SECURITIES OPERATIONS

REGULATORY UPDATE

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IN THIS ISSUE

SEC PROCEEDINGS ESTABLISHED FOR DECISION ON 24X NATIONAL EXCHANGE LLC REGISTRATION AS A NATIONAL SECURITIES EXCHANGE

On September 1, 2022, the U.S. Securities and Exchange Commission ("SEC" or "Commission") announced proceedings under Section 19(a)(1)(B) of the Securities Exchange Act of 1934 (the "Exchange Act") to determine whether the 24X National Exchange LLC application for registration as a national securities exchange should be granted or denied and provides notice of the grounds for denial under consideration by the Commission. The Commission received three comments on the application concerning insufficient information and clarity about several aspects of its proposed operation, meeting the legal and administrative requirements, use of trading concepts that have not been tested within the U.S. equities markets, and the lack of regulatory infrastructure necessary to support its proposed trading system. The application also raised questions regarding how its new exchange will interact with the current trading ecosystem.

Notice Release: https://www.sec.gov/rules/other/2022/34-95651.pdf

SEC ADOPTS JOBS ACTION INFLATION ADJUSTMENTS

On September 9, 2022, the SEC announced it had adopted amendments to its rules to implement inflation adjustments mandated by the Jumpstart Our Business Startups ("JOBS") Act. The SEC is required to make inflation adjustments to certain JOBS Act rules at least once every five years. The new thresholds became effective September 20, 2022. The amendments increase the annual gross revenue threshold in the definition of "emerging growth company" from $1,070,000,000 to $1,235,000,000 and increase certain financial thresholds included in Rules 100 and 201(t) of Regulation Crowdfunding.

Final Rule: https://www.sec.gov/rules/final/2022/33-11098.pdf
Press Release: https://www.sec.gov/news/press-release/2022-157
Fact Sheet: https://www.sec.gov/files/33-11098-fact-sheet.pdf

SEC ADDS INDUSTRY OFFICES FOCUSED ON CRYPTO ASSETS AND INDUSTRIAL APPLICATIONS AND SERVICES

On September 9, 2022, the SEC announced plans to add an Office of Crypto Assets and an Office of Industrial Applications and Services to the Division of Corporation Finance's Disclosure Review Program ("DRP"). The DRP has long had offices to review company filings by issuers. The two new offices will join the seven existing offices that provide focused review of issuer filings and that are grouped by industry expertise to further the Division's work to promote capital formation and protect investors. The Office of Industrial Applications and Services will be responsible for the non-pharma, non-biotech, and non-medicinal products companies currently assigned to the Office of Life Sciences. In recent years, the life sciences industry has experienced significant growth, which has added to the number of filings and companies assigned to that office. The DRP anticipates the new offices will be established later this fall.

Press Release: https://www.sec.gov/news/press-release/2022-158

SEC PROPOSES TO IMPROVE RISK MANAGEMENT IN CLEARANCE AND SETTLEMENT AND TO FACILITATE CENTRAL CLEARING FOR THE U.S. TREASURY MARKET

On September 14, 2022, the SEC proposed rule changes that would enhance risk management practices for central counterparties in the U.S. Treasury market and facilitate additional clearing of U.S. Treasury securities transactions. The proposed rule changes would update the membership standards required of covered clearing agencies for the U.S. Treasury market with respect to a member's clearance and settlement of specified secondary market transactions. Additional proposed rule changes are designed to reduce the risks faced by a clearing agency and incentivize and facilitate additional central clearing in the U.S. Treasury market. Specifically, the proposal would require that clearing agencies in the U.S. Treasury market adopt policies and procedures designed to require their members to submit for clearing certain specified secondary market transactions. These transactions would include: all repurchase and reverse repurchase agreements collateralized by U.S. Treasury securities entered into by a member of the clearing agency; all purchase and sale transactions entered into by a member of the clearing agency that is an interdealer broker; and all purchase and sale transactions entered into between a clearing agency member and either a registered broker-dealer, a government securities broker, a government securities dealer, a hedge fund, or a particular type of leveraged account. The proposal would also permit broker-dealers to include margin required and on deposit at a clearing agency in the U.S. Treasury market as a debit in the customer reserve formula, subject to certain conditions. In addition, the proposal would require clearing agencies in this market to collect and calculate margin for house and customer transactions separately. Finally, the proposal would require policies and procedures designed to ensure that the clearing agency has appropriate means to facilitate access to clearing, including for indirect participants.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/34-95763.pdf
Comments Due: 60 Days after publication in Federal Register
Press Release: https://www.sec.gov/news/press-release/2022-162

SEC ADOPTS UPDATED EDGAR FILER MANUAL

On September 19, 2022, the SEC adopted amendments to Volume II of the Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR") Filer Manual ("Filer Manual") and related rules and forms. The EDGAR system was upgraded on September 19, 2022, and the effective date for the updated Filer Manual and related rule amendment will be the publication date contained in the Federal Register. Along with the updated Filer Manual, Rule 301 of Regulation S-T was amended 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/2022/33-11101.pdf

PROCEEDINGS INSTITUTED REGARDING AMENDMENT OF FINRA RULE 8312 BROKERCHECK DISCLOSURE

On September 15, 2022, the SEC issued an order instituting proceedings to determine whether to approve or disapprove a Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to amend Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a "Restricted Firm" pursuant to Rule 4111 (Restricted Firm Obligations) and Rule 9561 (Procedures for Regulating Activities Under Rule 4111). The Commission provided notice of the grounds for disapproval under consideration and is instituting proceedings to allow for additional analysis and comment.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-95791.pdf
Comments Due: October 12, 2022
Rebuttal Comments Due: October 26, 2022

NASDAQ ADOPTS CHANGE TO SCHEDULE OF CREDITS AT EQUITY 7 AND CLARIFIES PORT-RELATED FEES AT OPTIONS 7

On September 9, 2022, the SEC published for comment a Nasdaq Stock Market LLC ("Nasdaq") proposal, effective upon filling, to amend the Nasdaq transaction credits at Equity 7, Section 118(a) and amend the port-related fees at Options 7, Section 3. Specifically, Nasdaq proposed to (1) modify the volume requirement from 0.625% or more of Consolidated Volume during the month to 0.75% to achieve an existing credit for displayed quotes/orders that provide liquidity and (2) amend the options Rules to clarify that Nasdaq Testing Facility ("NTF") ports are provided at no cost. The changes are applicable to Tape A, Tape B and Tape C. Nasdaq also added language to Options 7, Section 3(iv) to clarify to market participants the existing practice that NTF Ports are provided at no cost.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-95718.pdf
Comments Due: October 6, 2022

NASDAQ ADOPTS CHANGE TO EQUITY 4, RULES 4120, 4702 AND 4703 DUE TO PLANNED SYSTEM CHANGES

On September 14, 2022, the SEC published for comment a Nasdaq proposal, effective upon filling, to introduce a new upgraded version of the OUCH Order entry protocol that will enable Nasdaq to make functional enhancements and improvements to specific Order Types and Order Attributes. Specifically, enhancements to OUCH enable Nasdaq to upgrade the logic and implementation of these Order Types and Order Attributes so that the features are more robust, streamlined and harmonized across Nasdaq's Systems and Order entry protocols. Nasdaq developed OUCH with simplicity in mind, and therefore, it presently lacks certain complex order handling capabilities. By contrast, Nasdaq specifically designed its RASH Order Entry Protocol to support advanced functionality, including discretion, random reserve, pegging and routing. The OUCH upgrades enable participants to utilize OUCH, in addition to RASH, to enter Order Types that require advanced functionality. Thus, the upgrades do not introduce new functionality, but rather, offer OUCH users advanced functionality that already exists for RASH users. Nasdaq will implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute. To support and prepare for the introduction of OUCH upgrades, Nasdaq is amending Rule 4702 pertaining to Order Types to specify that, going forward, OUCH may be used to enter certain Order Types together with certain Order Attributes, whereas now, Rule 4702 specifies that RASH, FIX and QIX, but not OUCH, may be used to enter such combinations of Order Types and Attributes. Nasdaq is also amending Rule 4703 to adjust the current functionality of the Pegging, Reserve, and Trade Now Order Attributes so that they align with how OUCH, once upgraded, will manage these Order Attributes going forward.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-95768.pdf
Comments Due: October 11, 2022

NASDAQ PROPOSES PRICING LIMITATIONS FOR COMPANIES WITH A DIRECT LISTING WITH A CAPITAL RAISE

On September 16, 2022, the SEC published for comment Amendment No. 2 to a Nasdaq proposal to modify certain pricing limitations for companies listing in connection with a Direct Listing with a Capital Raise on the Nasdaq Global Select Market in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. Amendment No. 2 supersedes the original filing, as modified by Amendment No. 1, in its entirety and addresses issues the Commission raised in the Order Instituting Proceedings. Amendment No. 2 proposes to require that a company offering securities for sale in connection with a Direct Listing with a Capital Raise must retain an underwriter with respect to the primary sales of shares by the company and identify the underwriter in its effective registration statement. In Amendment No. 2, Nasdaq also proposes to modify the Pricing Range Limitation, such that, provided other requirements are satisfied, a Direct Listing with a Capital Raise can be executed in the Cross at a price that is above the highest price of the price range established by the issuer in its effective registration statement only if the execution price is at or below the price that is 80% above the highest price of the price range.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-95811.pdf
Comments Due: October 13, 2022

ORDER APPROVING NYSE AMENDMENTS TO RULE 7.35B RELATED TO CLOSING AUCTION AND NON-SUBSTANTIVE CHANGES

On September 7, 2022, the SEC published an order granting approval of a New York Stock Exchange LLC ("NYSE") proposal to amend NYSE Rule 7.35B (Designated Market Makers ("DMM")-Facilitated Closing Auctions) relating to the Closing Auction, and make certain conforming and non-substantive changes to NYSE Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B, and NYSE Rule 104 (Dealings and Responsibilities of DMMs). The amendments to NYSE Rule 7.35B add price parameters within which DMMs must select a Closing Auction Price when facilitating the Closing Auctions in their assigned securities. The Closing Auction Price determined by the DMM must be at a price that is at or between the last-published Imbalance Reference Price and the last-published Continuous Book Clearing Price. Further, the amendments modify how the DMM would participate in the Closing Auction by canceling any resting DMM Orders at the end of Core Trading Hours. The amendments also make conforming changes to the other noted affected rules previously referenced. NYSE states that the changes will make the Closing Auction more transparent and deterministic while retaining the DMMs' unique obligation to facilitate the Closing Auction. The Commission received no comment letters on the proposed rule change.

SEC Approval Order: https://www.sec.gov/rules/sro/nyse/2022/34-95691.pdf

LONGER ACTION PERIOD DESIGNATED FOR AMENDMENT TO NYSE-LISTED COMPANY MANUAL

On September 9, 2022, the SEC designated a longer period for Commission action on proceedings to determine whether to approve or disapprove a NYSE proposal to amend Section 312.03 of the NYSE Listing Company Manual to provide an exemption from certain shareholder approval requirements of that rule for listed registered closed-end management investment companies and business development companies under certain circumstances. The Commission received no comments but finds it appropriate to extend the action period for an additional 60 days so that it has sufficient time to consider the proposed rule change, as modified by Amendment 1. The Commission has designated November 10, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File No. SR-NYSE-2022-11).

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-95716.pdf

NYSE ADOPTS CHANGES TO PRICE LIST RELATED TO CREDIT AND LIQUIDITY

On September 13, 2022, the SEC published for comment a NYSE proposal, effective upon filling, to amend its Price List to (1) increase the credit for orders designated as "retail" that add liquidity to the NYSE, and (2) amend the requirements for charges that remove liquidity. The changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing and liquidity-removing orders by offering further incentives for member organizations to send additional liquidity. NYSE implemented the fee changes effective September 1, 2022.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-95761.pdf
Comments Due: October 11, 2022

NYSE ADOPTS CHANGES TO PRICE LIST RELATED TO CROSSING SESSION II ORGANIZATION FEE CAP

On September 14, 2022, the SEC published for comment a NYSE proposal, effective upon filling, to amend its Price List to increase the NYSE Crossing Session II ("CS II") monthly-per-member-organization fee cap. The NYSE is increasing the monthly cap per member organization from $200,000 for executions on CS II to $300,000. The $0.0004 per share fee for executions in CS II will remain unchanged and will be subject to the proposed $300,000 per month per member organization cap. The increase in the cap reflects the decommissioning of the off-hours facility offered by the NYSE's affiliate NYSE American LLC ("NYSE American"), effective September 1, 2022. The NYSE implemented the fee changes effective September 1, 2022.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-95773.pdf
Comments Due: October 11, 2022

NYSE ADOPTS CHANGES TO PRICE LIST RELATED TO DIRECT ORDERS ROUTED TO AN ATS

On September 15, 2022, the SEC published for comment a NYSE proposal, effective upon filling, to amend its Price List to reflect the fee for Directed Orders routed by NYSE to an alternative trading system ("ATS"). Pursuant to Commission approval, the NYSE recently adopted a new order type known as Directed Orders. A Directed Order is a Limit Order with instructions to route on arrival at its limit price to a specified ATS with which the NYSE maintains an electronic linkage. Under NYSE rules, the ATS to which a Directed Order is routed would be responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be canceled. Directed Orders must be designated with a Time in Force modifier of Day or Immediate-or-Cancel modifier and are eligible to be designated for the Core Trading Session only. Directed Orders that are the subject of the rule change will be routed to OneChronos LLC ("OneChronos"). In anticipation of the scheduled implementation of routing functionality to OneChronos, the NYSE proposed to amend the Price List to state that it will not charge a fee for Directed Orders routed to OneChronos and has reflected the "no fee" by amending the current table under Transaction Fees as well as adopting new rule text under Routing Fee – per share. Additionally, similar rule text under Transaction Fees and Credits for Tape B and C Securities has also been adopted. The fee changes were effective September 9, 2022.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-95798.pdf
Comments Due: October 12, 2022

NYSE AND NYSE AMERICAN AMEND RULES 7.10 AND 7.10E

On September 19, 2022, the SEC published for comment proposals by the NYSE and NYSE American (collectively "the Exchanges"), effective upon filing, to modify Rules 7.10 and 7.10E (Clearly Erroneous Executions), respectively. Specifically, the amendments: (1) make the current clearly erroneous pilot program permanent; and (2) limit the circumstances where clearly erroneous review would continue to be available during the Core Trading Session, when the Limit Up-Limit Down ("LULD") Plan to Address Extraordinary Market Volatility (the "LULD Plan") already provides similar protections for trades occurring at prices that may be deemed erroneous. The Exchanges believe that these changes are appropriate as the LULD Plan has been approved by the Commission on a permanent basis, and in light of amendments to the LULD Plan, including changes to the applicable Price Bands around the open and close of trading.

NYSE Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-95822.pdf
Comments Due: October 14, 2022
NYSE American Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-95823.pdf
Comments Due: October 14, 2022

NYSE AMERICAN ADOPTS CHANGE TO OPTIONS FEE SCHEDULE

On September 7, 2022, the SEC published for comment a NYSE American proposal, effective upon filling, to modify the NYSE American Options Fee Schedule to (1) increase Floor Broker credits for executed Qualified Contingent Cross ("QCC") transactions, and (2) make an administrative change to the table setting forth fees for Premium Products to reflect a ticker symbol change. Specifically, Floor Brokers may now earn a credit of ($0.08) per contract for the first 300,000 contracts and a credit of ($0.11) per contract on all contracts above 300,000 in a month. Additionally, NYSE American is making an administrative change to reflect a ticker symbol change for Meta Platforms, Inc., who changed its trading symbol from FB to META effective June 9, 2022. Accordingly, the NYSE American has updated the Premium Products Table to replace "FB" with "META." The NYSE American believes this change will improve the clarity and accuracy of the Fee Schedule by ensuring that the Premium Products Table reflects the current ticker symbol for all Premium Products. The NYSE American implemented the rule change on September 1, 2022.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-95694.pdf
Comments Due: October 4, 2022

NYSE AMERICAN ADOPTS CHANGE TO EQUITIES PRICE LIST

On September 14, 2022, the SEC published for comment a NYSE American proposal, effective upon filling, to amend its Price List to eliminate obsolete fees for the NYSE American's off-hours trading facility known as CS II, which was decommissioned. The NYSE American implemented the fee changes effective September 1, 2022.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-95770.pdf
Comments Due: October 11, 2022

NYSE AMERICAN ADOPTS CHANGE TO EQUITIES PRICE LIST RELATED TO ATS

On September 16, 2022, the SEC published for comment a NYSE American proposal, effective upon filling, to amend the Price List to reflect the fee for Directed Orders routed directly by the NYSE American to an ATS. Similar to the NYSE proposal related to Directed Orders referenced above, the Price List change by NYSE American will reflect no fee for Directed Orders routed to OneChronos by amending current Section III. Fees for Routing for all Exchange-Traded Products Holders and related rule text. The NYSE American implemented the fee change effective September 2, 2022.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-95813.pdf
Comments Due: October 13, 2022

OCC PARTIAL AMENDMENT NO. 1 CONCERNING ONE MULTIPLIER OPTIONS GRANTED ACCELERATED APPROVAL

On September 9, 2022, the SEC published for comment an order granting accelerated approval of an Options Clearing Corporation ("OCC") proposal to amend provisions of OCC Rules to accommodate the issuance, clearance and settlement of index options and flexibly structured index options with an index multiplier of one. OCC's proposed amendments to Rule 1804(b) and (c) will facilitate automatic exercise procedures for One Multiplier Options. OCC is adding a new threshold that will trigger automatic exercise of One Multiplier Options. Specifically, amended Rule 1804(b) will explicitly state that for cash-settled options with a multiplier of one, each option contract that has an exercise settlement amount of $0.01 or more per contract will be automatically exercised. Amended Rule 1804(c) will maintain the current treatment of all other cash-settled options with a multiplier of other than one, by explicitly stating that each such option contract that has an exercise settlement amount of $1.00 or more per contract will be automatically exercised. OCC's amendments will apply to cash-settled index options with standard expiration dates under Rule 1804(b); and to flexibly structured index options, quarterly index options, monthly index options, weekly index options, and short-term index options under Rule 1804(c). OCC's changes will also ensure that the one-cent automatic exercise threshold for OTC index options will remain the same.

Notice Release: https://www.sec.gov/rules/sro/occ/2022/34-95717.pdf
Comments Due: October 6, 2022

OCC PROPOSES REVISIONS TO RISK MANAGEMENT FRAMEWORK AND A NEW CORPORATE RISK POLICY

On September 20, 2022, the SEC published for comment an OCC proposal to adopt a revised Risk Management Framework ("RMF") as well as a new Corporate Risk Management Policy. Based on its routine review of the existing RMF Policy, OCC believes it should replace its current RMF Policy with two, more detailed documents. By making this change, OCC intends to enhance the clarity and transparency of its overall risk management framework. The OCC is also proposing corresponding changes to other related risk policies as noted in the release. The change to OCC's documents will not affect OCC's members or other market participants; it is intended to better describe and strengthen OCC's internal risk management processes.

Notice Release: https://www.sec.gov/rules/sro/occ/2022/34-95842.pdf
Comments Due: October 17, 2022

MSRB ADOPTS CHANGE TO RULE G-3 CONTINUING EDUCATION PROGRAM REQUIREMENTS

On September 7, 2022, the SEC published for comment a Municipal Securities Rulemaking Board ("MSRB") proposal, effective upon filling, to amend MSRB Rule G-3, on professional qualification requirements, to (i) amend the MSRB's continuing education ("CE") program requirements for brokers, dealers, and municipal securities dealers (collectively, "dealers") to align with the FINRA rule change in furtherance of implementing the recommendations of the Securities Industry/Regulatory Council on Continuing Education ("CE Council") and (ii) make technical amendments to renumber certain rule provisions under MSRB Rule G-3. The rule change is specific to dealers' professional qualification obligations under MSRB Rule G-3 and does not modify municipal advisors' continuing education obligations under the rule. MSRB is (i) transitioning the Regulatory Element component of CE for dealers to an annual requirement for each dealer qualification category; (ii) extending the Firm Element component of CE for dealers to all registered persons of dealers; (iii) permitting maintenance of professional qualifications for dealers after termination of registration; and (iv) making other amendments that are technical in nature. The operative date for the rule change is September 30, 2022.

Notice Release: https://www.sec.gov/rules/sro/msrb/2022/34-95684.pdf
Comments Due: October 4, 2022

PROCEEDINGS INSTITUTED FOR DTC PROPOSAL TO AMEND STRESS TESTING AND LIQUIDITY RISK MANAGEMENT

On September 9, 2022, the SEC published for comment an order instituting proceedings to determine whether to approve or disapprove a Depository Trust Company ("DTC") proposal to amend the Clearing Agency Stress Testing Framework (Market Risk) ("ST Framework") and the Clearing Agency Liquidity Risk Management Framework ("LRM Framework") of DTC and its affiliates, National Securities Clearing Corporation and Fixed Income Clearing Corporation ("FICC") (collectively the "Clearing Agencies"). First, the proposed changes would amend both the ST Framework and the LRM Framework to move descriptions of the Clearing Agencies' liquidity stress testing activities from the LRM Framework to the ST Framework. Additionally, the Clearing Agencies propose to recategorize the stress scenarios used for liquidity risk management, such that all such stress scenarios are described as either regulatory or informational scenarios. Second, the proposed changes would amend the ST Framework to (1) enhance stress testing for the Government Securities Division of FICC ("GSD") to obtain certain data utilized in stress testing from external vendors and implement a back-up stress testing calculation that would be utilized in the event such data is not supplied by its vendors, and amend the ST Framework to reflect these practices for both GSD and the Mortgage-Backed Securities Division of FICC; (2) reflect that a stress testing team is primarily responsible for the actions described in the ST Framework, and (3) make other revisions to update and clarify certain statements in the ST Framework. Third, the proposed changes would amend the LRM Framework to update and clarify certain statements in the LRM Framework. The Commission is providing notice of the grounds for disapproval under consideration.

Notice Release: https://www.sec.gov/rules/sro/dtc/2022/34-95729.pdf
Comments Due: October 20, 2022

Notable Enforcement Actions

This month's enforcement actions highlight three significant SEC actions relating to Regulation S-P, municipal bond offering disclosure requirements, and the municipal advisor registration rule, with the last two being first-time SEC actions in those areas. The FINRA actions relate to manipulative trading, reporting requirements, Customer Protection Rule calculations, and cheating by individuals on on-line qualification examinations.

A firm was censured and agreed to pay a $35 million fine for the firm's extensive failures, over a five-year period, to protect the personal identifying information, or PII, of approximately 15 million customers by violation of the Safeguards and Disposal Rules under Regulation S-P. The SEC's order finds that, as far back as 2015, the firm failed to properly dispose of devices containing its customers' PII. On multiple occasions, the firm hired a moving and storage company with no experience or expertise in data destruction services to decommission thousands of hard drives and servers containing the PII of millions of its customers. Moreover, according to the SEC's order, over several years, the firm failed to properly monitor the moving company's work. The staff's investigation found that the moving company sold to a third-party thousands of devices including servers and hard drives, some of which contained customer PII, and which were eventually resold on an internet auction site without removal of such customer PII. While the firm recovered some of the devices, which were shown to contain thousands of pieces of unencrypted customer data, the firm has not recovered the vast majority of the devices. The SEC's order also finds that the firm failed to properly safeguard customer PII and properly dispose of consumer report information when it decommissioned local office and branch servers as part of a broader hardware refresh program. A records reconciliation exercise undertaken by the firm during this decommissioning process revealed that 42 servers, all potentially containing unencrypted customer PII and consumer report information, were missing. Moreover, during this process, the firm also learned that the local devices being decommissioned had been equipped with encryption capability, but that the firm had failed to activate the encryption software for years. **(SEC Administrative Action:** https://www.sec.gov/litigation/admin/2022/34-95832.pdf**)**
(SEC Press Release: https://www.sec.gov/news/press-release/2022-168**)**

Three firms were censured and fined in SEC settlement actions for failing to comply with municipal bond offering disclosure requirements. Fines included $656,833.56 in disgorgement plus prejudgment interest and a $300,000 penalty, $52,955.92 in disgorgement plus prejudgment interest and a $100,000 penalty, and $43,215.22 in disgorgement plus prejudgment interest and a $100,000 penalty. The SEC filed a litigation action against a fourth firm in the federal district court in Manhattan and seeks permanent injunctions, disgorgement plus prejudgment interest, and a civil money penalty. These are the first SEC actions addressing underwriters who fail to meet the legal requirements that would exempt them from obtaining disclosures for investors in certain offerings of municipal bonds. According to the SEC's complaint and the settled orders, during different periods since 2017, the four firms sold new issue municipal bonds without obtaining required disclosures for investors. Each of the firms purported to rely on an exemption to the typical disclosure requirements called the limited offering exemption, but they did not take the steps necessary to satisfy the exemption's criteria. The SEC's settlement orders found that the three firms violated Rule 15c2-12 under the Exchange Act, which establishes disclosures that must be provided to investors, as well as MSRB Rule G-27 and Section 15B(c)(1) of the Exchange Act; the SEC's complaint charges the fourth firm with the same violations and also alleges the firm made deceptive statements to issuers in violation of MSRB Rule G-17, which prohibits deceptive, dishonest or

unfair practices. As a result of its findings in these investigations, the SEC staff has begun investigations of other firms' reliance on the limited offering exemption. **(SEC Administrative Action:** https://www.sec.gov/litigation/admin/2022/34-95751.pdf; https://www.sec.gov/litigation/admin/2022/34-95750.pdf; https://www.sec.gov/litigation/admin/2022/34-95749.pdf; https://www.sec.gov/litigation/complaints/2022/comp-pr2022-161.pdf**)**
(SEC Press Release: https://www.sec.gov/news/press-release/2022-161**)**

A firm was censured and agreed to pay disgorgement and prejudgment interest of $5,456.73 and a civil penalty of $100,000 for providing advice to a municipal entity without registering as a municipal advisor. The action marks the first time the SEC has charged a broker-dealer for violating the municipal advisor registration rule. According to the SEC's order, between September 2017 and February 2019, the firm advised a Midwestern city to purchase particular fixed income securities, which the city purchased using the proceeds of its own municipal bond issuances. In addition, the Commission's order found that the firm did not maintain a system reasonably designed to supervise its municipal securities activities and had inadequate procedures, including insufficient methods to identify potential violations of the municipal advisor registration rules.
(SEC Administrative Action: https://www.sec.gov/litigation/admin/2022/34-95764.pdf**) (SEC Press Release:** https://www.sec.gov/news/press-release/2022-163**)**

A firm was censured and fined a total of $775,000, of which $83,333.33 is payable to FINRA, and required to review and revise its supervisory system including its Written Supervisory Procedures ("WSPs") with respect to the findings described in this AWC concerning the firm's supervision for potentially manipulative trading by customers on its platforms. The firm provided routing and execution services to domestic and foreign entities, which were comprised of hundreds to thousands of individual day traders. The findings stated that the firm's supervisory system, including WSPs, were not reasonable in several respects. First, the firm did not conduct any supervisory reviews for potentially manipulative trading, such as layering, spoofing, wash trades, or marking the close or open. Second, the firm implemented an automated surveillance system that generated post-trade alerts for potential spoofing, layering, wash trades, and marking the close, but that system did not initially surveil for marking the open. Also, due to a coding error, the system did not capture the trading activity of individual traders of one of the firm's high-risk customers. Third, the firm's review of the alerts was not reasonable as the firm had limited staff and other resources to sufficiently conduct the initial review and analysis of the alerts and its first-level reviewers were permitted to close surveillance alerts for potentially manipulative trading without any oversight or supervision by a firm principal. Fourth, the firm's WSPs failed to provide reasonable guidance on how to review for potentially manipulative trading. The firm's WSPs required reviewers to escalate "significant" alerts to an alert review committee, however, the procedures did not explain what qualified as a significant alert, nor what steps the reviewer should take when reviewing alerts. Fifth, the firm's supervisory system was unreasonable because while the firm focused on resolving individual alerts generated by each separate trader at each customer, and terminated some individual traders, the firm did not have a system in place to consider the total alerts generated by multiple traders at the same customer in order to evaluate the aggregate regulatory risk presented by a customer's overall trading activity. Sixth, the firm identified two customers as high risk, which, according to the firm, required enhanced surveillance. But the firm had no system or procedures for conducting enhanced surveillance and, in fact, did not do so. Finally, the firm did not routinely document the alert reviews it conducted,

and for the alert reviews that it did document, the documentation was not always sufficient. **(FINRA Case #2017053210201)**
https://www.finra.org/sites/default/files/fda_documents/2017053210201%20Sagetrader%2C%20LLC%20CRD%20137862%20AWC%20gg%20%282022-1660954817811%29.pdf

A firm was censured and fined $325,000 based on findings that it published inaccurate monthly reports of order executions it was required to publish pursuant to Rule 605 of Regulation National Market System ("NMS") of the Exchanges Act. The firm is a full-service broker-dealer and sponsors and operates an ATS. The findings stated that the firm published statistical information concerning order executions for its broker-dealer and ATS market centers together on its publicly available Rule 605 monthly reports rather than in separate reports for each market center as required and classified its ATS market center executions as "away executed shares" in that report. As a result of the combined report, the firm inaccurately categorized certain mid-point peg immediate or cancel orders in order type categories other than the inside-the-quote order type category, and certain immediate or cancel orders within the market order type category rather than the marketable limit order type category. Subsequently, the firm implemented a separate stand-alone report for its ATS market center that prevents these types of issues from recurring. In addition, various technological issues caused the firm to publish inaccurate Rule 605 reports for its broker-dealer market center. First, the firm misclassified orders based on inaccurate order quantities that did not reflect a reduction for prior executions. Second, the firm did not properly attribute executions to the correct canceled-and-replaced order, misclassified orders using incorrect quotations within the same second, and misclassified some inside-the-quote orders as at-the-quote orders. Third, the firm excluded certain reportable executions from the broker-dealer market center report. Finally, inaccuracies occurred within the firm's new, stand-alone ATS market center report as a result of coding errors that caused the firm to exclude certain reportable, executed orders from the ATS market center report. The findings also stated that the firm's supervisory system was not reasonably designed to achieve compliance with Rule 605 of Regulation NMS in violation of FINRA Rule 2010. The firm had no system to check the accuracy of the order executions it reported on its Rule 605 report. Although the firm implemented surveillances to check the accuracy of particular aspects of its Rule 605 reports, it was not until more than six months later that the firm implemented a system that checks for a broader set of inconsistencies and potentially missing information. **(FINRA Case #2019061061701)**
https://www.finra.org/sites/default/files/fda_documents/2019061061701%20BofA%20Securities%20Inc.%20CRD%20283942%20AWC%20va%20%282022-1660522800543%29.pdf

A firm was censured and fined $100,000 based on findings that it failed to accurately calculate the reserves in its customer reserve account and also had deficiencies in the reserves of its proprietary securities account of a broker or dealer ("PAB account") in violation of Section 15(c) of the Exchange Act and Rule 15c3-3 (known as the "Customer Protection Rule") and FINRA Rule 2010. The firm also failed to maintain good control over securities in its customer sweep account. The finding stated that the firm had deficiencies in the customer reserve account ranging from $101,468 to $245,837 because the firm erroneously debited pre-payments by the firm to customers that were expected to be covered the following day, as well as fees that customers owed the firm without an agreement permitting the firm to liquidate customer assets to cover such fees. The firm has since corrected its customer reserve calculations and deposited additional funds into its customer reserve account to eliminate the deficiency. Subsequently, the firm had deficiencies in its customer reserve account ranging from $571,958 to $693,703 resulting from a margin position in one customer account. At the time, the firm's

margin position was concentrated in a single stock, resulting in a significant reduction in the margin account debit. The margin position was later liquidated, eliminating the deficiency. The firm also failed to establish and maintain a required PAB account. This occurred after the firm reentered the correspondent clearing business when it enrolled an introducing firm as a customer. The firm failed to properly establish a PAB account for a customers' clearing deposit and set aside associated reserves. The firm also failed to code accounts of the introducing firm as PAB accounts, which resulted in hindsight deficiencies in the firm's PAB reserves. The firm then deposited $200,000 into a PAB reserve account and reclassified the relevant accounts. The findings also stated that the firm failed to maintain customer securities in good control location because its agreement with the custodian for the firm's money market/sweep account did not provide the securities were held for the exclusive benefit of customers and free of liens, security interests, or encumbrances by the bank or any party acting through the bank. The amounts at issue ranged from $10,000 to approximately $43 million. The firm resolved the issue by modifying its agreement with the bank. None of the foregoing deficiencies caused the firm to be out of compliance with its net capital requirements. The findings concluded that the firm failed to establish a supervisory system reasonably designed to achieve compliance with the Customer Protection Rule, specifically, the obligation to accurately calculate PAB account requirements and detect errors in that calculation, and to comply with FINRA Rules 3110 and 2010. Initially, the firm did not have any WSPs addressing its correspondent clearing business or PAB reserve obligations under the Customer Protection Rule. Subsequently, the firm established written supervisory and operational procedures to address PAB accounts, however, the firm's supervisory system remained not reasonably designed to accurately calculate PAB reserve obligations and detect errors in the reserve calculation. Later, the firm established a new procedure to review a firm-wide account report prior to running its reserve calculations to ensure the accuracy of its PAB reserves. **(FINRA Case #2019062183901)**
https://www.finra.org/sites/default/files/fda_documents/2019062183901%20Wilson-Davis%20%26%20Co.%2C%20Inc.%20CRD%203777%20AWC%20gg%20%282022-1660782016817%29.pdf

FINRA announced that it has barred two individuals from the securities industry for cheating during qualification examinations administered online. The enforcement actions are FINRA's first in connection with cheating on remote exams. In the two separate matters, FINRA found that each individual violated FINRA rules of conduct by seeking assistance from public internet forums while taking the online examinations. While these are FINRA's first actions against individuals for online cheating, FINRA has suspended or barred 12 individuals since January 2021 who cheated on in-person qualification exams or possessed unauthorized materials while taking in-person tests. **(Individual FINRA Case #2022073741701)**
https://www.finra.org/sites/default/files/fda_documents/2022073741701%20Brandon%20Autiero%20CRD%207331393%20AWC%20va%20%282022-1660350016237%29.pdf
(Individual FINRA Case #2022073741702)
https://www.finra.org/sites/default/files/fda_documents/2022073741702%20Harris%20Kausar%20CRD%207262411%20AWC%20va%20%282022-1660350016432%29.pdf