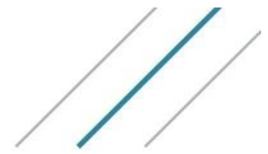
SECURITIES OPERATIONS

REGULATORY UPDATE



December 1, 2022

For more information please contact info@mediantonline.com

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SEC ENHANCES REPORTING OF PROXY VOTES BY REGISTERED MANAGEMENT INVESTMENT COMPANIES

On November 2, 2022, the U.S. Securities and Exchange Commission ("SEC" or "Commission") adopted amendments to Form N-PX to enhance the information mutual funds, exchange-traded funds ("ETFs"), and certain other registered funds report about their proxy votes. The amendments make funds' proxy voting records more usable and easier to analyze, improving investors' ability to monitor how their funds vote and compare different funds' voting records. Additionally, Form N-PX is structured into a machine-readable format. The rulemaking also requires institutional investment managers to disclose how they voted on executive compensation, or so-called "say-on-pay" matters, which fulfills one of the remaining rulemaking mandates under the Dodd-Frank Wall Street Reform and Consumer Protection Act. To enhance proxy vote reporting, the amendments require funds and managers to categorize each matter by type and, where a form of proxy or "proxy card" subject to the Commission's proxy rules is available, tie the description and order of voting matters to the issuer's form of proxy to help investors identify votes of interest and compare voting records. The changes also prescribe how funds and managers must organize their reports and require them to use a structured data language to make the filings easier to analyze. Funds and managers are also required to disclose the number of shares that were voted or instructed to be voted, as well as the number of shares loaned and not recalled and thus not voted. The latter requirement is designed to provide shareholders with context to understand how securities lending activities could affect a fund's or manager's proxy voting practices. The new rules and form amendments will be effective for votes occurring on or after July 1, 2024.

Final Rule: https://www.sec.gov/rules/final/2022/33-11131.pdf
Press Release: https://www.sec.gov/news/press-release/2022-198
Fact Sheet: https://www.sec.gov/files/33-11131-fact-sheet.pdf

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SEC PROPOSES ENHANCEMENT TO OPEN-END FUND LIQUIDITY FRAMEWORK

On November 2, 2022, the SEC published for comment proposed amendments to better prepare open-end funds for stressed conditions and to mitigate dilution of shareholders' interests. The rule and form amendments would enhance how funds manage their liquidity risks, require mutual funds to implement liquidity management tools, and provide for more timely and detailed reporting of fund information. The proposal also seeks to improve funds' liquidity classifications by establishing new minimum standards for classification analyses, including some that incorporate stressed conditions, and by updating the liquidity categories to limit the extent of a fund's investments in securities that do not settle within seven days. The changes are designed to help better prepare funds for stressed conditions and prevent funds from overestimating the liquidity of their investments. Affected funds would also be required to maintain a minimum amount of highly liquid assets of at least 10 percent of net assets to help manage stressed conditions and heightened redemption levels. The funds would publicly report certain information about their liquidity profiles to improve the availability of information about liquidity risk for investors as well as information about the use of liquidity classification service providers. In addition, the proposal would require open-end funds, other than money market funds and ETFs, to use a liquidity management tool called "swing pricing," which is a method to allocate costs stemming from inflows or outflows to the investors engaged in that activity, rather than diluting other shareholders. The proposal would also require a "hard close" for relevant funds. With a hard close, investor orders would need to be received by the fund, its transfer agent, or a registered clearing agency by the time of the fund's pricing, typically 4 p.m. ET, to receive that day's price. In addition to helping to operationalize swing pricing, a hard close would help prevent late trading of fund shares and improve order processing. The release also includes questions about alternative liquidity management tools, such as the use of liquidity fees. Finally, the proposal would provide the Commission and investors with timelier information. As proposed, funds would be required to file portfolio and other information on Form N-PORT on a monthly basis within 30 days, with the report becoming public after 30 additional days. This change would triple the amount of information currently available to investors and would apply to all registrants that report on Form N-PORT, including most open-end funds and registered closed-end funds, with certain exceptions.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/33-11130.pdf
Comments Due: 60 days after publication in the Federal Register
Press Release: https://www.sec.gov/news/press-release/2022-199
Fact Sheet: https://www.sec.gov/files/33-11130-fact-sheet.pdf

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SEC PUBLISHES AMENDMENTS TO 24X EXCHANGE APPLICATION AND INSTITUTES PROCEEDINGS

During November 2022, the SEC published for comment Amendments No. 1 and 2 to the 24X National Exchange LLC ("24X") Initial Form 1 Application to operate a fully automated electronic trading platform for the trading of listed National Market System ("NMS") stocks pursuant to unlisted trading privileges. On November 3, 2022, 24X filed an amendment to its Form 1 application ("Amendment No. 1"). Among other things, Amendment No. 1 revised the corporate documents of 24X and its direct holding company; amended 24X's proposed rules and User Manual; filed additional financial statements for 24X's immediate holding company; and provided additional information about the finances for 24X. On November 10, 2022, 24X filed a second amendment to its Form 1 application ("Amendment No. 2). In Amendment No. 2, 24X revised the Amended and Restated Limited Liability Company Operating Agreement of 24X Bermuda Holdings LLC, as well as the Member Nominating Committee Charter. Prior to both Amendments, the SEC instituted proceedings pursuant to the Securities Exchange Act of 1934 (the "Exchange Act") to determine whether to grant or deny 24X's application for registration as a national securities exchange. 24X has proposed to significantly expand trading outside of regular trading hours for NMS stocks by operating a national securities exchange 24 hours a day, seven days a week, 365 days a year, including holidays. In addition, within Amendment Nos. 1 and 2, 24X significantly amended its application for registration as a national securities exchange as originally filed. Therefore, the Commission finds good cause to extend the time for conclusion of the proceedings and designates March 3, 2023, as the date by which the Commission shall either grant or deny 24X's Form 1 application.

November 3, 2022, Notice Release: https://www.sec.gov/rules/other/2022/34-96218.pdf
November 17, 2022, Notice Release: https://www.sec.gov/rules/other/2022/34-96337.pdf
Comments Due: December 13, 2022
November 18, 2022, Notice Release: https://www.sec.gov/rules/other/2022/34-96364.pdf

SEC ANNOUNCES APPOINTMENT OF FISCHER TO REPLACE YERRAMALLI AS CHIEF OF STAFF

On November 7, 2022, the SEC announced that Chief of Staff Prashant Yerramalli would leave the agency, effective Dec. 31, 2022, and Amanda Fischer, currently Senior Counselor to Chair Gary Gensler, would be appointed Chief of Staff, effective upon Mr. Yerramalli's departure. Ms. Fischer has served as Senior Counselor to Chair Gensler since June 2021. She is one of Chair Gensler's principal advisers, focused on rulemaking and interagency work. Immediately before joining the SEC, Ms. Fischer was the Policy Director at the Washington Center for Equitable Growth, a non-partisan research organization focused on economic policy. Earlier in her career, Ms. Fischer worked for more than a decade on Capitol Hill in roles related to financial services policymaking.

Press Release: https://www.sec.gov/news/press-release/2022-203

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SEC ANNOUNCES APPOINTMENTS OF CASSIDY AND GREINER TO DEPUTY DIRECTORS OF DIVISION OF EXAMINATIONS

On November 7, 2022, the SEC announced Keith E. Cassidy and Natasha Vij Greiner as Deputy Directors of the Division of Examinations. In addition to serving as Deputy Director, Mr. Cassidy is the National Associate Director of the Division's Technology Controls Program ("TCP") with responsibility for examinations of Regulation SCI entities and for overseeing the SEC's CyberWatch program and the Cybersecurity Program Office. Mr. Cassidy previously served as Deputy and then Director of the Commission's Office of Legislative and Intergovernmental Affairs, worked as Chief of Staff and Counsel at the Department of Justice's Office of Legislative Affairs, and served as a legislative assistant in the United States Senate. In addition to serving as Deputy Director of the Division, Ms. Greiner is the National Associate Director of the Investment Adviser/Investment Company ("IA/IC") examination program and is the Associate Director of the Home Office IA/IC examination program. She began her SEC career in the Division as a broker-dealer examiner and has served in a variety of roles across the agency for more than 21 years, including Acting Chief Counsel and Assistant Chief Counsel in the Division of Trading and Markets, where she provided legal and policy advice to the Commission on rules affecting market participants and the operation of the securities markets. Before that, Ms. Greiner spent almost a decade in the Division of Enforcement, including in its Asset Management Unit, where she investigated possible violations of the federal securities laws and litigated matters in federal district court and administrative proceedings. Mr. Cassidy and Ms. Greiner will continue to serve in their current leadership roles within the TCP and IA/IC examination program, respectively, in addition to their new responsibilities as Deputy Directors.

Press Release: https://www.sec.gov/news/press-release/2022-202

FINRA PROVIDES GUIDANCE ON SUCCESSION PLANNING

On November 1, 2022, the Financial Industry Regulatory Authority ("FINRA") published Regulatory Notice 22-23 (the "Notice") to provide notice of benefits and common types of succession plans for registered representatives of member firms to plan for expected and unexpected life events. Succession planning can benefit customers, member firms and registered representatives. The Notice also provides an overview of related FINRA rules and administrative processes and includes questions to consider when developing and implementing succession plans.

FINRA Reg Notice 22-23: https://www.finra.org/rules-guidance/notices/22-23

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FINRA EXTENDS REMOTE INSPECTIONS

On November 4, 2022, the SEC published for comment a FINRA proposal, effective upon filling, to extend temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020 and 2021, and through December 31 of Calendar Year 2022) under FINRA Rule 3110 (Supervision) to include calendar year 2023 inspection obligations. The proposed extension of Rule 3110.17 would alleviate the ongoing operational challenges resulting from the COVID-19 pandemic that many member firms may continue to face in planning for and timely conducting the on-site inspection component of Rule 3110(c) (Internal Inspections) at locations requiring inspection in calendar year 2023.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-96241.pdf

FINRA RULE REVISING THE SYNDICATE ACCOUNT SETTLEMENT TIME APPROVED

On November 9, 2022, the SEC issued an order granting approval of a FINRA proposal to amend Rule 11880 (Settlement of Syndicate Accounts) to revise the syndicate account settlement timeframe for corporate debt offerings. Specifically, FINRA proposed to establish a two-stage syndicate account settlement approach whereby the syndicate manager for corporate debt offerings would be required to remit to each syndicate member at least 70 percent of the gross amount due to such syndicate member within 30 days following the syndicate settlement date, with any final balance due remitted within 90 days following the syndicate settlement date. The rule change is expected to benefit syndicate members by reducing the exposure of syndicate members to the credit risk of the syndicate manager during the pendency of account settlements, including capital-constrained small firms, by allowing them to obtain earlier access to the funds earned from an offering without significantly increasing the risks of resettlements. In addition, the staged approach will provide benefits to syndicate members while easing compliance for syndicate managers by permitting them to retain 30 percent of the gross amount earned by syndicate members to cover expenses and remit any balance due to the syndicate members within the current 90-day period following the syndicate settlement date. FINRA announced the effective date for the rule change of January 1, 2023 in Regulatory Notice 22-24.

Approval Order: https://www.sec.gov/rules/sro/finra/2022/34-96279.pdf
FINRA Reg Notice 22-24: https://www.finra.org/rules-guidance/notices/22-24

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PROCEEDINGS INSTITUTED FOR FINRA PROPOSAL TO ADOPT REMOTE INSPECTIONS PILOT PROGRAM

On November 10, 2022, the SEC published an order to solicit comments on a FINRA proposed rule change to adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision) and instituted proceedings to determine whether to approve or disapproved the proposed rule change. FINRA proposed to amend FINRA Rule 3110 to adopt a voluntary, three-year remote inspection pilot program to allow member firms to elect to fulfill their obligation under Rule 3110(c) (Internal Inspections) by conducting inspections of some or all branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified terms described in the proposed rule filing dated July 28, 2022 (Exchange Act Release No. 95452 (Aug. 9, 2022), 87 FR 50144 (Aug. 15, 2022) (File No. SR-FINRA-2022-021)).

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-96297.pdf
Comments Due: December 7, 2022
Rebuttal Comments Due: December 21, 2022

PROCEEDINGS INSTITUTED FOR FINRA PROPOSAL TO AMEND THE CODES OF ARBITRATION PROCEDURES

On November 10, 2022, the SEC published an order to solicit comments on, and to institute proceedings to determine whether to approve or disapprove, the FINRA proposal, as modified by Amendment No. 1, to amend the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (together, the “Codes”) to modify the current process relating to the expungement of customer dispute information. The original proposed rule change filed by FINRA on July 29,2022 (SR-FINRA-2022-24) would impose seven requirements on expungement requests: (a) filed by an associated person during an investment-related, customer initiated arbitration (“customer arbitration”), or filed by a party to the customer arbitration on behalf of an associated person (“on-behalf-of request”), or (b) filed by an associated person separate from a customer arbitration (“straight-in request”). Amendment No. 1 would modify the rule proposal in three ways: amend proposed Rules 12805(c)(3)(A) and 13805(c)(3)(A) to state all customers whose customer arbitrations, civil litigations or customer complaints are a subject of the expungement request are entitled to attend and participate in all aspects of the prehearing conferences and expungement hearing, modify proposed Rule 12805(c)(8)(C) and 13805(c)(9)(C) to state that a panel shall not give any evidentiary weight to a decision by a customer or an authorized representative not to attend or participate in an expungement hearing, and provide that an associated person shall not file a claim requesting expungement of customer dispute information if the customer dispute information is associated with a customer arbitration or civil litigation in which a panel or court of competent jurisdiction previously found the associated person liable.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-96298.pdf
Comments Due: December 21, 2022

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FINRA PROVIDES 2023 AND FIRST QUARTER 2024 REPORT FILING DUE DATES

On November 11, 2022, FINRA published an Information Notice to assist members in their financial reporting obligations by providing the due dates for Annual Report, Financial and Operational Combined Uniform Single ("FOCUS"), Form Custody, and supplemental FOCUS Report filings that are due in 2023 or the first quarter of 2024. FINRA reminds members that all such filings they submit to FINRA must be made electronically through the FINRA Gateway. The due dates set forth in the Notice relate solely to the filings that are specified in the Notice and are required under Exchange Act Rule 17a-5 or FINRA Rule 4524. The due dates take into account the federal holiday calendar as appropriate.

Information Notice: https://www.finra.org/rules-guidance/notices/information-notice-111122

FINRA PROVIDES 2023 HOLIDAY MARGIN EXTENSIONS SCHEDULE

On November 11, 2022, FINRA published an Information Notice to assist firms with making accurate submissions in connection with requests for Federal Reserve Board Regulation T, Exchange Act Rule 15c3-3 and FINRA Rule 4210 extensions of time around holidays when exchanges or banks are closed. The schedule included in the Notice specifies the due dates for filing requests of extensions of time prior to and after a holiday when the exchanges or banks are closed in 2023.

Information Notice: https://www.finra.org/rules-guidance/notices/information-notice-111822

NASDAQ SPECIFIES TIMEFRAME FOR THE INTRODUCTION OF ENHANCED ANTI-INTERNALIZATION FUNCTIONALITY

On November 7, 2022, the SEC published for comment a Nasdaq Stock Market LLC ("Nasdaq") proposal, effective upon filling, which specifies an implementation timeframe for the introduction of enhanced anti-internalization functionality. Nasdaq previously filed a rule proposal to enhance the anti-internalization functionality on Nasdaq that would permit market participants to direct that quotes/orders entered into the System not execute against quotes/orders entered across MPIDs that are under Common Ownership. The previous rule filing, however, did not specify an implementation date. Nasdaq proposes to implement the enhanced anti-internalization functionality no later than the First Quarter of 2023. The delay provides Nasdaq additional time to develop and test this functionality. Nasdaq will issue an Equities Trader Alert to provide notification of the change and relevant implementation date prior to introducing the new functionality.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-96248.pdf
Comments Due: December 5, 2022

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NASDAQ CHANGES SCHEDULE OF CREDITS AT EQUITY 7

On November 15, 2022, the SEC published for comment a Nasdaq proposal, effective upon filling, that amends Nasdaq's schedule of credits at Equity 7, Section 118(a). Specifically, with respect to its schedule of credits for non-displayed midpoint orders (other than Supplemental Orders) that provide liquidity, Nasdaq is adding a new supplemental credit in Tapes A, B and C and making conforming changes to its schedule of credits. Nasdaq's new supplemental credit is for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the NBBO) that provide liquidity to Nasdaq. Specifically, Nasdaq provides a supplemental credit of $0.0001 per share executed for midpoint orders (excluding buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the National Best Bid and Offer) if the member (i) executes at least 0.35% of Consolidated Volume through midpoint orders and through Midpoint Extended Life Orders during the month, and (ii) executes at least 0.20% of Consolidated Volume through midpoint orders during the month. The proposed credit will be in addition to other credits otherwise available to members for adding non-displayed liquidity to Nasdaq, meaning that this supplemental credit is cumulative. The purpose of the new credit is to provide an extra incentive to members that provide non-displayed liquidity to Nasdaq through midpoint orders, which, if the incentive is effective, will improve market quality to the benefit of all participants.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-96311.pdf
Comments Due: December 9, 2022

NASDAQ AMENDS NOM OPTIONS 7, SECTION 2

On November 22, 2022, the SEC published for comment a Nasdaq proposal, effective upon filling, which amends The Nasdaq Options Market LLC ("NOM") Pricing Schedule at Options 7, Section 2 (Nasdaq Options Market - Fees and Rebates). The Nasdaq amendments (1) amend the Tier 6 Professional Rebate to Add Liquidity in Penny Symbols; (2) amend the criteria for the Tier 3 and Tier 6 Rebates to Add Liquidity in Penny Symbols; and (3) add an incentive to achieve a higher Tier 6 Professional Rebate to Add Liquidity in Penny Symbols.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-96375.pdf
Comments Due: December 20, 2022

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NYSE PROPOSES PRICING LIMITATIONS FOR PRIMARY DIRECT FLOOR LISTINGS

On November 8, 2022, the SEC published for comment Amendment No. 2 to a New York Stock Exchange LLC ("NYSE") proposal to modify certain pricing limitations for securities listed on the NYSE pursuant to a Primary Direct Floor Listing. Amendment No. 2 to SR-NYSE-2022-14 replaces SR-NYSE-2022-14 and Amendment No 1 thereto as originally filed and supersedes such filings in their entirety. The NYSE proposes to modify the Price Range Limitation, the price range specified by the company in its effective registration statement, such that a Direct Listing Auction for a Primary Direct Floor Listing could proceed if the Auction Price is at or above the price that is 20% below the lowest price of the Issuer Price Range, price range established by the issuer in its effective registration statement, and at or below the price that is 80% above the highest price of such price range. In such cases (whether the Auction Price is lower or higher than the Issuer Price Range), the company must have, in its effective registration statement, specified the quantity of shares registered, as permitted by Rule 457 of the Securities Act of 1933. When the Auction Price is outside of the Issuer Price Range but not more than 20% below such price range and not more than 80% above the highest price of such price range, the Direct Listing Auction would not proceed unless the company has publicly disclosed and certified to the NYSE that (i) the company does not expect that such offering price would materially change the company's previous disclosure in its effective registration statement; (ii) the price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S-K; and (iii) the company's registration statement contains a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering differ from the amount assumed in the price range established by the issuer in its effective registration statement. In addition, if the company's certification submitted to the NYSE includes a price limit that is below the price that is 80% above the highest price of the Issuer Price Range, the Direct Listing Auction would not take place if the Auction Price were determined by the Designated Market Maker ("DMM") to be above such limit. When the Auction Price is outside of the Issuer Price Range (whether it is lower or higher than such price range), the NYSE also proposes to provide the issuer with the opportunity to provide any necessary additional disclosures that are dependent on the price of the offering so that any such disclosures would be available to investors prior to the completion of the offering. Thus, the NYSE proposes that a Direct Listing Auction for a Primary Direct Floor Listing would not take place until the issuer confirms to the NYSE that no additional disclosures are required under federal securities laws based on the Auction Price determined by the DMM. Recognizing the important role of an underwriter in a traditional initial public offering, the NYSE also proposes to require that a company listing securities in connection with a Primary Direct Floor Listing must retain an underwriter with respect to the primary sales of shares by the company and identify the underwriter in its registration statement. To implement the changes to the Price Range Limitation described above, the NYSE also proposes to adopt certain requirements for member organizations with respect to Primary Direct Floor Listings, modify Section 102.01B(E) of the NYSE Listed Company Manual ("NYSE Manual"), and amend Rules 7.31 and 7.35A.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-96272.pdf
Comments Due: December 6, 2022

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NYSE ESTABLISHES INITIAL AND ANNUAL FEES FOR EXCHANGE TRADED PRODUCTS

On November 15, 2022, the SEC published for comment a NYSE proposal, effective upon filling, to establish initial and annual fees for the listing of ETPs on the NYSE by adopting a new Section 902.12 to the NYSE Manual. The proposed changes respond to the current extremely competitive environment for ETP listings in which issuers can readily favor competing venues or transfer their listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The proposed changes are designed to establish a fee structure for the listing of ETPs on the NYSE that would incentivize issuers to list new products and transfer existing products as well as to maintain listings on the NYSE, which will enhance competition both among issuers and listing venues, to the benefit of investors.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-96321.pdf
Comments Due: December 9, 2022

NYSE CHANGES ITS PRICE LIST

On November 18, 2022, the SEC published for comment a NYSE proposal, effective upon filing, to amend its Price List to introduce monthly quoting credits to DMMs in assigned ETPs. Specifically, DMMs quoting 30% or more of the time in a billing month in an ETP assigned to that DMM on the last day of that billing month are eligible for a credit of $4,000 per assigned ETP for that billing month. DMMs quoting less than 30% of the time in a billing month in an ETP assigned to that DMM on the last day of that billing month are eligible for a credit of $2,000 per assigned ETP for that billing month. DMMs would be eligible for the credits for the first 12 months following the listing of the ETP on the NYSE while that ETP is listed on the NYSE. The fee changes were effective November 14, 2022.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-96361.pdf
Comments Due: December 16, 2022

NYSE AMERICAN UPDATES REIMBURSEMENT SCHEDULE FOR FORWARDING PROXY AND ISSUER MATERIAL

On November 10, 2022, the SEC published for comment a NYSE American LLC ("NYSE American") proposal, effective upon filling, that amends NYSE American Rules 576, 585, 451 - Equities and 465 - Equities, and the related provisions of Section 722 of the NYSE American Company Guide (the "Company Guide"), to provide a schedule for the reimbursement of expenses by issuers to NYSE American member organizations for the processing of proxy materials and other issuer communications provided to investors holding securities in street name. The amendments to Rules 576, 585, 451 - Equities and 465 - Equities and Section 722 of the Company Guide conform NYSE American's reimbursement schedule to one previously adopted by the NYSE. The NYSE adopted the changes to its reimbursement schedule upon the recommendation of the Proxy Fee Advisory Committee which was formed in 2010 to review the then-existing fee structure and report its findings to the NYSE.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-96296.pdf
Comments Due: December 7, 2022

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NYSE AMERICAN AMENDS OPTIONS FEE SCHEDULE CONCERNING OPTIONS REGULATORY FEE

On November 22, 2022, the SEC published for comment a NYSE American proposal, effective upon filling, which amends the NYSE American Options Fee Schedule ("Fee Schedule") regarding the Options Regulatory Fee ("ORF"), effective November 14, 2022. NYSE American amends the Fee Schedule to (1) waive the ORF for the period November 1, 2022, through January 31, 2023; (2) eliminate the requirement that the NYSE American may only modify the ORF semi-annually; and (3) delete outdated language relating to the ORF for August 30, 2019.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-96373.pdf
Comments Due: December 20, 2022

LONGER SEC ACTION PERIOD FOR OCC PROPOSAL CONCERNING RISK MANAGEMENT FRAMEWORK AND POLICY

On November 8, 2022, the SEC published a notice designating a longer period to approve, disapprove, or institute proceedings on an Options Clearing Corporation ("OCC") proposal to replace OCC's current Risk Management Framework Policy with two new documents: a Risk Management Framework as well as a Corporate Risk Management Policy. The Commission has not received comments regarding the proposal. To provide sufficient time to consider the proposal the SEC designates December 25, 2022 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR-OCC-2022-010.

Notice Release: https://www.sec.gov/rules/sro/occ/2022/34-96275.pdf

MSRB EXTENDS REMOTE OFFICE INSPECTIONS

On November 17, 2022, the SEC published for comment a Municipal Securities Rulemaking Board ("MSRB") proposal, effective upon filling, that amends Supplementary Material .01, Temporary Relief for Completing Office Inspections, of MSRB Rule G-27, on supervision, to further extend the current regulatory relief and permit brokers, dealers and municipal securities dealers to conduct office inspections, due to be completed during calendar year 2023, remotely, through June 30, 2023. The operative date of the rule change is January 1, 2023.

Notice Release: https://www.sec.gov/rules/sro/msrb/2022/34-96346.pdf
Comments Due: December 14, 2022

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MSRB ENDS TEMPORARY REGULATORY RELIEF ON PROFESSIONAL QUALIFICATION REQUIREMENTS

On November 17, 2022, the SEC published for comment a MSRB proposal, effective upon filling, that amends Rule G-3, regarding professional qualification requirements, to delete references to certain temporary regulatory relief implemented during the height of the coronavirus disease. The MSRB rule change becomes operative on December 27, 2022 and aligns with the provision of allowing 120 days from August 29, 2022, the expiration date of the temporary regulatory relief under Supplementary Material .10 through .12 and .14 under Rule G-3, for individuals to meet their regulatory obligations related to professional qualification requirements. Thus, upon the operative date of December 27, 2022, the expired regulatory relief will be deleted from MSRB Rule G-3.

Notice Release: https://www.sec.gov/rules/sro/msrb/2022/34-96348.pdf
Comments Due: December 14, 2022

DTC PROPOSES CHANGE TO CLEARING AGENCY LIQUIDITY RISK MANAGEMENT FRAMEWORK

On November 2, 2022, the SEC published for comment a Depository Trust Company ("DTC") proposal to amend the Clearing Agency Liquidity Risk Management Framework ("Framework") of DTC and its affiliates, Fixed Income Clearing Corporation ("FICC") and National Securities Clearing Corporation ("NSCC"). Specifically, the proposed rule changes would (1) add a new section describing the process by which FICC would designate uncommitted liquidity resources as qualifying liquid resources ("QLR"); (2) clarify that FICC may have access to liquidity resources that are not designated as QLR; (3) delete the stand-alone section on due diligence and testing of liquidity providers, and instead add due diligence and testing descriptions where each liquidity resource is described or state where testing is not performed, as applicable; (4) clarify the description of FICC's QLR; (5) clarify the description of NSCC's and DTC's QLR to add language to reflect NSCC's and DTC's current due diligence and testing processes for their committed line of credit and make a correction to the description of DTC's Collateral Monitor; and (6) make technical changes.

Notice Release: https://www.sec.gov/rules/sro/dtc/2022/34-96211.pdf
Comments Due: November 29, 2022

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DTC AMENDS STRESS TESTING AND LIQUIDITY RISK MANAGEMENT FRAMEWORK

On November 17, 2022, the SEC issued an order granting approval of the DTC, FICC, and NSCC (each a "Clearing Agency," and collectively, the "Clearing Agencies") proposed rule changes (SR-DTC-2022-006, SR-FICC-2022-004, and SR-NSCC-2022-006) filed with the SEC (the "Proposed Rule Changes") to amend the Stress Testing Framework ("ST Framework") and Liquidity Risk Management Framework (LRM Framework") adopted by the Clearing Agencies, as well as to update the FICC Mortgage-Backed Securities Division ("MBSD") Rules. First, the rule change amends 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. In connection with this change, the Clearing Agencies are also recategorizing the liquidity stress scenarios by removing the Level 1, Level 2 and Level 3 labels and instead categorizing all stress scenarios as either regulatory or informational. Second, the changes amend the ST Framework to (1) enhance stress testing for the Government Securities Division ("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 MBSD; (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 the statements in the ST Framework. Third, the changes amend the LRM Framework to update and clarify statements in the LRM Framework. Fourth, the changes amend the MBSD Rules to remove duplicative disclosures regarding the stress testing program.

Approval Order: https://www.sec.gov/rules/sro/dtc/2022/34-96345.pdf

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Notable Enforcement Actions

This month's enforcement actions highlight regulatory requirements relating to the monitoring of electronic communications (text messages), Regulation SHO Fails to Deliver, outside business activities, customer statements, and potentially suspicious activity tailored to firms' anti-money laundering programs. The anti-money laundering actions highlight deficiencies relating to the use of exception reports and written procedures that fail to adequately direct supervisors.

A firm was censured, fined $1,500,000 and required to certify that it has revised its supervisory systems, policies, procedures, and trainings related to its compliance with Section 17(a) of the Exchange Act, Rule 17a-4 thereunder, and FINRA Rules 4511, 3110(a) and (b), and 2241(b)(1) and (b)(2)(G). Additionally, the head of investment banking and president, and the director of research were each fined $15,000 and suspended from association with any FINRA member in all capacities for 30 days. The findings stated that firm employees, including the president and director of research, communicated about firm business through text messages using their personal cell phones. These text messages included communications between firm employees, as well as with third parties, including issuers and firm clients. The firm did not obtain or preserve copies of these communications at the times they were exchanged and the firm's failure to preserve business related communications sent outside of its approved communications platforms prevented FINRA from fully investigating matters in two of its investigations. The findings also stated that the firm failed to reasonably supervise its employees' business-related text messages and its employees' email communications. The firm's written supervisory procedures ("WSPs") did not require a review of text messages. Although the firm's management knew that firm employees were using text messaging for business-related communications, the firm did not take reasonable steps to enforce its WSPs prohibiting the use of text messaging for such communications. Further, the firm failed to designate who would conduct and supervise the reviews of email communications, when the reviews were to be conducted, what the reviewers would be reviewing for, and how and under what circumstances any potentially concerning email should be escalated by the reviewer to a supervisor. As a result, the firm reviewed a small percentage of the emails and did not, in many instances, conduct the review until more than a year after an email was sent or received, and elevated a de minimis number of emails for supervisory review. The findings also included that the firm failed to enforce its written policies prohibiting business-related written communications, and unchaperoned business-related telephone communications between research and non-research personnel, breaching the firm's information barrier. **(FINRA Case #2017055977301)**
https://www.finra.org/sites/default/files/fda_documents/2017055977301%20H.C.%20Wainwright%20%26%20Co.%2C%20LLC%20CRD%20375%20John%20Wesley%20Chambers%20CRD%201863864%20Robert%20Eugene%20Kristal%20CRD%204269940%20AWC%20va%20%282022-1666570801275%29.pdf

A firm was censured, fined a total of $900,000, of which $450,000 is payable to FINRA and required to certify that its supervisory systems and written procedures are reasonably designed to achieve compliance with Rules 204(a) and (c) of Regulation SHO of the Exchange Act. The findings stated that the firm failed to timely close out fail to deliver ("FTD") positions due to the firm failing to timely borrow shares, recall shares that were out on loan or otherwise acquire shares and deliver them in accordance with the requirements of Rule 204(a). In addition, on certain occasions, the firm failed to place a security in which it had failed to obtain a close-out into the penalty box, as required by Rule 204(b) and to send the notice that the firm had a position in any equity security that had not been closed out, as required by Rule 204(c). The findings also stated that the firm failed to establish and maintain a supervisory

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system, including WSPs, reasonably designed to achieve compliance with Rules 204(a) and (c). The firm's system for complying with Rule 204(a) first relied on an automated in-house system to attempt to borrow or recall shares necessary to effectuate a close-out, and then, when the firm did not obtain such shares, on a manual process to obtain the shares. However, the firm's WSPs included only summary instructions to close out FTDs and failed to offer reasonable guidance on the steps that firm staff needed to take to execute buy-ins if the automated process did not result in closing an FTD. The firm also failed to effectively delegate responsibility for ensuring that it was closing out each FTD. The firm was on notice that its process for closing out FTDs was unreasonable because in prior FINRA exams, FINRA identified FTDs to the firm that were not properly closed out, which the firm acknowledged, but the firm failed to institute effective remedial measures to its supervisory system in response to these red flags. In addition, the firm did not maintain any WSPs for complying with Rule 204(c). **(FINRA Case #2019061872201)**
https://www.finra.org/sites/default/files/fda_documents/2019061872201%20Wedbush%20Securities%2C%20Inc.%20CRD%20877%20AWC%20lp%20%282022-1666916413754%29.pdf

Two firms were censured, fined, jointly and severally, a total of $850,000, of which $95,625 is payable to FINRA and required to retain an independent consultant to conduct a comprehensive review of the reasonableness of the firms' policies, systems, procedures (written and otherwise), and training relating to their compliance with FINRA Rules 3310(a) and 2010 and Exchange Act § 15(c)(3) and Rules 15c3-5(b) and (c) thereunder. The two firms failed to develop and implement an Anti-Money Laundering ("AML") program reasonably designed to achieve and monitor the firms' compliance with the Bank Secrecy Act and the implementing regulations thereunder. The firms did not establish and implement policies and procedures tailored to their business, which could be reasonably expected to detect and cause the reporting of suspicious activity arising from transactions and money movements in domestic and foreign-based retail accounts. The firms' written AML procedures were not reasonably designed for the surveillance of potentially suspicious trading and money movements in customer accounts. Although the firms' written procedures identified exception reports for them to use to assist with identifying suspicious activity, the procedures did not describe how supervisors should use these reports, or what activity should trigger further action by supervisors or the firms. Further, the firms relied almost exclusively on a manual review of the daily trade blotter and money movement reports to identify suspicious trading. This was unreasonable given the volume and complexity of trading by the firms' customers and because the blotter did not reflect patterns of trading across accounts or across multiple days. The findings also stated that the firms failed to dedicate sufficient resources to the review of the alerts, did not investigate the activity that generated certain categories of alerts because the firms unreasonably concluded that these types of alerts did not indicate potentially manipulative activity and relied on a manual review of data to detect whether alerts regarding potentially manipulative trading reflected a broader pattern of manipulation by certain traders. Additionally, one firm failed to establish reasonable market access controls and procedures. The findings stated the firm did not implement any erroneous order controls that took into account the individual characteristics of a security, such as an average daily trading volume control, and did not review the reasonableness of its erroneous order controls on a regular basis. **(FINRA Case #2019061702701)**
https://www.finra.org/sites/default/files/fda_documents/2019061702701%20Vision%20Financial%20Markets%2C%20LLC%20CRD%2047927%20AWC%20gg%20%282022-1665966012625%29.pdf

A firm was censured and fined a total of $500,000, of which $120,298 is payable to FINRA, for failing to

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submit, submitting untimely, and/or submitting inaccurate and/or incomplete restricted period notifications and/or trading notifications with FINRA. The findings stated that those notifications, among other things, failed to identify all of the syndicate members participating in relevant offerings. The findings also stated that as a result, the firm failed to establish and maintain a system to supervise, including WSPs, reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Specifically, the firm's system was not reasonably designed to verify the accuracy of certain elements of Regulation M filings. **(FINRA Case #2018056929901)**
https://www.finra.org/sites/default/files/fda_documents/2018056929901%20Morgan%20Stanley%20%26%20Co.%2C%20LLC%2C%20CRD%208209%20AWC%20gg%20%282022-1667002806220%29.pdf

A firm was censured, fined $450,000 and prohibited from providing market access to customers for two years and engaging in any business in which the firm provides market access to customers unless and until it certifies that it revised and enhanced its AML and supervisory procedures related to detecting and investigating suspicious trading activity and potential market manipulation. The findings stated that the firm's AML procedures did not identify any types of manipulative trading, such as wash trades, matched orders, spoofing, or layering, and the procedures did not describe how the firm would detect manipulative trading. In addition, the firm never created parameters, including for trade review and wire transfers, to determine whether a transaction lacks financial sense or is suspicious because it is an unusual strategy for that customer, and the procedures did not describe how any parameters should be set. Further, the firm's AML procedures did not identify any exception reports to detect unusual transactions, did not describe how supervisors should use an any reports, or what activity should trigger further action by supervisors or the firm. Moreover, the firm did not use any exception reports or automated tools to detect suspicious activity, such as cancelled orders, patterns of trading across accounts or multiple days, coordinated trading, trading resulting in losses that might indicate a lack of rational economic motive, and other indicia of common forms of market manipulation. The findings also stated that the firm failed to implement its Customer Identification Program ("CIP") with respect to retail and institutional customer accounts located in foreign jurisdictions. The firm only collected basic information such as customer names, telephone numbers, addresses, and government-issued identifications, and conducted an Office of Foreign Assets Control check when opening accounts. The firm failed to implement its CIP for at least four individual customers located in China and for a customer located in a jurisdiction that the U.S. designated as a major money laundering jurisdiction. In addition, the firm failed to reasonably address the potential market manipulation that was brought to its attention by FINRA and the firm's routing and clearing broker. This included the firm unreasonably relying on unverified representations from the customer about its steps to prevent potential market manipulation in the future. FINRA found that the firm failed to preserve and maintain certain instant messages and email communications of its registered representatives in violation of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder. The representatives used an instant messaging service to communicate with each other and another firm regarding securities-related business. The representatives also used their personal email addresses to discuss securities-related firm business with the other firm. In addition, one of the firm's representatives used a non-firm email address that the company provided to him to communicate with the other firm. **(FINRA Case #2019062623001)**
https://www.finra.org/sites/default/files/fda_documents/2019062623001%20MM%20Global%20Securities%2C%20Inc.%20CRD%202509%20AWC%20gg%20%282022-1665361195368%29.pdf

A firm was censured, fined $200,000 and required to certify that it has implemented supervisory

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procedures and WSPs reasonably designed to achieve compliance with FINRA rules. Between July 2017 and December 2021, the firm sent approximately 25,000 customers approximately 56,000 account statements containing inaccurate information about their cash balances and securities holdings in violation of FINRA Rules 2210(d)(1)(B) and 2010. During the same period, in addition to inaccurate account statements, the firm also maintained internal books and records that contained inaccurate information about customers' securities holdings and cash balances in violation of FINRA Rules 4511 and 2010. Additionally, throughout the period, the firm failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA Rules 2210 and 4511 in violation of FINRA Rules 3110 and 2010. The firm's written procedures did not identify the criteria to be used to select statements for review or the steps to be taken to identify and correct inaccurate information. The firm was aware that it was continuing to provide certain customers with inaccurate account statements, but it did not conduct additional reviews. Further, when the firm completed certain steps to enhance its procedures, it continued to issue account statements to customers containing inaccurate cash balances and inaccurately stating that customers' accounts contained negative balances of ETF shares. **(FINRA Case #2019064308401)**
https://www.finra.org/sites/default/files/fda_documents/2019064308401%20Acorns%20Securities%2C%20LLC%20CRD%20168172%20AWC%20va%20%282022-1664814460900%29.pdf

A firm was censured, fined $50,000 and ordered to retain an independent consultant to conduct a comprehensive review of the reasonableness of the firm's policies, systems, procedures (written and otherwise), and training related to compliance with FINRA Rule 3310 and the requirements of the Bank Secrecy Act and regulations promulgated thereunder for monitoring, identifying, investigating, documenting, and responding to red flags of suspicious trading activity and potential market manipulation. They failed to develop and implement an AML compliance program reasonably designed to detect and report suspicious transactions. The findings stated that the firm lacked reasonable written AML procedures for the surveillance of potentially suspicious transactions in customer accounts. The firm's written AML procedures failed to identify the need to monitor for sustained customer trading activity representing a significant portion of the daily trading volume in a thinly-traded or low-priced security, and customer trading activity with no discernable purpose or that appears to lack business sense. The AML procedures also failed to describe how supervisors were supposed to conduct their monitoring or the frequency of such monitoring. In addition, the written AML procedures did not contain any other information about documenting the investigation of potentially suspicious trading activity. Moreover, the firm's manual review of the daily trade blotter to monitor for suspicious trading activity was unreasonable because it did not reflect patterns of trading across accounts or across multiple days. In addition, the firm's new set of exception reports that related to monitoring for suspicious trading only alerted it to evidence of marking the open, marking the close and suspicious order cancellations. The firm had no exception reports to alert it to evidence of other forms of suspicious and potentially manipulative trading. Further, the firm's written AML procedures did not contain any reference to these new exception reports or provide any information about how they should be used. The findings also stated that the firm failed to reasonably detect, investigate, and respond to potentially suspicious transactions by a corporate customer. **((FINRA Case #2019062351401)**
https://www.finra.org/sites/default/files/fda_documents/2019062351401%20Glendale%20Securities%2C%20Inc.%20CRD%20123649%20AWC%20lp%20%282022-1665361194685%29.pdf

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A firm was censured, fined $35,000 and ordered to pay $51,830.24, plus interest, in restitution to customers for failing to establish and maintain a reasonable supervisory system and failing to establish, maintain, and enforce WSPs reasonably designed to supervise unsuitable trading on margin. The findings stated that the firm's first line supervisors were not responsible for reviewing new account documents or approving margin or options accounts, and the firm's transaction review system did not provide first line supervisors any indication of whether transactions were done on margin. Further, although the firm ran a quarterly surveillance report, which alerted the surveillance department to margin accounts with high debit balances, significant margin interest, and high commissions, among other potential red flags, the surveillance department failed to reasonably review and resolve these alerts in connection with at least two senior customer accounts. **(FINRA Case #2019061612601)**
https://www.finra.org/sites/default/files/fda_documents/2019061612601%20SagePoint%20Financial%2C%20Inc.%20CRD%20133763%20AWC%20va%20%282022-1665361195661%29.pdf

A firm was censured, fined $30,000 and required to revise its WSPs for failing to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA Rule 2121. The findings stated that registered representatives at the firm bought and sold in excess of $161 million of inverse floating rate collateralized mortgage obligations, which they sold to institutional customers. The firm failed to apply the criteria of FINRA Rule 2121.01 to the representatives' sales of inverse floaters. Instead, the firm reviewed the markups and markdowns of the inverse floaters only to verify that they were five percent or below. The firm did not conduct a review of the rule factors for the markups and markdowns it charged in each of these transactions. By failing to conduct a fair pricing analysis, the firm failed to reasonably determine whether the inverse floater transactions were priced fairly. **(FINRA Case #2019061634801)**
https://www.finra.org/sites/default/files/fda_documents/2019061634801%20Crescent%20Securities%20Group%2C%20Inc.%20CRD%20114993%20AWC%20gg%20%282022-1666830010932%29.pdf

A firm was censured and fined $30,000 for failing to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to ensure it evaluated whether its registered persons' proposed outside business activities ("OBAs") constituted outside securities activities. The finding stated that the firm knew that two of its registered representatives were engaged in OBAs that involved investment funds and private placement offerings, but it did not evaluate whether the activity constituted an outside securities activity. The registered persons submitted OBA forms disclosing their ownership and management of investment funds that were actively involved in private placement offerings. As owners of the funds' managers, the registered persons were entitled to and received a management fee. The finding stated that the firm knew that two of its registered representatives were engaged in OBAs that involved investment funds and private placement offerings, but it did not evaluate whether the activity constituted an outside securities activity. Although the firm understood that the registered persons' OBAs involved private placement offerings and were investment-related, it failed to evaluate whether the proposed activities would interfere with or otherwise compromise the registered persons' responsibilities to the firm or the firm's customers or be viewed as part of the firm's business. The firm also failed to evaluate whether the registered persons' outside activities with the funds should be restricted or prohibited, or whether the funds should have been treated as outside securities activity and any transactions recorded on the firm's books and records. The firm's failure to evaluate whether the funds should have been subject to the requirements of FINRA Rule 3280 allowed the registered

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persons to raise funds from individual investors, none of whom were firm customers. **(FINRA Case #2022075812301)**
https://www.finra.org/sites/default/files/fda_documents/2022075812301%20IBN%20Financial%20Services%2C%20Inc.%20CRD%2042360%20AWC%20lp%20%282022-1666398012890%29.pdf

A firm was censured and fined $25,000 for failing to submit options orders with accurate origin codes. The findings stated that because the firm was not a member of options exchanges, it contracted with and routed customer options orders to third-party broker-dealers that would then route those orders to options exchanges for execution. For each options order it routed to third-party broker-dealers, the firm used an origin code indicating, among other things, whether the order originated from a Customer or a Professional Customer. The exchanges used the origin codes to prioritize and match orders, and to calculate fees. The firm submitted options orders for two customer accounts that had incorrect origin codes to one of the third-party broker-dealers with which it had contracted. The options orders incorrectly stated that the orders originated from Customers, even though the customers were in fact Professional Customers at the time of the orders. The inaccurate origin codes were caused by a computer coding error in the firm's order routing system. The firm maintained written procedures requiring it to conduct quarterly reviews to determine whether it was using accurate origin codes on its options orders. However, the firm's origin code reviews were limited to determining whether customers who qualified as Professional Customers were properly categorized in the firm's systems. The firm's origin code reviews did not encompass its order routing system or a review of executed trades to ensure that orders the firm submitted to other broker-dealers for execution contained accurate origin codes. After FINRA contacted the firm about the matter, it revised its relevant supervisory procedures. **(FINRA Case #2019061928701)**
https://www.finra.org/sites/default/files/fda_documents/2019061928701%20Lightspeed%20Financial%20Services%20Group%20LLC%20CRD%20104369%20AWC%20lp%20%282022-1667175599209%29.pdf

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