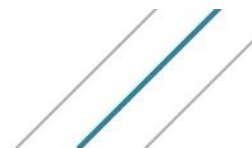


# SECURITIES OPERATIONS

REGULATORY UPDATE



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## Take Action Now

### One Day - Three Major Technology-related SEC Proposals are Issued

On March 15, 2023, the U.S. Securities and Exchange Commission (“SEC” or “Commission”) published for comment a proposed amendment to Regulation S-P that would enhance the protection of customer information by, among other things, requiring broker-dealers, investment companies, registered investment advisers, and transfer agents to provide notice to individuals affected by certain types of data breaches that may put them at risk of identity theft or other harm.

**SEC Proposed Rule:** <https://www.sec.gov/rules/proposed/2023/34-97141.pdf>

**Comments Due:** 60 days after publication in the Federal Register

**Press Release:** <https://www.sec.gov/news/press-release/2023-51>

**Fact Sheet:** <https://www.sec.gov/files/34-97141-fact-sheet.pdf>

On March 15, 2023, the SEC published for comment a proposed rule for broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents (collectively, “Market Entities”) to address their cybersecurity risks. The proposal would require all Market Entities to implement policies and procedures to address their cybersecurity risks and, at least annually, review and assess the design and effectiveness of their cybersecurity policies and procedures, including whether they reflect changes in cybersecurity risk over the review time period.

**SEC Proposed Rule:** <https://www.sec.gov/rules/proposed/2023/34-97142.pdf>

**Comments Due:** 60 days after publication in the Federal Register

**Press Release:** <https://www.sec.gov/news/press-release/2023-52>

**Fact Sheet:** <https://www.sec.gov/files/34-97142-fact-sheet.pdf>

On March 15, 2023, the SEC published for comment a proposed amendment to expand and update Regulation Systems Compliance and Integrity (“SCI”) to help address technological vulnerabilities and improve Commission oversight of the core technology of key U.S. securities markets entities (“SCI entities”). The proposed amendments would expand the scope of SCI entities, strengthen the requirements Regulation SCI imposes on SCI entities, expand the types of SCI events experienced by an SCI entity that would trigger immediate notification to the Commission, update the rule’s annual SCI review and business continuity and disaster recovery testing requirements, and update certain of the regulation’s recordkeeping provisions.

**SEC Proposed Rule:** <https://www.sec.gov/rules/proposed/2023/34-97143.pdf>

**Comments Due:** 60 days after publication in the Federal Register

**Press Release:** <https://www.sec.gov/news/press-release/2023-53>

**Fact Sheet:** <https://www.sec.gov/files/34-97143-fact-sheet.pdf>

## Regulatory Actions

On March 1, 2023, the SEC announced that the Section 31 fee rate for fiscal 2023 will remain at the current rate of \$8.00 per million, as previously announced on January 23, 2023. This rate will remain in place until September 30, 2023, or 60 days after the enactment of a regular FY 2024 appropriation, whichever is later. The Section 31 assessment on round turn transactions in security futures will also remain at \$0.0042 per transaction.

**Press Release:** <https://www.sec.gov/news/press-release/2023-41>

On March 15, 2023, the SEC announced that it reopened the comment period on proposed rules and amendments related to cybersecurity risk management and cybersecurity-related disclosure for registered investment advisers, registered investment companies, and business development companies that were proposed by the Commission on February 9, 2022.

**SEC Proposed Rule:** <https://www.sec.gov/rules/proposed/2023/33-11167.pdf>

**Comments Due:** May 22, 2023

**Press Release:** <https://www.sec.gov/news/press-release/2023-54>

**Fact Sheet:** <https://www.sec.gov/files/33-11028-fact-sheet.pdf>

On March 22, 2023, the SEC published for comment a proposal designed to modernize its information collection and analysis methods by, among other things, proposing that a number of filings, submissions, or posting of certain forms be submitted to the Commission electronically on the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system using structured data where appropriate. The proposed amendments would also make certain amendments to the Financial and Operational Combined Uniform Single Report to harmonize it with other rules, make technical corrections, and provide clarifications. In addition, the proposed amendments would require withdrawal of notices filed in connection with an exception to counting certain dealing transactions toward determining whether a person is a security-based swap dealer in specified circumstances.

**SEC Proposed Rule:** <https://www.sec.gov/rules/proposed/2023/33-11176.pdf>

**Comments Due:** 30 days after publication in the Federal Register

**Press Release:** <https://www.sec.gov/news/press-release/2023-58>

**Fact Sheet:** <https://www.sec.gov/files/33-11176-fact-sheet.pdf>

On March 20, 2023, the SEC adopted amendments to Volume II of the EDGAR Filer Manual and related rules and forms. EDGAR Release 23.1 will be deployed in the EDGAR system on March 20, 2023.

**Final Rule:** <https://www.sec.gov/rules/final/2023/33-11168.pdf>

On March 3, 2023, the SEC published an order to solicit comments on, and institute proceedings to determine whether to approve or disapprove, the Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to adopt FINRA Rule 6470 (Disclosure of Order Routing Information for NMS Securities), which imposes disclosure requirements for unlisted stocks; in addition to adopting FINRA Rule 6151 (Disclosure of Order Routing Information for OTC Equity Securities) to require members to submit their order routing reports for NMS Securities to FINRA for centralized publication on the FINRA website. These changes are generally aligned with the requirements of SEC Rule 606(a) disclosures and reports.

**Notice Release:** <https://www.sec.gov/rules/sro/finra/2023/34-97039.pdf>

**Rebuttal Comments Due:** April 13, 2023

On March 7, 2023, the SEC published for comment, and granted immediate effectiveness to, a FINRA proposal to extend, to October 25, 2023, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements). The proposed rule change would not make any changes to the text of FINRA rules.

**Notice Release:** <https://www.sec.gov/rules/sro/finra/2023/34-97062.pdf>

On March 14, 2023, FINRA published Regulatory Notice 23-04 providing guidance for members affected by the recent failures of Silicon Valley Bank and Signature Bank.

**Regulatory Notice 23-04:** <https://www.finra.org/rules-guidance/notices/23-04>

On March 22, 2023, the SEC published for comment, and granted immediate effectiveness to, a FINRA proposal to amend FINRA Rule 1240.01 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Paragraph (c) of this Rule) to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program. This new enrollment period begins March 15, 2023, and will end on December 31, 2023.

**Notice Release:** <https://www.sec.gov/rules/sro/finra/2023/34-97184.pdf>

**Comments Due:** April 18, 2023

**Information Notice:** <https://www.finra.org/rules-guidance/notices/information-notice-031523>

On March 24, 2023, the SEC published an order instituting proceedings to determine whether to approve or disapprove a FINRA proposal to add IntelligentCross ATS as a new entrant to the Alternative Display Facility ("ADF"). The Commission believes that there are questions as to whether FINRA has provided sufficient information to demonstrate that the proposal to add IntelligentCross ATS to the ADF is consistent with the Exchange Act of 1934 and the rules thereunder.

**Notice Release:** <https://www.sec.gov/rules/sro/finra/2023/34-97195.pdf>

**Comments Due:** April 20, 2023

**Rebuttal Comments Due:** May 4, 2023

On March 7, 2023, the SEC published for comment a Nasdaq Stock Market LLC ("Nasdaq") proposal to

establish listing standards related to recovery of erroneously awarded executive compensation as required by SEC Rule 10D-1.

**Notice Release:** <https://www.sec.gov/rules/sro/nasdaq/2023/34-97060.pdf>

On March 24, 2023, the SEC published a Nasdaq notice of withdrawal of a proposal to amend Rule 4702 to establish new “Contra Midpoint Only” and “Contra Midpoint Only with Post-Only” order types. On March 22, 2023, Nasdaq withdrew the proposed rule change (SR-NASDAQ-2022- 077).

**Notice Release:** <https://www.sec.gov/rules/sro/nasdaq/2023/34-97194.pdf>

On March 1, 2023, the SEC published for comment, and granted immediate effectiveness to, a New York Stock Exchange LLC (“NYSE”) proposal to amend Rule 7.19 pertaining to pre-trade risk controls to make additional pre-trade risk controls available to Entering Firms. NYSE affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. recently filed to make similar changes and addressed questions from a comment letter that are also addressed in the NYSE filing. The additional pre-trade risk controls would provide Entering Firms with enhanced abilities to manage their risk with respect to orders on the NYSE. Each of the proposed additional risk controls is modeled on risk settings that are already available on the Cboe, Nasdaq, MEMX, and MIAX Pearl equities exchanges.

**Notice Release:** <https://www.sec.gov/rules/sro/nyse/2023/34-97010.pdf>

On March 7, 2023, the SEC published for comment, a NYSE proposal to adopt new Section 303A.14 of the NYSE Listed Company Manual to require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers.

**Notice Release:** <https://www.sec.gov/rules/sro/nyse/2023/34-97055.pdf>

On March 20, 2023, the SEC published for comment, and granted immediate effectiveness to, a NYSE proposal to amend its price list related to charges for transactions that remove liquidity. NYSE proposes to implement the fee changes effective March 13, 2023.

**Notice Release:** <https://www.sec.gov/rules/sro/nyse/2023/34-97170.pdf>

**Comments Due:** April 14, 2023

## Notable Enforcement Actions

*This month's FINRA regulatory actions include large fines related to options trading and reporting and monitoring of customers electronic trading activities.*

FINRA censures and fines firm \$3,000,000 for [not exercising reasonable due diligence](#) before it approved customers for options trading, not maintaining a supervisory system reasonably designed to identify and respond to customer complaints, and not reporting certain written customer complaints to FINRA as required.

FINRA censures and fines firm \$3,750,000 for [failing to report and inaccurately reporting over-the-counter options positions](#) to the large options positions reporting system in at least 7.1 million instances. The findings stated that these violations were caused by multiple technology issues.

FINRA censures and fines firm \$975,000 for [failing to review electronic trading customers' activities](#) for potential manipulation. Although findings stated the firm stopped providing market access services to its customers, the firm still provided certain customers with access to third-party electronic trading platforms that routed these orders to other broker-dealers for execution.

FINRA censures and fines firm \$300,000 for [sending customers trade confirmations](#) that inaccurately disclosed the firm's execution capacity or whether the trade was executed at an average price, or inaccurately disclosed or omitted its status as a market maker in the security.

FINRA censures and fines firm \$200,000 for [failing to retain business-related Apple iPhone-to-iPhone messages](#) sent and received by its registered representatives on firm-owned iPhones.

FINRA censures and fines firm \$150,000 for [failing to exclude the short interest positions](#) of one of its customers whose account was custodied at the firm's clearing firm, resulting in duplicative and inaccurate reporting of the customer's short interest positions to FINRA, and failed to report short interest positions after same day trades had settled.