

SECURITIES OPERATIONS

REGULATORY UPDATE

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Take Action Now

SEC Reopens Comment Period for Proposed Rule on Large SBS Position Reporting

On June 20, 2023, the U.S. Securities and Exchange Commission (“SEC” or the “Commission”) announced that it had reopened the comment period for its proposed rule for reporting of large security-based swap (“SBS”) positions that exceed certain thresholds. In addition, the SEC’s Division of Economic and Risk Analysis released a memorandum that provides supplemental data and analysis regarding the proposed reporting thresholds in the equity security-based swap market.

- **Proposed Rule:** <https://www.sec.gov/rules/proposed/2021/34-93784.pdf>
- **SEC Staff Memo:** <https://www.sec.gov/comments/s7-32-10/s73210-207819-419422.pdf>
- **Comments Received:** <https://www.sec.gov/comments/s7-32-10/s73210.htm>
- **Reopening Release:** <https://www.sec.gov/rules/proposed/2023/34-97762.pdf>
- **Press Release:** <https://www.sec.gov/news/press-release/2023-113>
- **Comments Due:** August 21, 2023

SEC Continues Enforcement Actions Targeting Crypto Exchanges

On June 5, 2023, the SEC charged Binance Holdings Ltd., its several affiliates, including Binance.US, which operates the largest crypto trading platform in the United States (collectively, “Binance”), and Binance’s founder, Changpeng Zhao, with a variety of securities law violations, including operating an unregistered national securities exchange. The following day, on June 6, 2023, the SEC announced that it had taken similar enforcement action against Coinbase. These SEC enforcement actions follow the SEC’s reopening of the comment period for its proposed amendment to the definition of exchange under Rule 3b-16 of the Securities Exchange Act of 1934 (“Exchange Act”) in mid-April 2023, and its enforcement action against crypto trading platform Bittrex, Inc. a few days thereafter.

- **SEC Complaint (Binance):** <https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-101.pdf>
- **Press Release (Binance):** <https://www.sec.gov/news/press-release/2023-101>
- **SEC Complaint (Coinbase):** <https://www.sec.gov/litigation/complaints/2023/comp-pr2023-102.pdf>
- **Press Release (Coinbase):** <https://www.sec.gov/news/press-release/2023-102>

Regulatory Actions

On June 7, 2023, the SEC announced that it had adopted rule amendments designed to prevent fraud, manipulation, and deception in connection with SBS transactions and to prevent undue influence over the chief compliance officers (“CCOs”) of SBS dealers and major SBS participants.

Final Rule: <https://www.sec.gov/rules/final/2023/34-97656.pdf>

Fact Sheet: <https://www.sec.gov/files/34-97656-fact-sheet.pdf>

Press Release: <https://www.sec.gov/news/press-release/2023-104>

Effective Date: August 21, 2023

On June 7, 2023, the SEC announced that it had adopted rule changes to remove and replace references to credit ratings from existing exceptions provided in Rule 101 and Rule 102 of Regulation M, a set of rules that prohibits activities that could artificially influence the market for an offered security. The amendments, when effective, will remove certain existing rule exceptions in Rule 101 and Rule 102 of Regulation M that reference credit ratings for nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities and substitute in their place new exceptions that are based on alternative standards of creditworthiness.

Final Rule: <https://www.sec.gov/rules/final/2023/34-97657.pdf>

Fact Sheet: <https://www.sec.gov/files/34-97657-fact-sheet.pdf>

Press Release: <https://www.sec.gov/news/press-release/2023-105>

Effective Date: August 21, 2023

On June 12, 2023, the SEC announced that it had released a public service campaign aimed at encouraging older investors to never stop learning when it comes to protecting their hard-earned money and investing for their future. The campaign features a new [television spot](#) called *Never Stop Learning*, available in English and Spanish, and four informational videos about [caregivers](#), [trusted contacts](#), [protecting investors’ retirement money](#), and the [red flags of investment fraud](#). The campaign also includes new resource pages for older investors in both [English](#) and [Spanish](#) that promote the free tools and resources on [Investor.gov](#) where investors can find information about investing in retirement, spotting fraud, and doing background checks on investment professionals, among other things.

Press Release: <https://www.sec.gov/news/press-release/2023-106>

On June 26, 2023, the SEC published for comment, and granted immediate effectiveness to, a proposal by the Financial Industry Regulatory Authority (“FINRA”) to amend its trading activity fee. Specifically, FINRA exempted from its trading activity fee any transaction by a proprietary trading firm that occurs on an exchange of which the proprietary trading firm is a member.

Notice Release: <https://www.sec.gov/rules/sro/finra/2023/34-97798.pdf>

Comments Due: 21 days after publication in the Federal Register

On June 12, 2023, FINRA published Regulatory Notice 23-11 to request comment on its concept proposal to establish liquidity risk management requirements. FINRA's potential new rule would be designed to ensure that members have sufficient liquid assets to meet their funding needs in both normal and stressed conditions. Broadly, the proposal outlines three areas where a potential rule might address liquidity risk, including liquidity stress testing, contingent funding plans and a requirement to always maintain sufficient liquidity on a current basis.

FINRA Regulatory Notice 23-11: <https://www.finra.org/sites/default/files/2023-06/Regulatory-Notice-23-11.pdf>

Comments Due: August 11, 2023

On May 31, 2023, FINRA published Regulatory Notice 23-10 to request comment on its proposal to facilitate centralized access to members' order execution quality reports for National Market System ("NMS") stocks that are required to be published by market centers under Rule 605 of Regulation NMS. Under the proposal, FINRA members would be required to provide to FINRA their Rule 605 reports, which FINRA would publish in a centralized location on the FINRA website.

FINRA Regulatory Notice 23-10: <https://www.finra.org/sites/default/files/2023-05/Regulatory-Notice-23-10.pdf>

Comments Due: July 31, 2023

On May 31, 2023, the SEC announced that it had designated a longer period within which it would approve or disapprove a FINRA proposal to adopt rules regarding the disclosure of order routing information for NMS securities and over-the-counter ("OTC") equity securities. The SEC will either approve or disapprove the proposal by August 3, 2023.

Notice Release: <https://www.sec.gov/rules/sro/finra/2023/34-97629.pdf>

On June 21, 2023, the SEC announced that it had designated a longer period within which it would approve or disapprove a FINRA proposal to add IntelligentCross ATS as a new entrant to FINRA's alternative display facility. The SEC will either approve or disapprove the proposal by August 24, 2023.

Notice Release: <https://www.sec.gov/rules/sro/finra/2023/34-97784.pdf>

On June 13, 2023, FINRA published a podcast featuring members of its examination program, which is responsible for examining every FINRA member firm at least every four years and as often as annually, depending on the risk profile of the firm. On June 27, 2023, FINRA published a separate podcast discussing its efforts to protect senior investors and exploring some real-world scenarios in the application of FINRA Rules 2165 and 4512, the first uniform national senior investor protection standards.

FINRA Exam Program Podcast: <https://www.finra.org/media-center/finra-unsigned/finra-examinations-team-program>

FINRA Senior Investor Protection Podcast: <https://www.finra.org/media-center/finra-unsigned/senior-investor-protection-update>

On June 7, 2023, the SEC published for comment, and granted immediate effectiveness to, a proposal by the Nasdaq Stock Market LLC (“Nasdaq”) to eliminate a transaction credit at Equity 7, Section 118(a). Specifically, Nasdaq eliminated the \$0.00295 per share executed credit for securities in Tapes A, B, and C offered to members with shares of liquidity provided in all securities through one or more of its Nasdaq MPIDs that represent 0.85% or more of consolidated volume, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.25% or more of consolidated volume.

Notice Release: <https://www.sec.gov/rules/sro/nasdaq/2023/34-97664.pdf>

Comments Due: July 5, 2023

On June 13, 2023, the SEC published for comment, and granted immediate effectiveness to, a proposal by the New York Stock Exchange LLC (“NYSE”) to amend the table in NYSE Rule 7.37(e) to specify that, with respect to NYSE data feed provider MEMX LLC (“MEMX”), the NYSE will receive a MEMX direct feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance, and will use the securities information processor (“SIP”) data feed as its secondary source for data from MEMX.

Notice Release: <https://www.sec.gov/rules/sro/nyse/2023/34-97710.pdf>

Comments Due: July 11, 2023

On June 16, 2023, the SEC published for comment, and granted immediate effectiveness to, a NYSE proposal to amend Options C and D of its Partial Cabinet Solutions (“PCS”) bundle so that users may elect to include 40 gigabyte (“Gb”) connections to the liquidity center network (“LCN”), internet protocol (“IP”) network and NMS network, rather than the prior 10 Gb connections.

Notice Release: <https://www.sec.gov/rules/sro/nyse/2023/34-97747.pdf>

Comments Due: July 14, 2023

On June 9, 2023, the SEC published for comment, and granted immediate effectiveness to, a proposal by the NYSE American LLC (“NYSE American”) to modify its options fee schedule to offer floor brokers an additional incentive for executing qualified contingent cross (“QCC”) transactions.

Notice Release: <https://www.sec.gov/rules/sro/nyseamer/2023/34-97694.pdf>

Comments Due: July 6, 2023

On June 13, 2023, the SEC announced that it had designated a longer period within which it would approve or disapprove a NYSE American proposal to amend NYSE American Rule 915 to accelerate the listing of options on certain initial public offerings. The SEC will either approve, disapprove, or institute proceedings regarding the proposal by July 30, 2023.

Notice Release: <https://www.sec.gov/rules/sro/nyseamer/2023/34-97717.pdf>

Comments Due: July 11, 2023

Notable Enforcement Actions

This month's regulatory actions feature two multi-million-dollar FINRA fines for trade reporting violations. FINRA also ordered hefty restitution for customers who were harmed as a result of supervisory failures.

[FINRA censures and fines firm \\$3 million](#) for erroneously marking and routing certain sell orders. The firm mismarked approximately 60 million short sell orders as long, resulting in the firm submitting over two million inaccurate trade reports to FINRA and creating and maintaining over seven million inaccurate order memoranda.

[FINRA censures and fines firm \\$2.5 million](#) for failing to report, or inaccurately reporting, OTC options positions to the Large Options Positions Reporting ("LOPR") system in approximately 4.3 million instances.

[FINRA censures, fines firm \\$300,000](#), and orders nearly \$800,000 in customer restitution and interest as a result of firm's failure to monitor its registered representatives' short-term trading of preferred stocks, as well as the firm's failure to establish and maintain a supervisory system reasonably designed to achieve compliance with its suitability obligations in connection with syndicate preferred stock.

[FINRA censures firm and orders \\$500,000](#) in customer restitution for firm's failure to establish and maintain a supervisory system, and failure to establish, maintain, and enforce written supervisory procedures ("WSPs"), that were reasonably designed to supervise the suitability of sales of variable annuities to customers who held both brokerage and advisory accounts.

[FINRA censures and fines firm \\$100,000](#) for failing to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with FINRA rules regarding surveilling for potentially manipulative trading.