SECURITIES OPERATIONS

REGULATORY UPDATE

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IN THIS ISSUE

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Gensler Signals Potential SEC Scrutiny of Payment for Order Flow

In a June 8, 2022 speech delivered at the Piper Sandler Global Exchange Conference, Gary Gensler, Chair of the U.S. Securities and Exchange Commission ("SEC" or "Commission"), remarked on several aspects of current equity market structure and advised that the SEC is reviewing how it can "mitigate conflicts [of interest] with respect to payment for order flow and rebates." According to Gensler, "technology has transformed and continues to transform our equity markets." While this has led to "some good things" it has also "led to challenges, including market segmentation, concentration and potential inefficiencies." Gensler went on to state that "there is not a level playing field among different parts of the market: wholesalers, dark pools and lit exchanges. It is not clear…that our current national market system is as fair and competitive as possible for investors." Specific to payment for order flow and rebates, Gensler cited the SEC's 2020 enforcement action against Robinhood Securities LLC as an example of the conflicts of interest presented by the practice and noted that "certain principal trading firms seeking to attract Robinhood's order flow told [Robinhood] that there was a tradeoff between payment for order flow and price improvement for customers." With respect to exchange rebates, Gensler noted that high volume traders are the main beneficiaries of the arrangement and claimed that "retail investors do not directly benefit from rebates." Gensler stated that he has asked SEC staff to review whether exchange fees and rebates should be more transparent, and how those fees might change if the minimum tick size was lowered. Gensler also advised that the SEC is reviewing other areas of equity market structure, including potentially expanding the National Best Bid and Offer ("NBBO") to include odd lots, enhancing the disclosure of order execution quality to allow investors to more easily compare brokers' executions, proposing an SEC rule on best execution, and investigating the competitiveness of retail orders.

- **Chair Gensler Speech:** https://www.sec.gov/news/speech/gensler-remarks-piper-sandler-global-exchange-conference-060822

SEC ADOPTS RULE REQUIRING ELECTRONIC FILING FOR INVESTMENT ADVISERS

On June 23, 2022, the SEC adopted amendments to require certain documents filed by investment advisers, institutional investment managers, and certain other entities to be filed or submitted electronically. The amendments also make technical amendments to modernize Form 13F and enhance the information provided. The amendments are intended to enhance transparency and efficiency by modernizing how information is filed with the SEC and disclosed to the public. Upon effectiveness of the rule, these electronic filings will be more readily accessible to the public and available on websites in easily searchable formats. The SEC noted that electronic filing capabilities have helped address logistical and operational issues raised by the spread of COVID-19. As such, the SEC believes that expanding electronic submission will allow it and SEC filers to navigate more effectively any future disruptive events that make the paper submission process unnecessarily burdensome, impractical, or unavailable. Apart from the amendments to Form 13F, the new rules and form amendments will be effective 60 days after publication in the Federal Register. The amendments to Form 13F will be effective on January 3, 2023.

Final Rule: https://www.sec.gov/rules/final/2022/34-95148.pdf
Fact Sheet: https://www.sec.gov/files/34-95148-fact-sheet.pdf
Gensler Statement: https://www.sec.gov/news/statement/gensler-statement-electronic-filing-requirements-062322
Press Release: https://www.sec.gov/news/press-release/2022-113

SEC REOPENS COMMENT PERIOD REGARDING RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION

On June 8, 2022, the SEC announced that it had reopened the comment period on proposed rules for listing standards for recovery of erroneously awarded compensation. In addition, SEC staff released a memo that contains additional analyses and data that may be informative for evaluating the proposals. Specifically, the staff memo: 1) discusses the increase in voluntary adoption of compensation recovery policies by issuers; 2) provides estimates of the number of additional restatements that would trigger a compensation recovery analysis if the rules were extended to include all required restatements made to correct an error in previously issued financial statements; and 3) briefly discusses some potential implications for the costs and benefits of the proposed rules. The rules were initially proposed by the Commission in July 2015 in order to implement Section 954 of the Dodd-Frank Act. The comment period for the proposal was previously reopened in October 2021 and is now being reopened a second time. The staff memorandum is available for review as part of the public comment file. The public comment period will remain open for 30 days after publication in the Federal Register.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/33-11071.pdf
Comments Due: July 14, 2022
Fact Sheet: https://www.sec.gov/rules/proposed/2021/33-10998-fact-sheet.pdf
SEC Staff Memo: https://www.sec.gov/comments/s7-12-15/s71215-20130560-298718.pdf
Press Release: https://www.sec.gov/news/press-release/2022-103

SEC SEEKS COMMENT ON INFORMATION PROVIDERS ACTING AS INVESTMENT ADVISERS

On June 15, 2022, the SEC announced that it is seeking information and public comment on matters related to the activities of certain "information providers," including whether, under particular facts and circumstances, information providers are acting as "investment advisers" under the Investment Advisers Act of 1940 ("Advisers Act"). The SEC's request focuses on index providers, model portfolio providers, and pricing services. Investment adviser status has regulatory implications, including questions related to registration under the Advisers Act and questions under the Investment Company Act of 1940. Public comment on the matter will facilitate consideration of whether SEC regulatory action is necessary.

Request for Comment: http://www.sec.gov/rules/other/2022/ia-6050.pdf
Comments Due: August 16, 2022
Press Release: https://www.sec.gov/news/press-release/2022-109

SEC ANNOUNCES SPRING 2022 REGULATORY AGENDA

On June 22, 2022, the U.S. Office of Information and Regulatory Affairs released the Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions, which included a list of short-term and long-term regulatory actions that the SEC plans to take. The SEC claimed that the planned rulemakings address each part of the SEC's tripartite mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation. In a statement, SEC Chair Gary Gensler stated that he is driven by two public policy goals regarding the SEC's agenda: "continuing to drive efficiency in our capital markets and modernizing our rules for today's economy and technologies." A review of the list showed 27 potential regulations at the proposed rule stage and 26 at the final rule stage.

2022 SEC Rulemaking List:
https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=ABBAA84824C29E01B566B0472A6E99E59C730916821A14613C79DE7F48AC8EAEF4CA3A7C929E9B10E667F119BAA4958D5293
Press Release: https://www.sec.gov/news/press-release/2022-112

SEC ANNOUNCES NEW MEMBERS OF INVESTOR ADVISORY COMMITTEE

On June 1, 2022, the SEC announced eight new members to its Investor Advisory Committee. The new members are: James Andrus, Interim Managing Investment Director, Board Governance & Sustainability, CalPERS; Gina-Gail S. Fletcher, Professor of Law, Duke Law School; Colleen Honigsberg, Associate Professor of Law, Stanford Law School; Christine M. Lazaro, Professor of Clinical Legal Education, St. John's University School of Law; Of Counsel, Law Offices of Brent A. Burns LLC; Andrew Park, Senior Policy Analyst – Hedge Funds and Private Equity, Americans for Financial Reform; Dr. David L. Rhoiney, Staff General Surgeon, U.S. Navy; Paul F. Roye, Retired, Former Senior Vice President and Senior Counsel, Fund Business Management Group, Capital Research and Management Company; Brian L. Schorr, Partner and Chief Legal Officer, Trian Fund Management L.P. The new members will serve 4-year terms.

Press Release: https://www.sec.gov/news/press-release/2022-96

SEC TO REVIEW CERTAIN RULES PURSUANT TO REGULATORY FLEXIBITY ACT

On June 17, 2022, the SEC published a list consisting of three rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act ("RFA"). The RFA requires a U.S. government agency to review its rules that have a significant economic impact upon a substantial number of small entities within 10 years of the publication of such rules as final rules. The SEC's list was published to provide the public with notice that these rules are scheduled for SEC review and to invite public comment on whether the rules should be continued without change or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities. Specifically, the three rules are: 1) *Purchase of Certain Debt Securities by Business and Industrial Development Companies Relying on an Investment Company Act Exemption;* 2) *Conflict Minerals;* and 3) *Listing Standards for Compensation Committees.* All of the rules were adopted in 2012. The SEC stated in its notice filing that these rules may have a significant economic impact on a substantial number of small entities. Where the SEC has previously decided on a rule's impact on small businesses, that determination is noted within the list. The SEC also stated that it is particularly interested in public comments regarding whether any of the three rules affect small businesses in new or different ways than when they were first adopted.

Notice Release: https://www.sec.gov/rules/other/2022/33-11073.pdf
Comments Due: August 23, 2022

DIRECTOR RICK FLEMING TO LEAVE SEC

On May 27, 2022, the SEC announced that, effective July 1, 2022, Rick Fleming, Director of the SEC's Office of the Investor Advocate, would leave the agency. Fleming, known as the SEC's "Investor Advocate" was appointed to the position in February 2014 and was the first director in the newly created Office of the Investor Advocate. Fleming built the office into a key resource for the SEC to assist retail investors in their interactions with the Commission and self-regulatory organizations ("SROs"), analyze the impact on investors of proposed rules and regulations, identify problems that investors have with financial service providers and investment products, and propose legislative or regulatory changes. In addition, Fleming introduced a new program to utilize surveys and other research methods to help the SEC understand the needs of investors. Prior to joining the SEC, Fleming spent 15 years as a state securities regulator, including more than a decade as General Counsel for the Office of the Kansas Securities Commissioner. The SEC Chair and Commissioners noted Fleming's impact on the agency in a press release. "We thank Rick for building the Office of the Investor Advocate from the ground up and for providing more than eight years of service. As the SEC's inaugural Investor Advocate, he has been a strong and independent voice for the investors we serve and a tireless, dedicated, and effective advocate on their behalf," said SEC Chair Gary Gensler and Commissioners Hester M. Peirce, Allison Herren Lee, and Caroline A. Crenshaw. "Throughout his tenure, Rick's thoughtfulness, keen insight, and true passion for investor protection have always been evident as he brought the concerns of investors to the fore and helped the Commission fulfill its mission. His many contributions will have a lasting impact."

Press Release: https://www.sec.gov/news/press-release/2022-93

FINRA ADOPTS TRACE REPORTING EXEMPTION FOR CERTAIN ATS TRANSACTIONS

On June 14, 2022, the Financial Industry Regulatory Authority ("FINRA") published *Regulatory Notice 22-13* to announce that it had adopted amendments to FINRA Rule 6732 to expand the scope of the Trade Reporting and Compliance Engine ("TRACE") reporting exemptions for eligible alternative trading system ("ATS") transactions contained within the rule. Specifically, the rule, as adopted, broadens the exemption to include eligible ATS transactions that involve only one FINRA member firm, other than the ATS itself. A FINRA-member ATS may apply for the exemption for transactions between a FINRA member and a non-member, such as a bank that is not a broker-dealer. Upon receipt of the application, FINRA staff may exempt the transaction if the following additional criteria are met: 1) the trade does not pass through any ATS account, and the ATS does not exchange TRACE-eligible securities or funds on behalf of the subscribers, take either side of the trade for clearing or settlement purposes, including, but not limited to, at the Depository Trust Company ("DTC") or otherwise, or in any other way insert itself into the trade; 2) the ATS agrees to provide to FINRA on a monthly basis data relating to each exempted trade occurring on the ATS's system pursuant to FINRA Rule 6732, and the ATS acknowledges that failure to report such data to FINRA, in addition to constituting a violation of FINRA rules, will result in revocation of the exemption; 3) the ATS remits to FINRA a transaction reporting fee based on the fee schedule set forth in paragraph (b)(1) of FINRA Rule 7730 for each exempted sell transaction occurring on the ATS; and 4) the ATS has entered into a written agreement with each FINRA member firm that is party to the transaction specifying that the trade must be reported to FINRA. The effective date of FINRA Rule 6732, as amended, is October 3, 2022.

FINRA Reg Notice 22-13: https://www.finra.org/sites/default/files/2022-06/Regulatory-Notice-22-13.pdf

FINRA REQUESTS COMMENT ON REPORTING REQUIREMENTS FOR OTC OPTIONS

On June 17, 2022, FINRA published *Regulatory Notice 22-14* to request public comment on a proposal to establish a new trade reporting requirement for transactions in over-the-counter ("OTC") options on securities with terms that are identical or substantially similar to listed options. FINRA is proposing to require firms to report this information to FINRA daily for regulatory purposes only. According to a study conducted by FINRA, a significant amount of firm trading occurs in OTC options with terms that are substantially similar to listed options. FINRA does not currently have access to a data source specifically for transactions in OTC options. Firms currently are required to report OTC and listed large options positions to FINRA pursuant to FINRA Rule 2360. Such reporting comprises the so-called Large Options Positions Report ("LOPR"). Using LOPR data, FINRA infers the net notional amount of OTC options trading that occurred on a given day. Based on its own analysis, FINRA believes that the notional amount of OTC options trading activity is significant; however, LOPR information is limited in many respects and does not identify a number of critical data elements that would be helpful for surveillance purposes, such as the price and time of individual transactions. FINRA's proposal is designed to address this regulatory data gap.

FINRA Reg Notice 22-14: https://www.finra.org/sites/default/files/2022-06/Regulatory-Notice-22-14.pdf
Comments Due: September 20, 2022

FINRA PROPOSES TO ENHANCE TRACE REPORTING REQUIREMENTS FOR U.S. TREASURIES

On May 27, 2022, the SEC published for comment a FINRA proposal to amend FINRA Rule 6730 to: 1) require members to report electronically to TRACE the timestamp for executed transactions in U.S. Treasury Securities 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; and 2) reduce the trade reporting timeframe for transactions in U.S. Treasury Securities to generally require reporting to TRACE as soon as practicable but no later than 60 minutes. FINRA members began reporting information on transactions in U.S. Treasury Securities to TRACE on July 10, 2017. Since then, FINRA has studied the information reported and has considered, in consultation with the U.S. Treasury Department, potential ways to enhance the quality and availability of the data for FINRA and the government.

Proposed Rule: https://www.sec.gov/rules/sro/finra/2022/34-95003.pdf

FINRA SEEKS TO ADD RESTRICTED FIRM DESIGNATION TO BROKERCHECK

On June 13, 2022, the SEC published for comment a FINRA proposal to amend FINRA Rule 8312 to release information on FINRA's BrokerCheck system as to whether a particular member firm or former member firm is currently designated as a restricted firm. FINRA Rule 8312 governs the information FINRA releases to the public through its BrokerCheck system. The publicly available BrokerCheck website provides registration and disciplinary history to investors at no charge and is designed to help investors make informed choices about the brokers and member firms with which they do business. FINRA requires member firms to inform their customers of the availability of BrokerCheck. FINRA's proposal to amend FINRA Rule 8312 follows the SEC approval of FINRA Rules 4111 and 9561 in July 2021, and the effectiveness of those rules on January 1, 2022, by which FINRA established an annual process for designating firms that present a high degree of risk to the investing public as "restricted firms." As previously reported, those rules allow FINRA to impose stricter obligations on broker-dealers with significantly higher levels of risk-related disclosures than other similarly sized peers based on numeric, threshold-based criteria.

Proposed Rule: https://www.sec.gov/rules/sro/finra/2022/34-95092.pdf
Comments Due: July 8, 2022

FINRA PROVIDES PODCAST UPDATE ON LATEST AML TRENDS

On May 31, 2022, FINRA published a new edition of its *FINRA Unscripted* podcast to update listeners on the latest trends and effective practices regarding anti-money laundering ("AML") compliance programs. The approximately 26-minute-long podcast features commentary on AML by Jason Foye of FINRA's National Cause and Financial Crimes Detection Program's Special Investigations Unit. The discussion occurred largely within the context of FinCEN's July 2021 report on eight priorities for countering AML and the financing of terrorism, which included cybersecurity, corruption, fraud and proliferation finance as areas of focus.

FINRA Podcast: https://www.finra.org/media-center/finra-unscripted/2022-aml-update

NASDAQ MODIFIES TRANSACTION FEES AT EQUITY 7, SECTION 118

On June 13, 2022, the SEC published for comment and granted immediate effectiveness to a proposal by the Nasdaq Stock Market LLC ("Nasdaq") to amend Nasdaq's schedule of fees at Equity 7, Section 118 to: 1) eliminate the Nasdaq Growth Program; 2) adjust or eliminate several of Nasdaq's transaction credits; 3) add a new credit; and 4) reorganize, reformat, and restate Nasdaq's schedule of transaction fees and credits. Under the Nasdaq Growth Program, prior to its elimination, Nasdaq provided a credit of $0.0025 per share executed in securities priced at $1 or more to members that provide a certain amount of liquidity to Nasdaq and also grow the extent to which they add such liquidity over time. Specifically, a member was eligible for the credit if it both: 1) added greater than 750,000 shares a day on average during the month; and 2) increased its shares of liquidity provided by 20%. Nasdaq stated that it sought elimination of the program because it was not successful in accomplishing its objectives. With respect to transaction credit adjustments, Nasdaq lowered several of its credits for adding liquidity from $0.0025 to $0.0020 per share executed, lowered similar liquidity adding credits from $0.0020 to $0.0018 per share executed, and also lowered one liquidity adding credit from $0.0015 to $0.0013 per share executed. Nasdaq also eliminated two credits for non-displayed orders, one worth $0.0019 per share executed and the other worth $0.0013 executed. Nasdaq also added a new credit of $0.0015 per share executed for a member firm that executed a combined volume of at least 5 million shares through midpoint order and M-ELO orders.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-95091.pdf
Comments Due: July 8, 2022

SEC APPROVES NASDAQ PROPOSAL TO ADD TRADING HALT CATEGORIES

On June 8, 2022, the SEC issued an order approving Nasdaq's proposal to modify Equity 4, Section 4120 to add categories of regulatory and operational trading halts. As previously reported, on May 3, 2022, the SEC published for comment Amendment No. 1 to the proposal, which amended and superseded Nasdaq's original filing. Nasdaq's proposal was made in conjunction with the adoption of an amended Nasdaq UTP Plan proposed by its participants ("Amended Nasdaq UTP Plan"). The proposal, as adopted, integrates several definitions and concepts from the Amended Nasdaq UTP Plan, reorganizes the rule text, and makes conforming changes to other rules. The rule establishes Nasdaq's authority to halt trading under various circumstances. Nasdaq is also a participant in the transaction reporting plan governing Tape C Securities ("Nasdaq UTP Plan"). Nasdaq worked with other SROs to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues. These common standards are designed to ensure that events which might impact multiple exchanges are handled in a consistent manner that is transparent. In its filing, Nasdaq stated its belief that implementation of its proposal will assist it and other SROs in maintaining fair and orderly markets.

SEC Order: https://www.sec.gov/rules/sro/nasdaq/2022/34-95069.pdf

NASDAQ AMENDS PROPOSAL ON PRICING LIMITATIONS FOR DIRECT LISTINGS

On May 26, 2022, the SEC published for comment Amendment No. 1 to a Nasdaq proposal to modify certain pricing limitations for companies listing in connection with a direct listing with a capital raise in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. As previously reported, on April 4, 2022, the SEC published Nasdaq's initial proposal for comment. The amended proposal supersedes the original filing in its entirety. In its filing, Nasdaq stated that it filed the amendment to: 1) clarify Nasdaq's view of the applicability of Rule 430A of the Securities Act of 1933 ("Securities Act") and mechanics of complying with the disclosures required under federal securities laws by a company listing in connection with a direct listing with a capital raise in circumstances where the actual price calculated by the cross is outside of the price range established by the issuer in its effective registration statement; 2) specify that if the company's certification to Nasdaq that the company does not expect that offering price above the price range would materially change the company's previous disclosure in its effective registration statement includes an upside limit, Nasdaq will not execute the cross if it results in the offering price above such limit; and 3) make minor technical changes to improve the structure, clarity and readability of the proposed rules.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94989.pdf

SEC APPROVES NYSE PROPOSAL TO AMEND RULES REGARDING CERTAIN CLOSING ORDER TYPES

On June 10, 2022, the SEC issued an order granting approval to a proposal by the New York Stock Exchange LLC ("NYSE") to amend the provisions of Rule 7.35B relating to the cancellation of market-on-close ("MOC"), limit-on-close ("LOC"), and closing imbalance offset ("CIO") orders before the closing auction. As previously reported, the SEC published the NYSE's initial proposal for comment on December 22, 2021. NYSE Rule 7.35B(f)(2) sets forth rules pertaining to the cancellation of MOC, LOC and CIO orders before the closing auction imbalance freeze. Prior to the amendment, Rule 7.35B(f)(2)(A) provided that, between the beginning of the auction imbalance freeze and two minutes before the scheduled end of the core trading hours, MOC, LOC and CIO orders could be cancelled or reduced in size only to correct a legitimate error. Rule 7.35B(f)(2)(B) specified that, except as provided for in Rule 7.35B(j)(2)(B), a request to cancel, cancel and replace, or reduce in size a MOC, LOC or CIO order entered two minutes or less before the scheduled end of the core trading hours would be rejected. As amended, NYSE Rule 7.35B(f)(2) provides that any requests to cancel, cancel and replace, or reduce in size a MOC, LOC or CIO orders that are entered between the beginning of the auction imbalance freeze and the scheduled end of core trading hours would be rejected. That is, requests to cancel, replace, and/or reduce in size a MOC, LOC or CIO order must be received prior to the beginning of the auction imbalance freeze, which commences 10 minutes prior to the scheduled end of core trading hours, even in the case of a legitimate error.

SEC Order: https://www.sec.gov/rules/sro/nyse/2022/34-95086.pdf

SEC DESIGNATES LONGER PERIOD TO CONSIDER NYSE PROPOSAL ON DIRECTED ORDERS

On June 16, 2022, the SEC published a notice designating a longer period to approve, disapprove or institute proceedings on a NYSE proposal to modify NYSE Rule 7.31 to allow member firms to submit directed orders to be routed directly to an ATS specified by the member firm. As previously reported, on May 3, 2022, the SEC published for comment the NYSE's proposal. Specifically, the proposal would provide for directed orders, which would be a limit order sent to the NYSE to be routed directly at its limit price to an ATS specified by a member organization along with other specific criteria.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-95118.pdf

NYSE AMERICAN AMENDS EQUITY PRICE LIST

On June 7, 2022, the SEC published for comment and granted immediate effectiveness to a proposal by the NYSE American LLC ("NYSE American") to amend the NYSE American Equities Price List to specify that the NYSE American may exclude from its average daily volume and quoting calculations the date of the annual reconstitution of the Russell Investments Indexes (the "Russell Rebalance"). The Russell Rebalance, which typically occurs in June, is characterized by high trading volumes, much of which derive from market participants, who are not generally as active, entering the market to rebalance their holdings in-line with the Russell Rebalance. The NYSE American stated in the filing that the Russell Rebalance significantly impacts its average daily volume and quoting calculations. The proposal is designed to increase the certainty for market participants as to the cost for trades executed on the NYSE American during the month of June.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-95059.pdf
Comments Due: July 13, 2022

NYSE AMERICAN MODIFIES OPTIONS FEE SCHEDULE

On June 3, 2022, the SEC published for comment and granted immediate effectiveness to a NYSE American proposal to amend the NYSE American Options Fee Schedule regarding credits relating to the BOLD Mechanism. The BOLD Mechanism is a trading mechanism for automated order handling for eligible orders in designated classes pursuant to NYSE American Rule 994NY. Prior to the amendment, BOLD Initiating Orders received the better of a $0.12 per contract credit or a higher credit earned by qualifying for the American Customer Engagement ("ACE") Program. As set forth in Section I.E. of the NYSE American Options Fee Schedule, the ACE Program provides qualifying participants with per contract credits applicable to electronic options transactions, including those executed via the BOLD Mechanism. The NYSE American proposal modified Section I.M. of the NYSE American Options Fee Schedule to provide that the credit available to BOLD Initiating Orders would be the better of $0.12 or, to the extent a member firm would qualify for a higher credit via the ACE Program, $0.13.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-95041.pdf

Notable Enforcement Actions

This month's regulatory actions feature two multi-million-dollar actions for misconduct surrounding mutual fund sales and underwriting practices, as well as actions for various operational failures.

A firm was ordered to pay more than $15.2 million in restitution and interest to thousands of customers who purchased Class C mutual fund shares when Class A shares were available at substantially lower costs. Mutual fund issuers offer different classes of mutual fund shares, including Class A and Class C shares. As a general matter, Class A shares are subject to a front-end sales charge. Class C shares typically do not carry a front-end sales charge but have ongoing fees and expenses that are higher than those of Class A shares. Many mutual fund issuers allow customers to purchase Class A shares without a front-end sales charge if the purchase exceeds certain thresholds. If a customer qualifies to purchase Class A shares without a front-end sales charge, there would be no reason for the customer to purchase Class C shares with higher annual expenses. The firm maintained an automated system designed to restrict a customer's purchase of Class C shares when lower cost Class A shares were available. The system, however, often failed to correctly identify and implement applicable purchase limits on Class C shares. As a result, thousands of the firm's customers purchased Class C shares, incurring fees and charges, when Class A shares were available at a substantially lower cost. In addition to providing restitution to harmed customers, the firm has agreed to convert certain customers' existing Class C holdings to Class A shares, where appropriate. The firm was not fined due to the firm's extraordinary cooperation and substantial assistance with the investigation. The firm voluntarily and proactively conducted an internal review, engaged an outside consultant to identify affected customers and calculate remediation, and established a remediation plan to repay customers and convert shares, where applicable. In settling this matter, the firm accepted and consented to the entry of FINRA's findings without admitting or denying them. (**FINRA Case #2020068535401**)
https://www.finra.org/sites/default/files/2022-06/ML_C_Share_AWC_050322.pdf

A firm was sanctioned, ordered to pay more than $9 million, including fines of approximately $4.3 million and disgorgement of $4.77 million, for attempting to artificially influence the market for securities offered in 10 public offerings that the firm underwrote. Between June 2016 and December 2018, the firm, while acting as an underwriter for three initial public offerings ("IPOs") and seven follow-on offerings, violated Rule 101 of Regulation M under the Securities Exchange Act of 1934 ("Exchange Act") by engaging in some combination of the following misconduct during each offering's restricted period: 1) expressly conditioning allocations on a branch manager's or representative's agreement to buy a specific number of shares in the aftermarket for the branch's or representative's customers (known as "tie-in agreements"); 2) agreeing to solicit customers who received allocations to purchase additional shares in the immediate aftermarket; and 3) threatening to reduce allocations to representatives who would not agree to solicit their customers to participate in the aftermarket. The firm's conduct was aimed at artificially stimulating demand and supporting the price of the offered securities, which tended to be thinly traded, in the immediate aftermarket. The aftermarket performance of the firm's underwritten offerings

was important to the firm's reputation and ability to generate future investment banking revenue. The settlement resolves multiple other charges against the firm, including that the firm: 1) between April 2018 and July 2018, negligently omitted to tell investors in two offerings about delays in the issuer's required public filings, including audited financial statements; 2) between January 2005 and April 2020, failed to obtain locates for more than 33,000 short sale transactions as required by Rule 203(b)(1) of Regulation SHO under the Exchange Act; 3) between September 2013 and May 2017, failed to reasonably supervise one of its representatives by failing to respond to multiple red flags that he was falsifying information about customers' assets and suitability information in order to avoid the firm's limits on concentration levels that applied to his non-traded real estate investment trust recommendations; and 4) made inaccurate representations concerning the sales of stock warrants it received in connection with a public offering. In settling this matter, the firm consented to the entry of FINRA's findings without admitting or denying the charges. (**FINRA Case #2019061652404**)
https://www.finra.org/sites/default/files/2022-06/finra-letter-of-acceptance-waiver-and-consent-no-2019061652404.pdf

A firm was censured, fined $350,000 and required to revise its supervisory system for failing to timely report to TRACE transactions in TRACE-eligible corporate debt securities, agency debt securities, and securitized products. The findings state that the majority of the late reports were caused by latencies associated with the manual handling of orders by traders and salespersons, including manual late entries or untimely amendments and corrections to transaction terms made by firm employees. The findings also state that the firm's supervisory system was not reasonably designed to achieve compliance with the firm's transaction reporting obligations for TRACE-eligible securities. Although the firm performed supervisory reviews that identified late reports, it failed to have a process for addressing the issues that caused those reports to be filed late. The firm was aware of its late reporting issues; however, it did not effectively remediate its late TRACE reporting. In addition, the firm failed to reasonably train supervisors and staff regarding TRACE reporting requirements. In settling this matter, the firm consented to the entry of FINRA's findings without admitting or denying the charges. (**FINRA Case #2018060139001**)
https://www.finra.org/sites/default/files/fda_documents/2018060139001%20UBS%20Financial%20Services%20Inc.%20CRD%208174%20AWC%20gg%20%282022-1653524405531%29.pdf

A firm was censured, fined $300,000, and ordered to pay disgorgement of a portion of commissions received in the amount of $363,447.67, plus interest, for violating Section 17(a)(3) of the Securities Act by engaging in a scheme that deceived investors in connection with a pre-IPO it sold. The findings state that the firm misled its customers into believing that the offering had acquired, or would be able to acquire, shares of a company at a maximum price of $9.75. However, the firm had done no due diligence to determine if shares were available at that price from any seller. The firm twice approved the closing of escrow on investor funds in the offering, even though the firm failed to locate any shares of the company available at the represented price. The firm closed escrow knowing that doing so would result in it receiving its placement fees, and investors receiving welcome letters that falsely suggested that they now had rights to shares in the company at the represented price. In addition, the firm failed to disclose the true status of the offering from its investors. Some investors inquired about their investments in the offering or asked to know the price paid for company shares. The firm's representatives negligently misrepresented to these investors that company shares had been purchased at $9.75, when they had not been. In fact, a seller of company shares was not identified until more than 10 months after the firm had approved the disbursement of investor funds in the offering. The firm did not make investors aware of the changes to their investments until the IPO of the company was imminent. The findings also state that the firm failed to reasonably enforce its written procedures concerning the offering of pre-IPO shares and failed to reasonably supervise the head of its pre-IPO business. The firm failed to investigate whether shares of the company could be acquired at the $9.75 price listed in the offering documents. Nonetheless, the firm approved the sale of interests in the offering by its representatives. As a result of the firm's failure to have a designated principal or supervisor for the head of its pre-IPO business, the firm failed to supervise the individual's actions relating to the offering. Among other things, the individual failed to conduct reasonable due diligence on the availability and authenticity of shares for the offering, recommended the close of escrow despite the absence of source shares, and misled other representatives and investors.

(**FINRA Case #2019064508801**)

https://www.finra.org/sites/default/files/fda_documents/2019061652404%20National%20Securities%20Corporation%20CRD%207569%20AWC%20va.pdf

A firm was censured and fined $225,000 for improperly deleted expiring OTC options positions from its reports to the LOPR system. The findings state that the firm implemented a new LOPR system that deleted expiring OTC option positions on their expiration dates and, as a result, under-reported OTC option positions to the LOPR. The findings also state that the firm failed to establish and maintain a supervisory system, including written supervisory procedures ("WSPs"), that was reasonably designed to comply with its LOPR reporting obligations. The firm did not test the new system for the deletion of expiring OTC positions from its reports to the LOPR, despite being previously disciplined for that exact issue. Subsequently, the firm updated its WSPs to include an OTC expiry review. (**FINRA Case #2020067153801**)

https://www.finra.org/sites/default/files/fda_documents/2020067153801%20Morgan%20Stanley%20%26%20Co.%20LLC%2C%20CRD%208209%20AWC%20gg%20%282022-1653697203216%29.pdf