

# SECURITIES OPERATIONS

REGULATORY UPDATE



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## IN THIS ISSUE

<b>Take Action Now</b> .....	2
SEC Adopts Amendments to Rule 10b5-1 Insider Trading Plans .....	3
SEC Reopens Comment Period for Proposed Revisions to Share Repurchase Disclosure Rules .	3
FINRA Requests Comment on Proposed Changes to TRACE Reporting .....	3
FINRA Adopts Amendments to TRACE Rule Governing U.S. Treasury Securities .....	3
FINRA Proposes to Adopt Revisions to Order Routing Disclosure Requirements.....	4
FINRA Modifies TRACE Rule Regarding Dollar-Denominated Foreign Sovereign Debt .....	4
FINRA Reopens Comment Period on TAF Exemption for Proprietary Trading Firms .....	4
SEC Designates Longer Period for Action on Nasdaq Contingent Value Rights Proposal.....	4
NASDAQ Amends Schedule of Credits at Equity 7, Section 118.....	5
NASDAQ Revises Market Maker Rules.....	5
NASDAQ Amends Rule Governing Close Eligible Interest .....	5
NYSE Amends Price List .....	5
<b>Notable Enforcement Actions</b> .....	6

## Take Action Now

### SEC Proposes to Rework Regulation of Order Executions

On December 14, 2022, the U.S. Securities and Exchange Commission (“SEC” or the “Commission”) proposed a series of new rules and amendments that would, if adopted, alter the existing structure of and framework for order executions in the public markets. **The public comment periods for each of the four proposals are open until March 31, 2023.**

Specifically, the SEC proposed Regulation Best Execution, which would establish through SEC rules a best execution regulatory framework for brokers, dealers, government securities brokers, government securities dealers, and municipal securities dealers.

- **Proposed Rule:** <https://www.sec.gov/rules/proposed/2022/34-96496.pdf>
- **Fact Sheet:** <https://www.sec.gov/files/34-96496-fact-sheet.pdf>
- **Press Release:** <https://www.sec.gov/news/press-release/2022-226>

The SEC also proposed amendments that would update the disclosure required under Rule 605 of Regulation National Market System (“NMS”) for order executions in national market system stocks, which are stocks listed on a national securities exchange.

- **Proposed Rule:** <https://www.sec.gov/rules/proposed/2022/34-96493.pdf>
- **Fact Sheet:** <https://www.sec.gov/files/34-96493-fact-sheet.pdf>
- **Press Release:** <https://www.sec.gov/news/press-release/2022-223>

The SEC also proposed to amend certain rules under Regulation NMS to adopt variable minimum pricing increments, or “tick sizes,” for the quoting and trading of NMS stocks, reduce access fee caps for protected quotations, and accelerate the transparency of the best priced orders available in the market.

- **Proposed Rule:** <https://www.sec.gov/rules/proposed/2022/34-96494.pdf>
- **Fact Sheet:** <https://www.sec.gov/files/34-96494-fact-sheet.pdf>
- **Press Release:** <https://www.sec.gov/news/press-release/2022-224>

Finally, the SEC proposed a new rule that would require certain orders of individual investors to be exposed to competition in fair and open auctions before such orders could be executed internally by any trading center that restricts order-by-order competition.

- **Proposed Rule:** <https://www.sec.gov/rules/proposed/2022/34-96495.pdf>
- **Fact Sheet:** <https://www.sec.gov/files/34-96495-fact-sheet.pdf>
- **Press Release:** <https://www.sec.gov/news/press-release/2022-225>

## Regulatory Actions

On December 14, 2022, the SEC adopted amendments to Rule 10b5-1 (Insider Trading Plans) under the Securities Exchange Act of 1934 (“Exchange Act”) and new disclosure requirements, which aim to strengthen investor protections concerning insider trading and to help shareholders understand when and how insiders are trading in securities for which they may at times have material non-public information.

**Final Rule:** <https://www.sec.gov/rules/final/2022/33-11138.pdf>

**Fact Sheet:** <https://www.sec.gov/files/33-11138-fact-sheet.pdf>

**Press Release:** <https://www.sec.gov/news/press-release/2022-222>

**Effective Date:** 60 days after publication in the Federal Register

On December 7, 2022, the SEC reopened the comment period on proposed amendments to revise the disclosure required about an issuer’s repurchases, or buybacks, of its equity securities. The comment period for the proposal was reopened due to the passage of the Inflation Reduction Act of 2022, which imposes upon certain corporations a non-deductible excise tax equal to one percent of the fair market value of any stock of the corporation that is repurchased by the corporation during the taxable year.

**Proposed Rule:** <https://www.sec.gov/rules/proposed/2022/34-96458.pdf>

**Press Release:** <https://www.sec.gov/news/press-release/2022-216>

**Comments Due:** January 11, 2023

On November 29, 2022, the Financial Industry Regulatory Authority (“FINRA”) published Regulatory Notice 22-26 to solicit comment on its proposal to provide additional transparency into delayed U.S. Treasury spot trades in corporate debt securities through FINRA’s Trade Reporting and Compliance Engine (“TRACE”).

**Regulatory Notice 22-26:** <https://www.finra.org/sites/default/files/2022-11/Regulatory-Notice-22-26.pdf>

**Comments Due:** January 30, 2023

On December 1, 2022, FINRA published Regulatory Notice 22-27 announcing that it had adopted amendments to Rule 6730 (Transaction Reporting) to: 1) require members to report transactions in U.S. Treasury securities to TRACE as soon as practicable but no later than 60 minutes from the time of execution; and 2) require members to report electronically executed transactions in U.S. Treasury securities to TRACE in the finest increment captured by the system used to execute the transaction, subject to an exception for members with limited trading volume in U.S. Treasury securities.

**Regulatory Notice 22-27:** <https://www.finra.org/sites/default/files/2022-12/Regulatory-Notice-22-27.pdf>

**Effective Dates:** May 15, 2023

On November 30, 2022, the SEC published for comment a FINRA proposal to adopt FINRA Rule 6151 and FINRA Rule 6470 requiring members to: 1) publish order routing reports for orders in over-the-counter (“OTC”) equity securities; and 2) submit their order routing reports for both OTC equity securities and NMS securities to FINRA for publication on the FINRA website.

**Notice Release:** <https://www.sec.gov/rules/sro/finra/2022/34-96415.pdf>

On December 13, 2022, FINRA published Regulatory Notice 22-27 to announce that it had adopted amendments to its rules governing TRACE to require members to report to TRACE transactions in U.S. dollar-denominated foreign sovereign debt securities.

**Regulatory Notice 22-28:** <https://www.finra.org/sites/default/files/2022-12/Regulatory-Notice-22-28.pdf>

**Effective Date:** November 6, 2023

On December 15, 2022, FINRA published Regulatory Notice 22-30 announcing that it had reopened the comment period for its previous proposal to exempt from FINRA’s Trading Activity Fee transactions by proprietary trading firms on the exchanges of which the firm is a member.

**Regulatory Notice 22-30:** <https://www.finra.org/sites/default/files/2022-12/Regulatory-Notice-22-30.pdf>

**Comments Due:** March 17, 2023

On December 15, 2022, the SEC announced that it had designated a longer period for action on a proposal by the Nasdaq Stock Market LLC (“Nasdaq”) to adopt Nasdaq Listing Rule 5732 to provide listing standards for Contingent Value Rights (“CVRs”) on the Nasdaq Global Market.

**Notice Release:** <https://www.sec.gov/rules/sro/nasdaq/2022/34-96509.pdf>

**Comments Due:** January 11, 2023

On December 8, 2022, the SEC published for comment, and granted immediate effectiveness to, a Nasdaq proposal to amend its schedule of credits at Equity 7, Section 118(a). Specifically, Nasdaq amended its schedule of credits to: 1) add a restriction to and reduce an existing supplemental credit; 2) delete an existing supplemental credit of \$0.0001 currently labeled as “M-ELO Supplemental Credit B”; and 3) make conforming changes to its schedule of credits.

**Notice Release:** <https://www.sec.gov/rules/sro/nasdaq/2022/34-96467.pdf>

On December 15, 2022, the SEC published for comment, and granted immediate effectiveness to, a Nasdaq proposal to update its requirements for market makers at Equity 2 to: 1) amend Section 4 to require a market maker to provide written notice of termination as a market maker; 2) amend Section 11 to require a market maker to provide written notice of withdrawal of its two-sided quotations when terminating its registration in a security and to lower the time period for re-registering in a security; and 3) update Section 5 to eliminate certain provisions that are no longer applicable and to make a clarifying amendment.

**Notice Release:** <https://www.sec.gov/rules/sro/nasdaq/2022/34-96507.pdf>

**Comments Due:** January 11, 2023

On December 20, 2022, the SEC published for comment, and granted immediate effectiveness, to a Nasdaq proposal to amend Nasdaq Rule 4754(a)(1) to specify that: (1) the system will delay processing any full cancellation request for close eligible interest made during the Nasdaq closing cross until such time as the Nasdaq closing cross concludes, except for securities in a halt or pause; and 2) during a halt or pause, the system will process any cancellation request for close eligible interest made for such halted or paused security during the Nasdaq closing cross.

**Notice Release:** <https://www.sec.gov/rules/sro/nasdaq/2022/34-96542.pdf>

**Comments Due:** January 17, 2023

On December 23, 2022, the SEC published for comment, and granted immediate effectiveness to, a proposal by the New York Stock Exchange LLC (“NYSE”) to amend its price list to: 1) eliminate the underutilized alternative Tier 2 adding credit qualification requirements and the underutilized alternative step up adding Tier 3 credits and requirements; and 2) revise and streamline the supplemental liquidity provider (“SLP”) adding tiers by eliminating and combining the SLP step up tier and incremental tiers and replacing the discount for SLPs that are also designated market makers (“DMMs”) with fixed levels.

**Notice Release:** <https://www.sec.gov/rules/sro/nyse/2022/34-96583.pdf>

**Comments Due:** 21 days after publication in the Federal Register

## Notable Enforcement Actions

*This month's regulatory actions feature a multi-million-dollar SEC complaint involving a front-running scheme, as well as steep fines imposed by FINRA for operational compliance failures.*

SEC uses Consolidated Audit Trail ("CAT") database to [charge two financial services professionals](#) in \$47 million front-running scheme. SEC seeks disgorgement of ill-gotten gains plus interest, penalties, and injunctive relief.

FINRA censures and fines firm over \$1.1 million for [failing to have a qualified and registered principal authorize changes](#) to the account name or designation on equity orders.

FINRA censures and fines firm \$520,000 for [improperly including securities positions of a foreign affiliate](#) when calculating net positions of independent trading units.

FINRA censures and fines firm \$375,000 for [overreporting transactions in U.S. Treasury securities](#) to TRACE.

FINRA censures and fines firm \$360,000 for [failing to have a supervisory system](#), including written supervisory procedures ("WSPs"), reasonably designed to timely review paper statements from employees' outside brokerage accounts.

FINRA censures and fines firm \$300,000 for [overreporting its short interest positions](#).

FINRA censures and fines firm \$100,000 for [inaccurately reporting transactions](#) to TRACE without the required "No Remuneration" indicator.