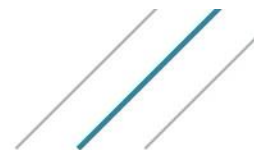


SECURITIES OPERATIONS

REGULATORY UPDATE



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February 1, 2023

For more information please contact info@mediantonline.com

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Take Action Now

2023 Report on FINRA’s Examination and Risk Monitoring Program

The Financial Industry Regulatory Authority (“FINRA”) has published the 2023 Report on its Examination and Risk Monitoring Program (“the Report”). FINRA’s intent is that the Report be an up-to-date, evolving resource or library of information for member firms. To that end, the Report builds on the structure and content in the 2021 and 2022 Reports by adding new topics (e.g., Fixed Income Fair Pricing, Manipulative Trading) for 2023 and new material (e.g., findings, effective practices) to existing sections where appropriate.

The Report provides member firms with insight into findings from the recent oversight activities of FINRA’s Member Supervision, Market Regulation and Enforcement programs (collectively, regulatory operations programs). The Report also provides greater transparency to member firms and the public about FINRA’s regulatory activities and the increasing integration among FINRA’S regulatory operations programs. The integrated approach is intended to increase the Report’s utility for member firms as an information source they can use to strengthen their compliance programs. This year’s Report adds three new topics in the Market Integrity section. Additionally, the Report introduces a new Financial Crimes section, consisting of three topics—Anti-Money Laundering, Fraud and Sanctions; Cybersecurity and Technological Governance; and Manipulative Trading. For each topic covered, the Report:

- identifies the relevant rule(s);
- highlights key considerations for member firms’ compliance programs;
- summarizes noteworthy findings or observations from recent oversight activities;
- outlines effective practices that FINRA observed through its oversight activities; and
- provides additional resources that may be helpful to member firms in reviewing their supervisory procedures and controls, and fulfilling their compliance obligations.

2023 Report on FINRA’s Examination and Risk Monitoring Program:

<https://www.sec.gov/rules/proposed/2022/34-96495.pdf>

Press Release: <https://www.finra.org/rules-guidance/guidance/reports/2023-finras-examination-and-risk-monitoring-program>

Regulatory Actions

On January 6, 2023, the U.S. Securities and Exchange Commission (“SEC” or the “Commission”) published a notice (“Notice”) pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “Act”). The Act requires the SEC to annually adjust for inflation the civil monetary penalties that can be imposed under the statutes administered by the Commission and publish the adjusted amounts in the Federal Register. The amounts included in the Notice are effective beginning on January 15, 2023 and will apply to all penalties imposed after that date for violations that occurred after November 2, 2015.

Final Rule: <https://www.sec.gov/rules/final/2023/33-11143.pdf>

Effective Date: January 15, 2023

On January 23, 2023, the SEC announced that, effective February 27, 2023, the annually adjusted fee rates applicable under Sections 31(b) and (c) of the Securities Exchange Act of 1934 shall be \$8.00 per million dollars for covered sales occurring on charge dates on or after that date. Self-regulatory organizations will continue to pay the Commission a rate of \$22.90 per million dollars through February 26, 2023.

SEC Order: <https://www.sec.gov/rules/other/2023/34-96724.pdf>

Press Release: <https://www.sec.gov/news/press-release/2023-15>

On January 25, 2023, the SEC published for comment a proposed rule to implement Section 27B of the Securities Act of 1933, a provision added by Section 621 of the Dodd-Frank Act. The rule is intended to prevent the sale of asset-backed securities (“ABS”) that are tainted by material conflicts of interest. Specifically, the rule would prohibit securitization participants from engaging in certain transactions that could incentivize a securitization participant to structure an ABS in a way that would put the securitization participant's interests ahead of those of ABS investors.

SEC Proposed Rule: <https://www.sec.gov/rules/proposed/2023/33-11151.pdf>

Press Release: <https://www.sec.gov/news/press-release/2023-17>

Fact Sheet: <https://www.sec.gov/files/33-11151-fact-sheet.pdf>

On January 3, 2023, FINRA published Regulatory Notice 23-01 to assist firms with their review of their Final Statements to confirm or reconcile the actual renewal fees broker-dealer and investment advisor firms owe after January 1, 2023. The deadline to remit payment for any additional amounts owed and to report any discrepancies to FINRA is January 27, 2023.

Regulatory Notice 23-01: <https://www.finra.org/rules-guidance/notices/23-01>

On January 18, 2023, the SEC announced that it had designated a longer period for action on a proposal by FINRA to adopt rules regarding the disclosure of order routing information for National Market System (“NMS”) securities (Rule 6151) and Over-the-Counter (“OTC”) equity securities (Rule 6470). The SEC designated March 6, 2023 as the date by which the Commission shall either approve or disapprove, or institute proceedings on the proposed rule change.

Notice Release: <https://www.sec.gov/rules/sro/finra/2023/34-96699.pdf>

On January 18, 2023, FINRA published Regulatory Notice 23-02 announcing that it had adopted amendments to Rule 2231 (Customer Account Statements) to add eight new supplementary materials. The changes become effective on January 1, 2024.

Regulatory Notice 23-02: <https://www.finra.org/rules-guidance/notices/23-02>

Effective Date: January 1, 2024

Amended Rule Text: <https://www.finra.org/sites/default/files/2023-01/Regulatory-Notice-23-02-Attachment-A.pdf>

On January 4, 2023, the SEC published for comment a Nasdaq Stock Market LLC (“Nasdaq”) proposal to amend Rules 4702(b)(14) and (15) of the Nasdaq Rulebook to replace the static 10 millisecond holding period requirements for its Midpoint Extended Life Order and Midpoint Extended Life Order Plus Continuous Book Order Types with dynamic holding periods.

Notice Release: <https://www.sec.gov/rules/sro/nasdaq/2023/34-96600.pdf>

On January 5, 2023, the SEC published for comment a Nasdaq proposal to amend Rule 4702(b) to establish Contra Midpoint Only and Contra Midpoint Only with Post-Only as new Order Types.

Notice Release: <https://www.sec.gov/rules/sro/nasdaq/2023/34-96601.pdf>

On January 10, 2023, the SEC published for comment, and granted immediate effectiveness to, a New York Stock Exchange LLC (“NYSE”) proposal to amend its price list to: 1) extend a fee waiver for new firm application fees for applicants seeking only to obtain a bond trading license (“BTL”) for 2023; and 2) waive the BTL fee for 2023. NYSE proposes to implement the fee changes effective January 3, 2023.

Notice Release: <https://www.sec.gov/rules/sro/nyse/2023/34-96622.pdf>

Comments Due: February 7, 2023

On January 11, 2023, the SEC published for comment, and granted immediate effectiveness to, a NYSE proposal to amend its price list with respect to certain regulatory fees related to the Central Registration Depository that are collected by FINRA. NYSE proposes to implement the fee changes effective January 3, 2023.

Notice Release: <https://www.sec.gov/rules/sro/nyse/2023/34-96636.pdf>

Comments Due: February 8, 2023

On January 18, 2023, the SEC published for comment, and granted immediate effectiveness to, a NYSE proposal to amend Rules 9132, 9133, 9135, 9146, 9522, 9524, 9559 and 9630 to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings, in conformity with recent changes by FINRA.

Notice Release: <https://www.sec.gov/rules/sro/nyse/2023/34-96688.pdf>

Comments Due: February 14, 2023

On January 18, 2023, the SEC published for comment, and granted immediate effectiveness to, a NYSE proposal to modify Rule 7.31 regarding Mid-Point Liquidity Orders with an Immediate-or-Cancel (“MPL-IOC”) Modifier to permit MPL-IOC Orders to be entered in any size. Because of the technology changes associated with this proposed rule change, the NYSE will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be in the first quarter of 2023.

Notice Release: <https://www.sec.gov/rules/sro/nyse/2023/34-96701.pdf>

Comments Due: February 14, 2023

On January 19, 2023, the SEC published for comment, and granted immediate effectiveness to, a NYSE proposal to amend Rule 7.31(i)(2) to enhance the NYSE’s existing Self Trade Prevention (“STP”) modifiers. Specifically, the NYSE proposes to allow member organizations the option to apply STP modifiers to orders submitted not only from the same Market Participant Identifier (“MPID”), as the rule currently provides, but also to orders submitted from 1) the same sub-identifier of a particular MPID; 2) other MPIDs associated with the same Client ID (as designated by the member organization); and 3) affiliates of the member organization.

Notice Release: <https://www.sec.gov/rules/sro/nyse/2023/34-96714.pdf>

Notable Enforcement Actions

This month's regulatory actions highlight firms' misreporting of market information to regulators and the public.

FINRA censures and fines firm \$850,000 for [negligently misrepresenting](#) the default status of bonds on customer account statements.

FINRA censures and fines firm \$675,000 for [failing to timely and accurately report transactions](#) to FINRA's Trade Reporting and Compliance Engine.

FINRA censures and fines firm \$375,000 for [misreporting the covered quantity](#) of OTC short positions to the Large Options Position Report.

FINRA censures and fines firm \$175,000 due to [overstating its daily trading volume](#) advertised through a private subscription-based provider of market data.

FINRA censures and fines firm \$100,000 for [publishing inaccurate reports](#) of its routing of non-directed orders in NMS securities.

FINRA censures and fines firm \$50,000 for [accepting expiring option exercise instructions](#) after the exercise cut-off time.

FINRA censures and fines firm \$35,000 for [failing to establish, maintain and enforce a supervisory system](#), including written supervisory procedures, reasonably designed to achieve compliance with the suitability requirements of FINRA Rule 2111 as they pertain to margin use.