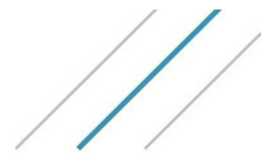
SECURITIES OPERATIONS

REGULATORY UPDATE



April 1, 2022

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SEC PROPOSES RULES ON CYBERSECURITY FOR PUBLIC COMPANIES

On March 9, 2022, the U.S. Securities and Exchange Commission ("SEC" or "Commission") published for comment a proposal to amend its rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and incident reporting by public companies ("registrants") that are subject to the reporting requirements of the Securities Exchange Act of 1934 ("Exchange Act"). The proposed amendments would require, among other things, current reporting about material cybersecurity incidents and periodic reporting to provide updates about previously reported cybersecurity incidents. The proposal would also require periodic disclosures about a registrant's policies and procedures to identify and manage cybersecurity risks; the registrant's board of directors' oversight of cybersecurity risk; and management's role and expertise in assessing and managing cybersecurity risk and implementing cybersecurity policies and procedures. In addition, the proposal would require annual reporting or certain proxy disclosure about the board of directors' cybersecurity expertise, if any.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/33-11038.pdf
Press Release: https://www.sec.gov/news/press-release/2022-39
Fact Sheet: 33-11038-fact-sheet.pdf (sec.gov)
Comments Due: May 9, 2022

SEC PROPOSES RULES TO ENHANCE CLIMATE-RELATED DISCLOSURES

On March 21, 2022, the SEC published for comment a proposed rule change under the Securities Act of 1933 ("Securities Act") and the Exchange Act that would require registrants to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about climate-related risks would include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks. The proposed rule changes would require a registrant to disclose information about (1) the registrant's governance of climate-related risks and relevant risk management processes; (2) how any climate-related risks identified by the registrant have had or are likely to have a material impact on its business and consolidated financial statements, which may manifest over the short-, medium-, or long-term; (3) how any identified climate-related risks have affected or are likely to affect the registrant's strategy, business model, and outlook; and (4) the impact of climate-related events (severe weather events and other natural conditions) and transition activities on the line items of a registrant's consolidated financial statements, as well as on the financial estimates and assumptions used in the financial statements. The proposed rules would include a phase-in period for all registrants, with the compliance date dependent on the registrant's filer status, and an additional phase-in period for certain emissions disclosure.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/33-11042.pdf
Fact Sheet: 33-11042-fact-sheet.pdf (sec.gov)
Press Release: https://www.sec.gov/news/press-release/2022-46
Statement of Dissent: https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321
Comments Due: May 20, 2022

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SEC ADOPTS UPDATED EDGAR FILER MANUAL

On March 21, 2022, the SEC adopted amendments to Volumes I and II of the Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR") Filer Manual ("Filer Manual") and related rules and forms. Volume I of the Filer Manual provides general information regarding electronic submissions to the Commission on EDGAR and has been amended to add a link to the Glossary of Commonly Used Terms, Acronyms, and Abbreviations to provide helpful introductory information. Updates to Volume II include amendments to reflect previous changes made to EDGAR related to prior Releases 21.3.1 and 22.0.2 and general functional enhancements including (1) adding new exhibit "EX-99.36 Form 7-R" (Firm Application) to the drop down exhibit list for submission form types SBSE-A and SBSE-A/A, (2) modifying Appendix B "Frequently Asked Questions" (FAQs) and removing Appendix F "Glossary of Commonly Used Terms, Acronyms and Abbreviations," and (3) revising Appendix D "Paper Forms" to remove screen shots of the paper forms. Along with the adoption of 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. The EDGAR system was upgraded on March 21, 2022.

Final Rule: https://www.sec.gov/rules/final/2022/33-11043.pdf

SEC PROPOSES TO REMOVE CREDIT RATING REFERENCES FROM REGULATION M

On March 23, 2022, the SEC re-proposed amendments, initially proposed in July 2008 (73 FR 40088 (July 11, 2008)) and April 2011 (76 FR 26550 (May 6, 2011)), to remove the references to credit ratings included in certain Commission rules. The Dodd-Frank Wall Street Reform and Consumer Protection Act, among other things, requires the Commission to remove any references to credit ratings from its regulations. Accordingly, the Commission is proposing to amend the existing exceptions found in Rules 101 and 102 for investment-grade nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities. Specifically, the Commission is proposing to remove the requirement to qualify for the exception in each of these rules that these securities be rated investment grade by at least one nationally recognized statistical rating organization. In its place, in Rule 101, the Commission proposes to except (1) nonconvertible debt securities and nonconvertible preferred securities (collectively, "Nonconvertible Securities") that meet a specified probability of default threshold, and (2) asset-backed securities that are offered pursuant to an effective shelf registration statement filed on the Commission's Form SF-3. In addition, the Commission is proposing to eliminate the existing exception in Rule 102 for investment-grade Nonconvertible Securities, and asset-backed securities. The Commission is also proposing amendments to Rule 17a-4(b) under the Exchange Act to require broker-dealers to maintain the written probability of default determination.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/34-94499.pdf
Comments Due: May 23, 2022

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SEC PROPOSES RULES TO INCLUDE MARKET PARTICIPANTS AS DEALERS OR GOVERNMENT SECURITIES DEALERS

On March 28, 2022, the SEC proposed two rules that would require market participants, such as proprietary (or principal) trading firms, who assume certain dealer-like roles and/or engage in certain levels of buying and selling government securities, in particular those who act as liquidity providers in the markets, to register with the SEC, become members of a self-regulatory organization, and comply with federal securities laws and regulatory obligations. If adopted, the proposed rules, Exchange Act Rules 3a5-4 and 3a44-2, would further define the phrase “as a part of a regular business” in Sections 3(a)(5) and 3(a)(44) of the Act by setting forth identical qualitative standards designed to identify market participants who assume certain dealer-like roles that would cause persons engaging in such activities to be “dealers” or “government securities dealers” and subject to the registration requirements of Sections 15 and 15C of the Act, respectively, absent an otherwise available and applicable statutory or regulatory exemption or exception (e.g., foreign broker-dealers exempted pursuant to Exchange Act Rule 15a-6). Additionally, Rule 3a44-2 would set forth a quantitative standard under which a person engaging in certain specified levels of activity would be deemed to be buying and selling government securities “as a part of a regular business,” regardless of whether it meets any of the proposed rule’s qualitative standards. However, no presumption shall arise that a person is not a dealer solely because that person does not engage in the activities identified in the proposed rules; the proposed rules do not seek to address all circumstances under which a person may be acting as a dealer or government securities dealer or to replace otherwise applicable interpretations and precedent.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/34-94524.pdf
Fact Sheet: 34-94524-fact-sheet.pdf (sec.gov)
Press Release: https://www.sec.gov/news/press-release/2022-54
Comments Due: May 27, 2022 or 30 days after publication in the Federal Register (whichever is later)

SEC SHAREHOLDER PROPOSAL RULE STATEMENT BY CORPORATION FINANCE

On March 8, 2022, at the Council of Institutional Investors’ 2022 Spring Conference, SEC Division of Corporation Finance Director Renee Jones commented on the recently issued Staff Legal Bulletin 14L ("Shareholder Proposals") pertaining to Rule 14a-8, the "Shareholder Proposal Rule.” Director Jones stated that the SEC would now regard matters of social policy, if they are "otherwise related" to a company's business, to be proper subjects for mandatory inclusion in a company's proxy statement, even if the economic relevance to the issuer is limited.

Director’s Statement: https://www.sec.gov/news/speech/jones-cii-2022-03-08

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SEC APPOINTMENTS AND DEPARTURES

On March 16, 2022, the SEC announced Dave A. Sanchez will return to the SEC to serve as Director of the Office of Municipal Securities ("OMS") effective April 11. Mr. Sanchez most recently advised municipal issuers, broker-dealers, and municipal advisors as a Senior Counsel at Norton Rose Fulbright US LLP. Mr. Sanchez served as an Attorney Fellow in OMS from 2010 to 2013. During that time, he helped author a major Commission report on the municipal securities market and played a role in the agency's rulemaking establishing a permanent registration regime for municipal advisors. The SEC also announced on March 24, 2022, that Daniel S. Kahl, Acting Director of the SEC's Division of Examinations, will depart the agency after more than 21 years of service. Richard R. Best, Director of the SEC's New York Regional Office, will serve as Acting Director of the Division of Examinations upon Mr. Kahl's departure. Lara Shalov Mehraban will serve as Acting Director of the New York Regional Office.

Press Release: https://www.sec.gov/news/press-release/2022-44
Press Release: https://www.sec.gov/news/press-release/2022-49

FINRA AMENDMENT TO TRACE REPORTING APPROVED

On March 4, 2022, Financial Industry Regulatory Authority, Inc. ("FINRA") filed Amendment No. 1 ("Amendment Notice") to a previously filed FINRA proposal to add new paragraph (d)(4)(H) to Rule 6730 to require members to append a modifier to a corporate bond trade that is part of a larger portfolio trade when reporting to FINRA's Trade Reporting and Compliance Engine ("TRACE"). On that same date, the Commission published for comment Amendment No. 1 and approved the proposed rule change, as modified by Amendment No. 1, on an accelerated basis. New paragraph (d)(4)(H) to Rule 6730 requires a member to append a designated modifier if reporting a transaction in a corporate bond that: (i) is executed between only two parties; (ii) involves a basket of corporate bonds of at least 10 unique issues; and (iii) has a single agreed price for the entire basket. The new portfolio trade modifier will be disseminated through TRACE, together with other information about the transaction, immediately upon receipt of a transaction report. FINRA will publish the specific format for the new portfolio trade modifier in the TRACE technical specifications. FINRA also has represented that it will publish a Regulatory Notice announcing the effective date of the proposed rule change no later than 90 days following Commission approval, and the effective date will be no later than 365 days following publication of the Regulatory Notice. The Amendment Notice also included requirements relating to TRACE reporting of a delayed Treasury spot trade, defined by FINRA in the Amendment Notice to mean a transaction in a corporate bond that occurs on the basis of a spread to a benchmark U.S. Treasury Security, where the agreed-upon spread is later converted to a dollar price by "spotting" the benchmark U.S. Treasury Security at a designated time. The rule change removes the provisions relating to delayed Treasury spot trades.

SEC Order and Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-94365.pdf

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FINRA EXTENDS EXPIRATION DATE OF TEMPORARY COVID AMENDMENTS

On March 16, 2022, the SEC published for comment a FINRA proposal, effective upon filling, to extend the expiration date of the temporary amendments set forth in SR-FINRA-2020-015 and SR-FINRA-2020-027 from March 31, 2022, to July 31, 2022. The rule change does not make any changes to the text of FINRA rules. In response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities, FINRA filed proposed rule changes, SR-FINRA-2020-015 and SR-FINRA2020-027, which respectively provide temporary relief from some timing, method of service and other procedural requirements in FINRA rules and allow FINRA's Office of Hearing Officers and the National Adjudicatory Council ("NAC") to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-94430.pdf
Comments Due: April 12, 2022

FINRA REMINDS FIRMS OF SCOPE OF RULE 3110 SUPERVISORY OBLIGATIONS

On March 17, 2022, FINRA published Regulatory Notice 22-10 as a reminder to member firms of the scope of FINRA Rule 3110 as it pertains to the potential liability of Chief Compliance Officers ("CCOs") for failure to discharge designated supervisory responsibilities. Rule 3110 sets out a comprehensive set of supervisory obligations for member firms and requires firms to designate individual supervisors and identify their responsibilities. The responsibility to meet these obligations rests with a firm's business management, not its compliance officials. The CCO's role is advisory, not supervisory. Accordingly, FINRA will look first to a member firm's senior business management and supervisors to determine responsibility for a failure to reasonably supervise. FINRA will not bring an action against a CCO under Rule 3110 for failure to supervise except when the firm conferred upon the CCO supervisory responsibilities and the CCO then failed to discharge those responsibilities in a reasonable manner. As a result, charges against CCOs for supervisory failures represent a small fraction of the enforcement actions involving supervision that FINRA brings each year.

Regulatory Notice 22-10: https://www.finra.org/rules-guidance/notices/22-10

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NASDAQ PROPOSES RULE CHANGE TO MODIFY EQUITY 4 SECTION 4120

On March 7, 2022, the SEC published for comment a Nasdaq Stock Market LLC ("Nasdaq") proposal to modify Equity 4, Section 4120 to add categories of regulatory and operational halts, reorganize the remaining text of the rule, and make conforming changes to related rules. In conjunction with the adoption of an amended Nasdaq UTP Plan proposed by its participants ("Amended Nasdaq UTP Plan"), Nasdaq proposes to amend Rule 4120 to integrate several definitions and concepts from the Amended Nasdaq UTP Plan and to reorganize the rule in light of Nasdaq's experience with applying the rule over 15 years as a national securities exchange. Nasdaq proposes to reorganize and amend Rule 4120 entitled Limit Up-Limit Down Plan and Trading Halts. The rule sets forth Nasdaq's authority to halt trading under various circumstances. Nasdaq is a participant of the transaction reporting plan governing Tape C Securities ("Nasdaq UTP Plan"). As part of these changes, Nasdaq will add categories of regulatory and operational halts, improve the rule's clarity, adopt defined terms from the Amended Nasdaq UTP Plan and delete parts of the rule that are no longer needed. Nasdaq will also update cross references in other rules that are affected by the proposed changes.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94370.pdf

NASDAQ PROPOSAL RELATING TO ACQUISITION COMPANY CONTRIBUTIONS IS DISAPPROVED

On March 9, 2022, the SEC published an order disapproving a proposed rule change to modify Nasdaq IM-5101-2 to permit an acquisition company to contribute a portion of the amount held in its deposit account to a deposit account of a new acquisition company in a spin-off or similar corporate transaction. The order disapproved the proposed rule change because Nasdaq had not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Section 6(b)(5) of the Exchange Act, and, in particular, the requirements that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

SEC Order: https://www.sec.gov/rules/sro/nasdaq/2022/34-94389.pdf

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NASDAQ AMENDS CONTINUING EDUCATION REQUIREMENTS IN GENERAL 4

On March 11, 2022, the SEC published for comment a Nasdaq proposal, effective upon filling, to amend General 4, Rule 1240 ("Continuing Education Requirements") and has designated the proposed amendments to be operative on March 15, 2022. The amendments harmonize Nasdaq's Continuing Education Requirements with those of FINRA so as to promote uniform standards across the securities industry. Nasdaq also amended its manual signature requirements in General 4, Rule 1250 (Form U4 Filing Requirements) to align with changes FINRA has made to similar rules. These Nasdaq changes are based on the changes approved by the Commission in the approval order for SR-FINRA-2021-015 and as noticed in SR-FINRA-2021-003. Nasdaq's changes are substantially similar to those adopted by FINRA, with only minor changes necessary to conform to Nasdaq's existing rules such as to remove cross-references and rules that are applicable to FINRA members but not to Nasdaq members.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94400.pdf
Comments Due: April 7, 2022

NASDAQ ENABLES PARTICIPANTS TO ENTER IOC AND TIF INSTRUCTION

On March 16, 2022, the SEC issued an order approving a Nasdaq proposal to enable Nasdaq participants to enter Midpoint Extended Life Orders ("M-ELOs") and M-ELO Plus Continuous Book Orders ("M-ELO+CBs") with an immediate-or-cancel ("IOC") Time-in-Force ("TIF") instruction. Accordingly, if a M-ELO or M-ELO+CB is entered with a TIF of IOC, it would execute against eligible resting interest immediately upon the expiration of the Holding Period. If no eligible resting interest is available or shares of the order remain unexecuted after trading against available eligible resting interest, then the system would automatically cancel the order or the remaining shares of the order, as applicable. If the order is ineligible to begin the Holding Period upon entry (i.e., the national best bid and national best offer ("NBBO") is crossed at the time of order entry, there is no national best bid or national best offer at the time of order entry, or the order is entered with a limit price that is not at or better than the NBBO midpoint), the system would cancel the order immediately. M-ELOs and M-ELO+CBs will also be subject to real-time surveillance to determine if they are being abused by market participants and Nasdaq will apply additional measures as needed. Manipulative abuse is subject to potential disciplinary action under Nasdaq's rules and other behavior that is not necessarily manipulative but nonetheless frustrates the purposes of M-ELOs or M-ELO+CBs may be subject to penalties or other participant requirements to discourage such behavior, should it occur.

Approval Order: https://www.sec.gov/rules/sro/nasdaq/2022/34-94431.pdf

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NASDAQ AMENDMENT REGARDING USE OF A HEARINGS PANEL MONITOR APPROVED

On March 17, 2022, the SEC issued an order approving a Nasdaq proposal to amend Nasdaq Rule 5815(d)(4) regarding the use of a Hearings Panel Monitor following a compliance determination by a Nasdaq Listings Qualification Hearings Panel. The Nasdaq amendment clarifies when a Hearings Panel Monitor is discretionary or mandatory under paragraphs (A) and (B) of Nasdaq Rule 5815(d)(4) by adding the specific terms “Discretionary” and “Mandatory” to the headings of Nasdaq Rule 5815(d)(4)(A) and (B), respectively. Nasdaq proposes to further modify Nasdaq Rule 5815(d)(4)(B) to make explicit the mandatory nature of appointing a Hearings Panel Monitor by stating in the rule that after having been granted an exception to the requirement to maintain certain levels of stockholders' equity, to timely file periodic reports, or with the bid price requirement where the Company was ineligible for a compliance period under Nasdaq Rule 5810(c)(3)(A)(iii) or (iv), a “Hearings Panel will impose a Hearings Panel Monitor for a period of one year from the date the company regains compliance” with those three specific listing requirements in Rule 5815(d)(4)(B). Nasdaq proposes to further clarify Nasdaq Rules 5815(d)(4)(A) and (B) by amending those rules to clearly state that under both paragraphs (A) and (B) of the rule, if a Company falls out of compliance with the listing standard deficiency that was the subject of the exception granted by the Listing Qualifications Department during the one-year monitoring period, the Company will not be afforded an applicable cure or compliance period pursuant to Nasdaq Rule 5810(c)(3), nor as currently provided by the rule be permitted to provide the Listing Qualifications Department with a plan of compliance under Nasdaq Rule 5810(c)(2). Finally, Nasdaq proposed to create a new paragraph (C) to Nasdaq Rule 5815(d)(4) which will outline how a Company may seek an appeal of a Staff Delisting Determination.

SEC Order: https://www.sec.gov/rules/sro/nasdaq/2022/34-94450.pdf

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NASDAQ PROPOSES CHANGE TO TRANSACTION FEES AND CREDITS AT EQUITY 7

On March 17, 2022, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend the schedule of fees and credits, at Equity 7, Sections 114 and 118 to establish pricing for orders executed in the new Extended Trading Close ("ETC") which the Commission approved earlier this year. The fee associated with orders executed in the ETC was effective coincident with the commencement of the ETC. As set forth in Rule 4755, the ETC will allow participants an additional opportunity to access liquidity in Nasdaq-listed securities at the Nasdaq Official Closing Price for a five-minute period of time after the Nasdaq Closing Cross or the LULD Closing Cross, (collectively, the "Closing Cross") concludes. During this five-minute period, the system will continuously match and execute "ETC Eligible Orders" – which include "ETC Orders" and "ETC Eligible LOC Orders" at the Nasdaq Official Closing Price, as determined by the Closing Cross, unless the system suspends executions in two scenarios. Nasdaq amended Equity 7, Section 118 to adopt fees for ETC Eligible LOC Orders and ETC Orders that execute in the ETC, essentially to charge the same fees to execute ETC Eligible Orders as it does to execute ordinary LOC Orders (and Market on Close ("MOC") Orders) in the Closing Cross. Equity 7, Section 118(d) governs pricing for orders executed in the Nasdaq Closing Cross. It provides for a system of tiered fees for MOC and LOC Orders executed in the Closing Cross. Nasdaq amended this tier schedule so that its fees also apply to executions of ETC Eligible LOC Orders and ETC Orders in the ETC. Under the proposal, shares in ETC Eligible LOC Orders and ETC Orders will not count towards determining a participant's qualification for any of the fee or credit tiers in Section 118(a) or 118(d). Likewise, Nasdaq proposed to amend Equity 7, Section 114(a) to specify that, to the extent that any of the market quality incentive programs described in Section 114 prescribe pricing tiers for which eligibility depends upon a participant achieving certain threshold volumes in LOC or MOC shares, then ETC Eligible LOC Orders and ETC Orders will not count towards such eligibility determinations.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94451.pdf
Comments Due: April 13, 2022

LONGER ACTION PERIOD FOR NASDAQ PROPOSAL TO EXEMPT NON-CONVERTIBLE BONDS

On March 18, 2022, the SEC designated a longer period for Commission action on proceedings to determine whether to approve or disapprove a Nasdaq proposal to exempt non-convertible bonds listed under Rule 5702 from certain corporate governance requirements. The Commission designates May 24, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SRNASDAQ-2022-015).

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94471.pdf

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NASDAQ AMENDS GENERAL 3, RULE 1002, QUALIFICATIONS, REGISTRATION AND DESIGNATION

On March 18, 2022, the SEC published for comment a Nasdaq proposal, effective upon filing, to amend General 3, Rule 1002, Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction. Specifically, General 3, Rule 1002(b) provides for ineligibility of certain persons for Membership or Association. The amendments specifically define the terms "person associated with a member" and "associated person" included within General 3, Rule 1002(b) to align with those terms as contained in FINRA's By-Laws. FINRA defines the terms "person associated with a member" or "associated person of a member" at paragraph (ee) of Article I, Definitions, of FINRA's By-Laws. At this time, Nasdaq adopts FINRA's definitions for purposes of statutory disqualification, within new Nasdaq General 3, Rule 1002(b)(2)(A). By defining the terms "person associated with a member" and "associated person" substantively identical to FINRA, for purposes of statutory disqualification, Nasdaq aligns its application of statutory disqualification with FINRA's process. This avoids potentially different outcomes for members of both FINRA and Nasdaq with respect to ineligibility for membership and association.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94473.pdf
Comments Due: April 14, 2022

NYSE ADOPTS LISTING STANDARDS FOR COMPANIES SOLELY IDENTIFYING AN ACQUISITION TARGET

On March 2, 2022, the SEC published for comment Amendment No. 2 to a New York Stock Exchange LLC ("NYSE") proposal (SR-NYSE-2021-45), modifying it in its entirety, to adopt listing standards for subscription warrants issued by a company organized solely for the purpose of identifying an acquisition target. The NYSE proposes to adopt a new subsection of Section 102 of the NYSE Listed Company Manual (the "NYSE Manual") (to be designated Section 102.09) to permit the listing of subscription warrants. For purposes of proposed Section 102.09, a subscription warrant is a warrant issued by a company organized solely for the purpose of identifying an acquisition target and is exercisable into the common stock of such company only upon consummation of such acquisition. The proposed rule change also outlines the specific standards to permit the listing of subscription warrants. On March 4, 2022, the SEC designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change as modified by Amendment No. 2 and designates May 8, 2022, as the date by which the Commission shall make its decision.

March 2nd Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94349.pdf
March 4th Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94363.pdf

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NYSE AMENDS SECTIONS 902.03 AND 902.11 OF LISTED COMPANY MANUAL TO ESTABLISH FEES

On March 8, 2022, the SEC published for comment a NYSE proposal, effective upon filing, to amend Sections 902.03 and 902.11 of the NYSE Manual to establish fees for the listing of rights and to remove rule text that is no longer applicable. NYSE adopted a fee schedule for listed rights equivalent to that currently applicable to listed warrants. Both types of securities represent the right to acquire shares of a listed equity security at a future time. The distinction is that, unlike warrants, rights are generally distributed without charge to all of the holders of a class of existing listed securities. NYSE will apply the same fee schedule to listed rights as it currently applies to warrants under Section 902.03 of the Manual. In connection with the listing of a class of warrants, Section 902.03 provides for a fee of $0.004 per warrant. Section 902.03 provides that listed warrants are subject to annual fees at a rate of $0.0017 per warrant, subject to a minimum annual fee of $5,000 per series of warrants. While the forementioned fees currently apply to listed warrants, there are specific provisions for warrants of two types of issuers – foreign issuers and Acquisition Companies – and the NYSE amendments apply the same fees for rights associated with those two types of companies as described in Sections 902.03 and 902.11 of the NYSE Manual, respectively. NYSE also deleted rule text from both Section 902.03 and Section 902.11 regarding fees that were in effect for calendar years prior to 2022 but are no longer in effect, as this rule text is now irrelevant.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94378.pdf

NYSE AMENDS SHAREHOLDER APPROVAL REQUIREMENTS IN NYSE MANUAL

On March 9, 2022, the SEC published for comment Amendment No. 1 to a NYSE proposal to amend Section 312.03 of the NYSE Manual to provide a limited exemption from the shareholder approval requirements of that rule for listed closed-end funds. Amendment No. 1 replaces and supersedes the original filing in its entirety. The Amendment includes clarifications in Section 312.03(b) and Section 102.04 of the Manual, modifications to the Statutory Basis section of the Manual, and corrections of typographical errors. NYSE proposed to exempt closed-end management companies that are registered under the Investment Company Act of 1940 ("1940 Act") from having to comply with the shareholder approval requirements in Sections 312.03(b) and (c) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the 1940 Act (mergers of affiliated companies) ("Rule 17a-8") and does not otherwise require shareholder approval under the 1940 Act or any other rule. NYSE believes Rule 17a-8 provides protections that obviate the need for a shareholder approval requirement in these circumstances. Notwithstanding the proposed exemption, if other provisions of NYSE rules and the 1940 Act and the rules thereunder require shareholder approval, those would still apply. NYSE also notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94388.pdf
Comments Due: April 5, 2022

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NYSE PROPOSED CHANGES TO CLOSING AUCTION RECEIVE LONGER ACTION PERIOD

On March 17, 2022, the SEC designated a longer period for Commission action on proceedings to determine whether to approve or disapprove a NYSE-proposed rule change to amend Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B (DMM-Facilitated Closing Auctions), 7.35C (Exchange-Facilitated Auctions), 98 (Operation of a DMM Unit), and 104 (Dealings and Responsibilities of DMMs) relating to the NYSE closing auction. The Commission has received two comment letters on the proposed rule changes and designates May 20, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule changes (File Number SR-NYSE-2021-44).

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94457.pdf

NYSE PROPOSED CHANGE TO RULE 7.35B EXTENDED

On March 22, 2022, the SEC published an order instituting proceedings to determine whether to approve or disapprove a proposed rule change to amend NYSE Rule 7.35B relating to the cancellation of MOC, LOC, and closing imbalance offset (“CIO”) orders before the closing auction. The NYSE’s proposal would change how cancellation of MOC, LOC, and Closing IO orders would be handled under NYSE Rule 7.35(B)(f)(2) with respect to the NYSE Closing Auction. The Commission notes that NYSE has separately proposed a different set of changes to its closing auction process and that the other proposal is currently in proceedings before the Commission. The Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change and to evaluate this proposed rule change in light of other pending proposed changes to the closing auction.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94483.pdf
Comments Due: May 2, 2022

NYSE MARKET-WIDE CIRCUIT BREAKERS APPROVED

On March 16, 2022, the SEC published an order granting accelerated approval of a NYSE proposal to make its rules governing the operation of Market-Wide Circuit Breakers (“MWCB”) permanent as modified by Amendment No. 1.

SEC Order: https://www.sec.gov/rules/sro/nyse/2022/34-94441.pdf
Comments Due: April 12, 2022

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NYSE AMERICAN AMENDS RULE 7.31E(h)(3)

On March 22, 2022, the SEC published for comment a NYSE American LLC ("NYSE American") proposal, to amend Rule 7.31E(h)(3) to modify certain factors relevant to the quote instability calculation for Discretionary Pegged Orders. Specifically, NYSE American proposed to amend Rule 7.31E(h)(3)(D)(i)(D)(1)(a), which sets forth the quote stability coefficients. Under Rule 7.31E(h)(3)(D)(i)(D)(3), NYSE American may modify the quote stability coefficients at any time, subject to a filing of a proposed rule change. The proposed changes are intended to update the quote stability coefficients to be based on more current market data and activity on NYSE American, including to reflect the elimination of a delay mechanism that previously added latency to certain order processing. Because of the technology changes associated with this proposed rule change, NYSE American will announce the implementation date by Trader Update.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-94487.pdf
Comments Due: April 18, 2022

MSRB PROPOSES EXTENSION OF REGULATORY RELIEF

On March 9, 2022, the SEC published for comment a Municipal Securities Rulemaking Board ("MSRB") proposal, effective upon filling, to amend Supplementary Material .01, Temporary Relief for Completing Office Inspections, of MSRB Rule G-27, on supervision, to further extend the regulatory relief and permit brokers, dealers, and municipal securities dealers (collectively, "dealers") to conduct office inspections, due to be completed during calendar year 2022, remotely until December 31, 2022.

Notice Release: https://www.sec.gov/rules/sro/msrb/2022/34-94383.pdf
Comments Due: April 5, 2022

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Notable Enforcement Actions

This month's enforcement actions are diverse in their violations, covering conflicts of interest, inadequate surveillance, improper order routing, inaccurate reporting, and anti-money laundering deficiencies.

On March 3, 2022, the SEC announced that a registered investment adviser ("RIA") agreed to pay more than $30 million to settle charges that its undisclosed conflicts of interest defrauded current and prospective clients. According to the SEC's Order, from at least 2016 through 2019, RIA, which has discretionary authority over client accounts, failed to inform its clients of its practice of investing their assets in proprietary mutual funds that generate fees for RIA and its affiliates, rather than in competitor funds whose fees may be lower. Additionally, the SEC's Order finds that from at least 2016 until 2019, RIA failed to inform some prospective clients that they could invest in RIA's proprietary funds at lower costs. Clients who opened accounts with certain RIA affiliates did not pay annual marketing or distribution fees, known as 12b-1 fees, but most clients who invested with RIA through their own financial advisors did. The SEC's Order finds that RIA violated Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-7. Without admitting or denying the SEC's findings, RIA agreed to cease and desist from committing or causing any future violations of these provisions; be censured; provide notice of the settlement to affected advisory clients; retain an independent compliance consultant; and pay disgorgement, prejudgment interest, and a civil penalty totaling $30,361,803 that will be distributed to investors through a Fair Fund.

SEC Enforcement Order: https://www.sec.gov/litigation/admin/2022/34-94352.pdf
Press Release: https://www.sec.gov/news/press-release/2022-33

A firm was censured, fined $350,000, of which $144,500 is payable to FINRA, and required to submit to FINRA a representation that it has implemented a supervisory system reasonably designed to detect potentially manipulative trading activity. The firm failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules, related to detecting potentially manipulative trading by its customers. The monitoring of trading conduct relied on automated surveillance reports, however, the surveillance system was not reasonably designed with respect to detecting potentially manipulative trading because certain of the firm's reports used parameters that significantly restricted their ability to detect potential wash trades and prearranged trades, particularly in lower-priced and thinly traded securities. In addition, the firm modified surveillance parameters in its reports in a way that rendered them too restrictive to reasonably detect potential marking-the-close activity, especially in lower-priced securities. The findings also stated that the firm did not have surveillance reasonably designed to detect trading that artificially increased or decreased the price of thinly traded stocks when a customer effecting a series of buy transactions within a short period of time created the false appearance of trading interest and activity in the security, followed shortly thereafter by transactions on the opposite side of the market to reap profits from an artificially increased price. **(FINRA Case # 2014039952901)**
https://www.finra.org/sites/default/files/fda_documents/2014039952901%20ETRADE%20Securities%20LLC%20CRD%2029106%20AWC%20jlg%20%282022-1644538827782%29.pdf

A firm was censured and fined $200,000, of which $42,765 is payable to FINRA. The firm failed to take reasonable steps to establish that the intermarket sweep orders ("ISOs") it routed met the requirements set forth in Rule 600(b)(30) of Regulation National Market System ("Regulation NMS") of the Exchange

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Act. The findings stated that the firm's electronic trading desk routed orders to trading centers that it marked as ISOs, but that did not meet the requirements of Regulation NMS because the desk failed to route additional limit orders to execute against other exchanges' protected quotes. The firm was notified of potential ISO routing issues through exchange surveillance, at which time the desk stopped routing ISO orders, yet failed to inform the firm's compliance department. Moreover, the desk did not have any procedures regarding compliance with Regulation NMS and did not maintain firm-specific quotation data or conduct periodic reviews to test the effectiveness of its policies and procedures for preventing trade-throughs. In addition, due to a coding issue, the firm failed to identify all protected quotations when determining to which venues ISOs should be routed. The firm also mistakenly routed orders to trading centers that it marked as ISOs but, in fact, were immediate-or-cancel orders that did not qualify as ISOs. Further, the firm failed to identify that a programing error within its order execution system was causing it to mismark orders and to fail to retain firm-specific quotation data that contributed to the firm's inability to perform reasonable periodic reviews to test the effectiveness of its policies and procedures for preventing trade-throughs. The findings also stated that the firm's supervisory system was not reasonably designed to comply with Exchange Act Rule 611(c). The firm did not establish a supervisory system or written supervisory procedures ("WSPs") that were reasonably designed to ensure that the desk did not route ISOs or, if it were to route ISOs, that such routing complied with Exchange Act Rule 611(c). The firm did not initially implement any supervisory review of ISOs until later, and this review was not documented in its procedures until almost a year later. Even after the review was implemented, it was unreasonable given that the ISOs reviewed by the firm represented a small fraction of the ISOs the firm handled each day. In addition, the firm's programming errors and failure to maintain snapshot records of the market data supporting its routing of certain ISOs prevented it from performing a reasonable review of those ISOs for compliance with Exchange Act Rule 611(c). **(FINRA Case #2017054588101)**
https://www.finra.org/sites/default/files/fda_documents/2017054588101%20Jefferies%20LLC%20CRD%202347%20AWC%20sl%20%282022-1644625221652%29.pdf

A firm was censured and fined $55,000 for failing to timely report TRACE transactions in TRACE-eligible corporate debt securities. The findings stated that the late reports were caused by several different issues at the firm, including delays related to a manual reporting process involving trades with foreign affiliates, operational errors, and delays by firm personnel, including firm employees not timely matching tickets in the firm's system and amendments to trade terms outside of the 15-minute reporting time frame. **(FINRA Case #2018060219201)**
https://www.finra.org/sites/default/files/fda_documents/2018060219201%20Jefferies%20LLC%20CRD%202347%20AWC%20jlg%20%282022-1644193204832%29.pdf

A firm was censured and fined $100,000 for violating Regulation SHO of the Exchange Act and FINRA trade reporting rules in connection with its handling of net trades. The findings stated that the firm failed to obtain locates in connection with 179,778 short sale transactions, in violation of Rule 203(b)(1) of Regulation SHO and FINRA Rule 2010. Specifically, upon receipt of a customer short sale order, the firm effected a principal short sale in the same security on an exchange or other execution venue and then satisfied the customer order by buying the security as principal at a different price. Additionally, the firm reported those short sale transactions to the FINRA/NYSE Trade Reporting Facility ("FNYTRF") without indicating the required short sale indicators, in violation of FINRA Rules 6182 and 2010. The firm failed to report these transactions as short sales because its front-end OMS was not programmed to include a short sale indicator for the customer when submitting the second leg of a net trade. As a result, the trade

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reports incorrectly reflected that the contra-party sold long. The firm did not discover the problem until FINRA staff approached the firm about the issue. The firm further did not establish, maintain and enforce written procedures reasonably designed to prevent the execution of 829 short sale transactions during a circuit breaker, in violation of Rule 201(b)(1) of Regulation SHO and FINRA Rules 3110 and 2010. The firm had no reasonable supervisory process to identify whether short sale transactions were executed at or below the National Best Bid when a circuit breaker was in effect. Instead, the firm relied on automated pre-trade controls within its front-end OMS, in part, to achieve compliance with Rule 201(b)(1). However, because the firm's front-end OMS was not programmed to include a short sale indicator for the customer when submitting the second leg of a net trade, the OMS also did not subject the transactions to automated pre-trade controls designed to achieve compliance with Rule 201. The firm also incorrectly reported net trades with a W modifier to the FINRA/Nasdaq Trade Reporting Facility, FNYTRF and the OTC Trade Reporting Facility, in violation of FINRA Rules 6380A(a), 6380B(a), 6622(a), and 2010 although none of the trades were priced at an average weighted price or with a special pricing formula. FINRA also found that the firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with the locate requirement in Regulation SHO and FINRA's trade reporting rules. **(FINRA Case #2017053847701)**
https://www.finra.org/sites/default/files/fda_documents/2017053847701%20DriveWealth%20Institutional%20LLC%20fka%20Cuttone%20%26%20Co.%2C%20LLC%20CRD%2033038%20AWC%20sl%20%282022-1645834803925%29.pdf

A firm was censured and fined $44,938 after an Office of Hearing Officers decision became final following the firm's withdrawal of its appeal to the NAC based on the findings that the firm improperly allowed an individual to associate with it. The individual was subject to a statutory disqualification and the firm allowed him to engage in its securities business in a manner that required him to be registered when he was not. The findings stated that the NAC issued a formal FINRA decision denying the firm's Membership Continuance Application (MC-400) seeking permission for the individual to associate with the firm despite his disqualification. The firm's owner ignored an initial warning from FINRA that the individual was prohibited from associating with the firm and implemented a plan to evade the prohibition. More than six months after the MC-400 application was denied, the owner and a firm registered representative together wrote a letter to customers to inform them that for now, the disqualified individual would not be their official registered representative. Instead, the representative that helped write the letter would be their acting registered representative. At the same time, the letter reassured customers that the disqualified individual was still generating investment ideas for them, and the representative was still providing "excellent and timely customer service." The letter promised that customers could request time with the disqualified individual to discuss the stock market, economic issues, and company-specific information. The owner and the representative described the changes after the MC-400 decision as semantics. The letter obscured the true nature of the situation, being that FINRA had denied the approval necessary for the disqualified individual to speak to the firm's customers about securities and their portfolios. Customers continued to see the disqualified individual as their broker, not the representative. **(FINRA Case #2018056436001)**
https://www.finra.org/sites/default/files/fda_documents/2018056436001%20Integrity%20Brokerage%20Services%2C%20Inc.%20CRD%20117589%20Joshua%20Helmle%202195760%20OHO%20Decision%20DM%20%282021-1630023618039%29.pdf

A firm was censured and fined $35,000 because it failed to establish and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA Rules 2111 and 4512(a)(1)(D).

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The findings stated that the firm's WSPs cited National Association of Securities Dealers, Inc. ("NASD") Rule 2310, instead of FINRA Rule 2111, even though FINRA Rule 2111 superseded NASD Rule 2310, and differs from Rule 2310 by requiring member firms to exercise reasonable diligence in ascertaining each customer's investment profile, including investment experience, investment time horizon, liquidity needs and risk tolerance. The firm cited NASD Rule 2310 in the WSPs despite previous warnings from FINRA that the rule had been superseded by FINRA Rule 2111. As a result, the firm failed to obtain certain suitability information from three customers, who collectively invested a total of $680,000 in high-risk private placement offerings, including information about the customers' risk tolerance and liquidity needs. Further, the firm failed to obtain and maintain a principal signature denoting the acceptance of accounts held by investors in the private placement offerings, as required by its WSPs. The findings also stated that the firm failed to maintain and enforce a reasonable supervisory system for email review. Despite the firm receiving previous warnings from FINRA that its supervisory system for email review was not reasonable, the firm's WSPs did not specify the required frequency for outgoing email review, the size and parameters of the relevant samples, or the required steps for escalation of any issues or problems identified through the email review. In addition, the firm's WSPs did not contain any information about documenting the review of incoming email, the size and parameters of the relevant samples, or the required steps for escalating any issues or problems identified during the email review, apart from complaints from customers. The firm has since revised its WSPs. **(FINRA Case #2019060957101)**
https://www.finra.org/sites/default/files/fda_documents/2019060957101%20CIM%20Securities%2C%20LLC%20CRD%20120852%20AWC%20sl%20%282022-1646266816295%29.pdf

A firm was censured, fined $20,000, and required to certify that it has developed and implemented a written anti-money laundering ("AML") program reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act, and the implementing regulations promulgated thereunder. A lower fine was imposed after considering, among other things, the firm's revenue, and financial resources. The findings stated that the firm failed to establish and implement AML policies and procedures reasonably expected to detect and cause the reporting of suspicious activity. Following a change in majority ownership, the firm's business model shifted, however, it failed to tailor its AML program to its new, higher-risk business model. While utilizing a quarterly checklist process as its primary method of AML monitoring, the firm failed to detect or investigate red flags of suspicious activity in multiple customer accounts. The findings also stated that the firm failed to conduct an independent AML test in 2019. The firm's independent AML test performed in the previous year only assessed its AML program through the time that the firm's business model still focused on private placements sold to domestic customers. The firm did not conduct another independent AML test until the following year, and it did so only with prompting by FINRA. The firm's belated annual test did not evaluate essential aspects of the firm's AML program and was unreasonable in that it failed to review customer account activity. As a result, the test failed to determine whether the firm was reasonably detecting, monitoring, and investigating potentially suspicious activity. The test also failed to review the firm's AML training program. The findings also included that the firm opened customer accounts without obtaining the signature of a firm principal evidencing supervisory review and approval during the account opening process. During this time, approximately 80 percent of the new customer accounts sampled and reviewed by FINRA were opened without the signature of a firm principal. **(FINRA Case #2019060991102)**
https://www.finra.org/sites/default/files/fda_documents/2019060991102%20BLV%20Securities%20CRD%2035205%20AWC%20sl%20%282022-1645748437696%29.pdf

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A firm was censured and fined $10,000 because it conducted a securities business while it failed to maintain the minimum required net capital, failed to maintain accurate books and records, and filed an inaccurate Financial and Operational Combined Uniform Single ("FOCUS") report, in addition to notices of net capital deficiency that contained material inaccuracies. The findings stated that the firm incurred $16,832.71 in legal fees, which caused its net capital to fall below the required minimum during the relevant period, with daily deficiencies between $726 and $29,665. Although the firm filed notices of net capital deficiency with FINRA and the SEC, the two such notices were inaccurate. Specifically, in its first filing, the firm inaccurately stated that its net capital deficiency had ended after the firm received funds in connection with a private placement, but the firm erroneously failed to include the above-referenced legal fees in its net capital calculations and its net capital was still below the required minimum. The firm then filed an amended notice of net capital deficiency with the SEC and FINRA stating that its net capital deficiencies had not ended and had continued until the date of the amended notification. However, in connection with its net capital calculations, the firm incorrectly recorded certain credits attributable to rent and software invoices as debits. Therefore, the amended notification was also inaccurate, and the firm's net capital remained below the required minimum after the amended notification was filed and until the following month. The findings also included that the firm failed to maintain accurate books and records concerning its aggregate indebtedness and net capital and filed a FOCUS report that inaccurately stated the amount of the firm's net capital deficiency. **(FINRA Case #2020065094701)**
https://www.finra.org/sites/default/files/fda_documents/2020065094701%20Third%20Seven%20Capital%20LLC%20CRD%20160209%20AWC%20sl%20%282022-1643847615895%29.pdf

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