

SECURITIES OPERATIONS

REGULATORY UPDATE

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Regulatory Actions

On August 23, 2023, the SEC announced that it had adopted new rules and rule amendments to enhance the regulation of private fund advisers and update the existing compliance rule that applies to all investment advisers. The SEC stated that the new rules and amendments have been designed to protect private fund investors by increasing transparency, competition, and efficiency in the private funds market.

Final Rule: <https://www.sec.gov/rules/2022/05/private-fund-advisers-documentation-registered-investment-adviser-compliance-reviews>

Fact Sheet: <https://www.sec.gov/files/ia-6383-fact-sheet.pdf>

Press Release: <https://www.sec.gov/news/press-release/2023-155>

Effective Date: 12-18 months after publication in the Federal Register

On August 23, 2023, the SEC announced that it had adopted rule amendments that narrow the exemption from Section 15(b)(8) of the Securities Exchange Act of 1934 ("Exchange Act"), which requires any broker or dealer registered with the SEC to become a member of a national securities association unless the broker or dealer effects transactions in securities solely on an exchange of which it is a member. The Financial Industry Regulatory Authority Inc. ("FINRA") currently is the only registered national securities association.

Final Rule: <https://www.sec.gov/rules/2015/03/exemption-certain-exchange-members>

Fact Sheet: <https://www.sec.gov/files/34-98202-fact-sheet.pdf>

Press Release: <https://www.sec.gov/news/press-release/2023-154>

Effective Date: 60 days after publication in the Federal Register

On August 23, 2023, the SEC announced that it had reopened the comment period on its proposed rule that would redesignate and amend the current custody rule under the Investment Advisers Act of 1940 ("Advisers Act") to enhance protections of customer assets managed by registered investment advisers, which was proposed by the SEC on February 15, 2023. The initial comment period ended on May 8, 2023.

Reopening Release: <https://www.sec.gov/rules/2023/02/safeguarding-advisory-client-assets>

Comments Received: <https://www.sec.gov/comments/s7-04-23/s70423.htm>

Fact Sheet: <https://www.sec.gov/files/ia-6240-fact-sheet.pdf>

Press Release: <https://www.sec.gov/news/press-release/2023-156>

Comments Due: 60 days after publication in the Federal Register

On August 25, 2023, the SEC announced that the fees that public companies and other issuers pay to register their securities with the SEC will increase from \$110.20 per million dollars to \$147.60 per million dollars, effective October 1, 2023. The new fee rate will be applicable to the registration of securities under the Securities Act of 1933 ("Securities Act"), as well as the repurchase of securities, proxy solicitations, and statements in corporate control transactions under Exchange Act.

SEC Order: <https://www.sec.gov/files/rules/other/2023/33-11224.pdf>

Press Release: <https://www.sec.gov/news/press-release/2023-162>

On August 16, 2023, FINRA published Regulatory Notice 23-13 to announce that it had adopted changes to its rules to allow for video conference hearings before the Office of Hearing Officers (“OHO”) and the National Adjudicatory Council (“NAC”) under specified conditions. FINRA noted that in-person hearings remain the default method for conducting hearings, which may take place where safe and appropriate.

FINRA Regulatory Notice 23-13: <https://www.finra.org/sites/default/files/2023-08/Regulatory-Notice-23-13.pdf>

Effective Date: August 23, 2023

On August 18, 2023, FINRA published Regulatory Notice 23-14 to announce that it had amended the requirements relating to covered agency transactions that FINRA originally adopted in 2016. Covered agency transactions include: 1) to be announced transactions, inclusive of adjustable-rate mortgage transactions; 2) specified pool transactions; and 3) transactions in collateralized mortgage obligations, issued in conformity with a program of an agency or government-sponsored enterprise, with forward settlement dates.

FINRA Regulatory Notice 23-14: <https://www.finra.org/sites/default/files/2023-08/Regulatory-Notice-23-14.pdf>

Effective Date: May 22, 2024

On August 2, 2023, the SEC announced that it had designated a longer period within which it would approve or disapprove a FINRA proposal to adopt a voluntary, three-year remote inspections pilot program to allow eligible broker-dealers to elect to fulfill their obligation under FINRA Rule 3110 by conducting inspections of eligible branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified safeguards and limitations.

SEC Order: <https://www.sec.gov/files/rules/sro/finra/2023/34-98046.pdf>

On August 24, 2023, the SEC announced that it had approved a FINRA proposal to add IntelligentCross ATS as a new entrant to FINRA’s alternative display facility. The SEC had previously designated a longer period within which it would approve or disapprove the proposal, or institute proceedings. The SEC then instituted proceedings and extended the period for its decision to August 24, 2023.

SEC Order: <https://www.sec.gov/files/rules/sro/finra/2023/34-98212.pdf>

Comments Received: <https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032.htm>

On August 2, 2023, the SEC announced that it had approved a FINRA proposal to adopt FINRA Rule 6470, which imposes disclosure requirements for over-the-counter (“OTC”) equity securities that are generally aligned with the requirements of SEC Rule 606(a) disclosures but with modifications to account for differences between the OTC markets and the market for national market system (“NMS”) securities. In addition, the SEC approved FINRA’s proposal to adopt FINRA Rule 6470(d) and FINRA Rule 6151 to require members to send both disclosures to FINRA for centralized publication on the FINRA website.

SEC Order: <https://www.sec.gov/files/rules/sro/finra/2023/34-98047.pdf>

On August 14, 2023, the SEC published for comment, and granted immediate effectiveness to, a proposal by the Nasdaq Stock Market LLC (“Nasdaq”) to provide a new tier credit, pursuant to Equity 7, Section 118(a). The new credit is for displayed quotes/orders, other than supplemental orders or designated detail orders, of \$0.0030 per share executed to a member with: 1) shares of liquidity provided in all securities that represent 0.70% or more of consolidated volume in securities priced at or greater than \$1.00; 2) shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or New York Stock Exchange LLC (“NYSE”) that represent 0.15% or more of consolidated volume; and 3) shares of non-displayed liquidity, other than midpoint orders, provided in all securities that represent 0.10% or more of consolidated volume.

Notice Release: <https://www.sec.gov/files/rules/sro/nasdaq/2023/34-98128.pdf>

Comments Due: September 8, 2023

On August 25, 2023, the SEC published for comment, and granted immediate effectiveness to, a Nasdaq proposal to delay implementation of pending amendments to Equity 4, Rules 4120, 4702 and 4703 as well as to make further amendments to Rules 4702 and 4703. Nasdaq is in the process of introducing a new upgraded version of the OUCH order entry protocol. Nasdaq stated that it has commenced migration on a feature-by-feature basis, but the migration will not be complete until the first quarter of 2024. As such, it is delaying implementation of its proposed amendments to related rules.

Notice Release: <https://www.sec.gov/files/rules/sro/nasdaq/2023/34-98225.pdf>

Comments Due: 21 days after publication in the Federal Register

On August 11, 2023, the SEC published for comment, and granted immediate effectiveness to, a NYSE proposal to adopt a fee for directed orders routed directly by the NYSE to an alternative trading system (“ATS”). The Exchange proposes to implement the fee change effective August 9, 2023.

Notice Release: <https://www.sec.gov/files/rules/sro/nyse/2023/34-98111.pdf>

Comments Due: September 6, 2023

On August 16, 2023, the SEC published for comment, and granted immediate effectiveness to, a NYSE proposal to amend the connectivity fee schedule to provide an alternative procedure by which the NYSE can allocate power in the Mahwah data center via deposit-guaranteed orders from users made within a 90-day ordering window.

Notice Release: <https://www.sec.gov/files/rules/sro/nyse/2023/34-98148.pdf>

Comments Due: September 12, 2023

On August 16, 2023, the SEC published for comment, and granted immediate effectiveness to, a proposal by the NYSE American LLC (“NYSE American”) to amend its fee schedule to: 1) delete text relating to an expired floor broker incentive and add a new floor broker incentive; and 2) add dividend strategies to the list of strategy executions eligible for the strategy execution fee cap.

Notice Release: <https://www.sec.gov/files/rules/sro/nyseamer/2023/34-98159.pdf>

Comments Due: September 13, 2023

Notable Enforcement Actions

This month's regulatory actions feature several hefty fines for technical violations of trade reporting rules, as well as gatekeeper and credit threshold maintenance failures.

FINRA censures and fines firm [\\$135,000](#), and censures and fines firm's affiliate [\\$870,000](#), for reporting orders to FINRA with inaccurate capacity codes.

FINRA censures and fines firm \$900,000 for [failing to timely report transactions](#) in Trade Reporting and Compliance Engine ("TRACE")-eligible securities.

FINRA censures and fines firm [\\$350,000](#), and censures and fines firm's affiliate [\\$500,000](#), for sending its customers transaction confirmations that omitted required disclosures regarding its customers' purchases of certain exchange traded notes ("ETNs").

FINRA censures and fines firm \$500,000 for [failing to meet its best execution obligations](#).

FINRA censures and fines firm \$100,000, and orders firm to pay over \$253,000 in customer restitution, for [negligently failing to uphold its gatekeeper obligations](#) related to a public offering.

FINRA censures and fines firm \$100,000 for [failing to establish, document, and maintain](#) reasonably designed credit thresholds.