS submissions consisted of combined order/execution reports with inaccurate account type codes and orders reported with an inaccurate order received timestamp. The firm also failed to report to the OTC reporting facility the riskless portion of a riskless-principal transaction in certain transactions sampled for review. The firm attributed these reporting failures to its transition to a new order management system. (**FINRA Case #2018057162401**)
https://www.finra.org/sites/default/files/fda_documents/2018057162401%20Alpine%20Securities%20Corporation%20CRD%2014952%20AWC%20sl%20%282021-1625790022304%29.pdf