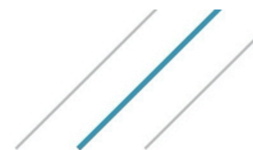
SECURITIES OPERATIONS

REGULATORY UPDATE



May 1, 2022

For more information please contact info@mediantonline.com

IN THIS ISSUE

Take Action Now 2

SEC Division of Examinations Announces 2022 Examination Priorities 3

SEC Proposes New Disclosure and Investor Protection Rules Related to SPACs 3

SEC Proposes Rules to Classify More Liquidity Providers as Dealers 4

SEC Proposes Rules for the Registration and Regulation of SBS Execution Facilities 4

SEC Raises Securities Transaction Fee 5

Regional Director of SEC San Francisco Office Departs 5

FINRA Seeks Advisory Committee Members 5

FINRA Increases Position and Exercise Limits for Options on Certain ETFs 6

FINRA Extends Pilot for Clearly Erroneous Transactions in Exchange-Listed Securities 6

FINRA Permanently Adopts Market-Wide Circuit Breaker Pilot for NMS Stocks 7

FINRA Reminds Firms of Sales Practice Obligations for Alternative Mutual Funds 7

FINRA Transforms Membership Application Program Process 8

NASDAQ Modifies Transaction Fees at Equity 7, Section 118 8

NASDAQ Delays Implementation of Post-Trade Risk Management Product to Q2 2022 9

NASDAQ Modifies Pricing Limitations for Direct Listings 9

NYSE Modifies its Price List 10

Notable Enforcement Actions **11**

Take Action Now

FINRA Reminds Member Firms of CAT CAIS Deadlines and Testing

On April 6, 2022, FINRA reminded member firms that are required to report to the Consolidated Audit Trail ("CAT") Customer & Account Information System ("CAIS") that they should be working to ensure that their customer and account data is ready for successful submission to CAT CAIS by July 11, 2022. If a clearing firm or another CAT reporting agent is reporting on another firm's behalf, the firms should be working together to submit the required data to the test environment, which has been open since January 2022.

To assist member firms with preparing for and complying with their CAT reporting obligations, FINRA has provided numerous educational offerings, including video tutorials. Questions can be directed to the FINRA CAT Helpdesk at 888-696-3348 or help@finracat.com.

- **CAT CAIS Deadline:** July 11, 2022
- **CAT Timeline of Events:** https://catnmsplan.com/timeline
- **CAT Video Tutorials:** https://www.catnmsplan.com/video-tutorials
- **Additional CAT Educational Resources:** https://www.catnmsplan.com/cais-registration

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

SEC DIVISION OF EXAMINATIONS ANNOUNCES 2022 EXAMINATION PRIORITIES

On March 30, 2022, the U.S. Securities and Exchange Commission's ("SEC" or "Commission") Division of Examinations announced its 2022 examination priorities, which include a focus on private funds, environmental, social and governance ("ESG") investing, retail investor protections, information security and operational resiliency, emerging technologies, and crypto-assets. Specifically, the Division will conduct reviews of registered investment advisers ("RIAs") who manage private funds under the Investment Advisers Act of 1940 ("Advisers Act"), including for issues related to an adviser's fiduciary duty, compliance program risks, fees and expenses, custody, fund audits, valuation, conflicts of interest, disclosures of investment risks, and controls surrounding material non-public information. In addition, the Division will focus on whether RIAs are accurately disclosing their ESG investing approaches and have adopted and implemented policies, procedures and practices designed to prevent violations of the federal securities laws in connection with their ESG-related disclosures. The Division will also seek to address standards of conduct for broker-dealers and RIAs to ensure retail investors are receiving investment advice and recommendations that are in their best interest. With respect to information security and operational resiliency, the Division will review RIA and broker-dealer practices designed to prevent interruptions of mission-critical services and to protect investor information, records, and assets, including by ensuring firms have taken appropriate measures to oversee vendors and service providers, and address malicious email activities. Lastly, the Division will review firm practices surrounding emerging financial technologies, such as crypto-assets, to ensure that firm compliance programs are designed with the risks of these assets appropriately incorporated.

2022 SEC Examination Priorities: https://www.sec.gov/files/2022-exam-priorities.pdf
Press Release: https://www.sec.gov/news/press-release/2022-57

SEC PROPOSES NEW DISCLOSURE AND INVESTOR PROTECTION RULES RELATED TO SPACS

On March 30, 2022, the SEC announced that it had proposed new rules and amendments to enhance disclosure and investor protection in initial public offerings ("IPOs") by special purpose acquisition companies ("SPACs") and in business combination transactions involving shell companies, such as SPACs and private operating companies. The proposed new rules and amendments would require, among other things, additional disclosures about SPAC sponsors, conflicts of interest, and sources of dilution. They also would require additional disclosures regarding business combination transactions between SPACs and private operating companies, including disclosures relating to the fairness of these transactions. Further, the new rules would address issues relating to projections made by SPACs and their target companies, including the Private Securities Litigation Reform Act safe harbor for forward-looking statements and the use of projections in SEC filings and in business combination transactions.

Comments Due: May 31, 2022
Proposed Rule: https://www.sec.gov/rules/proposed/2022/33-11048.pdf
Fact Sheet: https://www.sec.gov/files/33-11048-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-56

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

SEC PROPOSES RULES TO CLASSIFY MORE LIQUIDITY PROVIDERS AS DEALERS

On March 28, 2022, the SEC announced that it had proposed two rules that would require market participants, such as proprietary or principal trading firms, that assume certain dealer functions, in particular those that act as liquidity providers in the markets, to register with the SEC, become members of a self-regulatory organization ("SRO"), and comply with federal securities laws and regulatory obligations. If adopted, the proposed rules, Rules 3a5-4 and 3a44-2 of the Securities Exchange Act of 1934 ("Exchange Act"), would further define the phrase "as a part of a regular business" in Sections 3(a)(5) and 3(a)(44) of the Exchange Act to identify certain activities that would cause persons engaging in such activities to be "dealers" or "government securities dealers" and subject to the registration requirements of Sections 15 and 15C of the Exchange Act, respectively. Under the proposed rules, any market participant who engages in activities as described in the rules would be a "dealer" or "government securities dealer" and, absent an exception or exemption, would be required to: register with the SEC under Section 15(a) or Section 15C of the Exchange Act, as applicable; become a member of an SRO; and comply with federal securities laws and regulatory obligations, including as applicable, SEC, SRO, and Treasury rules and requirements.

Comments Due: May 27, 2022
Rule Proposal: https://www.sec.gov/rules/proposed/2022/34-94524.pdf
Fact Sheet: https://www.sec.gov/files/34-94524-fact-sheet.pdf
Chair Gensler Statement: https://www.sec.gov/news/statement/gensler-statement-further-definition-dealer-trader-032822
Press Release: https://www.sec.gov/news/press-release/2022-54

SEC PROPOSES RULES FOR THE REGISTRATION AND REGULATION OF SBS EXECUTION FACILITIES

On April 6, 2022, the SEC announced that it had proposed new Regulation SE under the Exchange Act to create a regime for the registration and regulation of security-based swap ("SBS") execution facilities. The new regulatory framework was one of the major reforms required under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") relating to the over-the-counter ("OTC") derivatives market. If adopted, the proposal would: 1) implement the Exchange Act's trade execution requirement for SBSs and address the cross-border application of that requirement; 2) implement Section 765 of the Dodd-Frank Act to mitigate conflicts of interest at SBS execution facilities and national securities exchanges that trade SBSs; and 3) promote consistency between proposed Regulation SE and existing rules under the Exchange Act. In its announcement, the SEC stated that, in developing this proposal, it sought to harmonize as closely as practicable with parallel rules of the Commodity Futures Trading Commission ("CFTC") that govern swap execution facilities ("SEFs") and swap execution generally. The SEC also announced that it would withdraw all previously proposed rules, amendments and interpretations regarding SBS execution facilities, all of which were released between 2010 and 2013.

Comments Due: June 6, 2022
Final Rule: https://www.sec.gov/rules/proposed/2022/34-94615.pdf
Fact Sheet: https://www.sec.gov/files/34-94615-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-59

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

SEC RAISES SECURITIES TRANSACTION FEE

On April 8, 2022, the SEC announced that, effective May 14, 2022, the fee rates applicable to most securities transactions would be set at $22.90 per $1 million, an approximately 4.5x increase over the current fee but a 3.6% increase over the 2020 fee. In its announcement, the SEC indicated the fee increase is intended to normalize the fee to levels like those in effect prior to 2021 (i.e., $22.10 per $1 million in 2020, $20.70 per $1 million in 2019). The SEC noted that the fee rate for 2021 was set so low due to the unprecedented covered sales volume during the COVID-19 pandemic, which continued throughout the fiscal year and resulted in very high collections. Each SRO will continue to pay the SEC the current rate of $5.10 per $1 million of covered sales occurring on charge dates through May 13, 2022. The assessment on security futures transactions will remain unchanged at $0.0042 for each round turn transaction.

SEC Order: https://www.sec.gov/rules/final/34-49928.htm

REGIONAL DIRECTOR OF SEC SAN FRANCISCO OFFICE DEPARTS

On March 25, 2022, the SEC announced that Erin E. Schneider, who had served as the Director of the SEC's San Francisco Regional Office since 2019, would leave the agency at the end of March 2022 after more than 17 years of service. Earlier in her SEC tenure, she served in the Asset Management Unit as an Assistant Director and then Associate Regional Director for Enforcement in the SEC's San Francisco office. She began as an enforcement staff attorney in 2005. Schneider received the SEC's Ellen Ross Award in 2011 and the Chairman's Award for the Protection of Main Street Investors in 2020. Monique C. Winkler became the office's Acting Regional Director upon Schneider's departure.

Press Release: https://www.sec.gov/news/press-release/2022-51

FINRA SEEKS ADVISORY COMMITTEE MEMBERS

On March 31, 2022, the Financial Industry Regulatory Authority ("FINRA") published *Special Notice 3/31/22* to encourage securities industry professionals and non-industry stakeholders from diverse backgrounds to become involved in FINRA's advisory committees. The *Notice* described FINRA's 12 advisory committees and explained how potential committee members can indicate their interest in joining. If selected, each advisory committee member serves a three-year term, with the potential to serve one additional consecutive term. Recently, FINRA has taken significant steps to increase the involvement of underrepresented minority groups and women on its advisory committees. In May 2021, upon the recommendation of FINRA's Racial Justice Task Force, FINRA established term limits for advisory committees to facilitate greater diversity and increase opportunities for those who are interested in serving. In addition, FINRA and its Board review each committee annually to help ensure appropriate composition and representation that considers not only the relevant expertise of each committee member but also the committees' diversity of geographic location, size and business models.

FINRA Special Notice 3/31/22: https://www.finra.org/rules-guidance/notices/special-notice-033122
Press Release: https://www.finra.org/media-center/newsreleases/2022/finra-seeks-advisory-committee-members

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

FINRA INCREASES POSITION AND EXERCISE LIMITS FOR OPTIONS ON CERTAIN ETFs

On April 8, 2022, the SEC published for comment and granted immediate effectiveness to a FINRA proposal to amend FINRA Rule 2360 to increase the position and exercise limits for conventional options on certain exchange-traded funds ("ETFs"). FINRA Rule 2360(b)(3)(A) imposes a position limit on the number of equity options contracts in each class on the same side of the market that can be held or written by a member, a person associated with a member, or a customer or a group of customers acting in concert. Position limits are intended to prevent the establishment of options positions that can be used to manipulate or disrupt the underlying market, or that might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In addition, position limits serve to reduce the potential for disruption of the options market itself, especially in illiquid options classes. This consideration has been balanced by the concern that the limits are not established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs, or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market. The proposed rule change increased the position limits for options on the iShares iBoxx $ Investment Grade Corporate Bond ETF ("LQD") and the VanEck Vectors Gold Miners ETF ("GDX") from 250,000 contracts to 500,000 contracts.

Comments Due: May 5, 2022
Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-94643.pdf

FINRA EXTENDS PILOT FOR CLEARLY ERRONEOUS TRANSACTIONS IN EXCHANGE-LISTED SECURITIES

On April 11, 2022, the SEC published for comment and granted immediate effectiveness to a FINRA proposal to extend the current pilot program related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) until July 20, 2022. On September 10, 2010, the SEC approved, on a pilot basis, changes to FINRA Rule 11892 that, among other things: 1) provided for uniform treatment of clearly erroneous transaction reviews in multi-stock events involving 20 or more securities; and 2) reduced the ability of FINRA to deviate from the objective standards set forth in the rule. In 2013, FINRA adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation National Market System ("NMS"). In 2014, FINRA adopted two additional provisions addressing: 1) erroneous transactions that occur over one or more trading days that were based on the same fundamentally incorrect or grossly misinterpreted information resulting in a severe valuation error; and 2) a disruption or malfunction in the operation of the facilities of an SRO or responsible single plan processor in connection with the transmittal or receipt of a trading halt. On April 9, 2019, FINRA filed a proposed rule change to untie the effectiveness of the Clearly Erroneous Transaction Pilot ("Pilot") from the effectiveness of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, and to extend the Pilot's effectiveness to the close of business on October 18, 2019. The Pilot has since been extended several times. In its filing, FINRA stated that further extending the Pilot would provide FINRA and the national securities exchanges additional time to consider a permanent proposal for clearly erroneous transaction reviews.

Comments Due: May 6, 2022
Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-94673.pdf

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

FINRA PERMANENTLY ADOPTS MARKET-WIDE CIRCUIT BREAKER PILOT FOR NMS STOCKS

On April 13, 2022, the SEC published for comment, and granted immediate effectiveness to a FINRA proposal to adopt, on a permanent basis, the pilot program for market-wide circuit breakers in FINRA Rule 6121.02 (Market-Wide Circuit Breakers in NMS Stocks). On March 16, 2022, the SEC approved a proposal of the New York Stock Exchange LLC ("NYSE") to adopt, on a permanent basis, its pilot program for market-wide circuit breakers in NYSE Rule 7.12. FINRA's proposal followed that approval. The market-wide circuit breaker rules, including FINRA Rule 6121.02, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The market-wide circuit breaker rules were designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets. The market-wide circuit breaker pilot rules provided for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index ("SPX"). Under those rules, a market-wide trading halt would be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers were set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggered a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day. During the onset of the COVID-19 pandemic in March 2020, the market experienced four market-wide circuit breaker Level 1 halts, after which a study was undertaken by FINRA and other SROs. The SRO working group that studied the March 2020 market volatility and the performance of the market-wide circuit breaker pilot rules concluded that the rules should be made permanent without any changes.

Comments Due: May 10, 2022
Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-94710.pdf

FINRA REMINDS FIRMS OF SALES PRACTICE OBLIGATIONS FOR ALTERNATIVE MUTUAL FUNDS

On April 19, 2022, FINRA published *Regulatory Notice 22-11* to remind firms of their sales practice obligations with respect to alternative mutual funds. Alternative mutual funds are open-end registered investment companies that seek to achieve their objectives through investments in non-traditional investments or asset classes. Industry participants, including FINRA member firms, have marketed or recommended alternative mutual funds to retail customers as products with sophisticated, actively managed hedge fund-like strategies that will perform well in a variety of market environments. FINRA has recently taken enforcement action against several firms for failing to establish or maintain a reasonably designed supervisory system for recommendations of alternative mutual funds. In the *Notice*, FINRA noted that is has continued to see similar deficiencies in its examinations and communications reviews of such products, and: 1) described frequent findings in recent examinations and enforcement matters; 2) shared effective practices FINRA has observed at member firms; and 3) noted considerations member firms may wish to take into account to improve their supervisory and compliance programs.

FINRA Regulatory Notice 22-11: https://www.finra.org/sites/default/files/2022-04/Regulatory-Notice-22-11.pdf

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

FINRA TRANSFORMS MEMBERSHIP APPLICATION PROGRAM PROCESS

On April 19, 2022, FINRA published *Information Notice 4/19/22* to share key operational changes in FINRA's Membership Application Program ("MAP"), which were implemented to improve MAP's effectiveness and efficiency, including establishing a centralized application intake function and aligning the program with the firm grouping model developed by FINRA's Member Supervision Department during its recent transformation, of which there are now three primary groupings: 1) Retail; 2) Diversified, Carrying and Clearing, Trading and Executions; and 3) Capital Markets. The new centralized intake function will support applicants by: 1) leading the new streamlined and centralized process for applicants to request early-filing meetings, including tracking and documenting meeting requests; 2) managing the new centralized resource for firms when they are completing their applications, including a dedicated telephone number for MAP Intake at (212) 858-4000, option 5, and email address MAPIntake@finra.org; and 3) continuing to handle the initial assessment of applications for substantial completeness to commence the review, determining whether applications should be subject to expedited or standard review, and routing applications to the appropriate firm grouping for review. Current applicants for FINRA membership are not required to take any action in response to these changes. The MAP transformation should not cause disruption to applicants or MAP's review of submitted and pending applications.

FINRA Information Notice 4/19/22: https://www.finra.org/sites/default/files/2022-04/Information-Notice-041922.pdf

NASDAQ MODIFIES TRANSACTION FEES AT EQUITY 7, SECTION 118

On April 21, 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(a) to incentivize members to grow the extent to which they participate in Nasdaq's routing strategy for designated retail orders ("RTFY"). RFTY is an order routing option designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to designated retail orders. As set forth in Equity 7, Section 118(a), for securities in each Tape, Nasdaq presently charges a $0.0030 per share executed fee to a member for shares executed above 4 million shares during the month for RFTY orders that remove liquidity or that execute in a venue with a protected quotation under Regulation NMS other than Nasdaq. Nasdaq charges no fee per share executed to a member for shares executed up to 4 million shares during the month for RFTY orders that remove liquidity or that execute in a venue with a protected quotation under Regulation NMS. The amendment modified Equity 7, Section 118(a) such that Nasdaq will now charge no fee per share executed during regular market hours to a member that executes orders using RFTY, when the member exceeds the 4 million share executed threshold for RFTY orders described above, if the member also grows the volume of its shares executed using RFTY during regular market hours during the month by at least 100 percent relative to a baseline month of March 2022. In its filing, Nasdaq stated that its intention for this amendment was to reward RFTY users that grow substantially the extent of their use of the RFTY strategy during regular market hours.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94774.pdf

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

NASDAQ DELAYS IMPLEMENTATION OF POST-TRADE RISK MANAGEMENT PRODUCT TO Q2 2022

On April 12, 2022, the SEC published for comment and granted immediate effectiveness to a Nasdaq proposal to extend the implementation date of its post-trade risk management product to Q2 2022. Nasdaq's initial proposal was to enhance its connectivity, surveillance and risk management by launching three re-platformed products: 1) WorkX; 2) Real-Time Stats; and 3) Post-Trade Risk Management. The proposal was filed with the SEC on April 20, 2021 and was published in the Federal Register on May 7, 2021. Nasdaq initially proposed that WorkX and Real-Time Stats would launch on April 12, 2021, and Post-Trade Risk Management would launch no later than Q3 2021; however, due to a re-prioritization in the Nasdaq product pipeline, Nasdaq proposed, on September 14, 2021, to delay the implementation of Post-Trade Risk Management until Q1 2022. Nasdaq undertook another re-prioritization, causing it to further delay implementation of Post-Trade Risk Management to Q2 2022. In the interim, the existing Nasdaq risk management product will continue to be available to market participants.

Comments Due: May 9, 2022
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94704.pdf

NASDAQ MODIFIES PRICING LIMITATIONS FOR DIRECT LISTINGS

On April 4, 2022, the SEC published for comment 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. In 2021, Nasdaq adopted Listing Rule IM-5315-2 to permit a company to list in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. Nasdaq also created a new order type (the "CDL Order"), which is used during the Nasdaq Halt Cross (the "Cross") for the shares offered by the company in a direct listing with a capital raise, and Nasdaq established requirements for disseminating information, establishing the opening price, and initiating trading through the Cross in a direct listing with a capital raise. For a direct listing with a capital raise, Nasdaq rules currently require that the actual price calculated by the Cross be at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement. Nasdaq now proposes to modify that pricing limitation such that, provided other requirements are satisfied, a direct listing with a capital raise can also be executed in the Cross at a price that is at or above the price that is as low as 20% below the lowest price in the price range established by the issuer in its effective registration statement, or at a price above the highest price of such price range. Specifically, to execute at a price outside of the price range, the company's registration statement must contain a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering were less than or exceeded the amount assumed in such price range and the company has publicly disclosed and certified to Nasdaq that the company does not expect that such price would materially change the company's previous disclosure in its effective registration statement.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94592.pdf

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

NYSE MODIFIES ITS PRICE LIST

On March 29, 2022, the SEC published for comment and granted immediate effectiveness to a NYSE proposal to amend its price list to: 1) align the charges for market at-the-close ("MOC") and limit at-the-close ("LOC") orders on MOC/LOC Tiers 1, 2 and 3, revise the requirements for MOC/LOC Tier 3, introduce incremental per share discounts on MOC orders under MOC/LOC Tier 1, 2 and 3, and revise the rate for all other orders swept into the close; 2) introduce new credits for removing liquidity from the NYSE in Tape C securities; and 3) introduce new Tier 1 adding credits in Tape C securities, revise the requirements for adding Tier 2 in Tapes B and C securities, and introduce a new Adding Tier in Tape C securities. Prior to the amendment, the NYSE charged different fees for MOC and LOC orders in MOC/LOC Tiers 1, 2 and 3. For MOC/LOC Tier 1, the NYSE charged $0.0004 per share for MOC orders and $0.0007 per share for LOC orders from any member organization in the prior three billing months executing 1) an average daily trading volume ("ADV") of MOC activity on the NYSE of at least 0.45% of NYSE consolidated ADV ("CADV"); 2) an ADV of total close activity (i.e., MOC/LOC and executions at the close) on the NYSE of at least 0.7% of NYSE CADV; and 3) MOC activity comprised at least 35% of the member organization's total close activity (i.e., MOC/LOC and other executions at the close). NYSE will now charge $0.0007 per share for MOC orders meeting the requirements of MOC/LOC Tier 1. For MOC/LOC Tier 2, the NYSE charged $0.0005 per share for MOC orders and $0.0008 per share for LOC orders from any member organization in the prior three billing months executing 1) an ADV of MOC activity on the NYSE of at least 0.35% of NYSE CADV; 2) an ADV of total close activity on the NYSE of at least 0.525% of NYSE CADV; and 3) MOC activity comprised at least 35% of the member organization's total close activity. The NYSE will now charge $0.0008 per share for MOC orders meeting the requirements of MOC/LOC Tier 2. For MOC/LOC Tier 3, the NYSE charged $0.0008 per share for MOC orders and $0.0009 per share for LOC orders from any member organization executing in the current billing month 1) an ADV of MOC activity on the NYSE of at least 0.25% of NYSE (Tape A) CADV; 2) an ADV of the member organization's total close activity on the NYSE of at least 0.35% of NYSE (Tape A) CADV; and 3) MOC activity comprised at least 35% of the member organization's total close activity. The NYSE now will charge $0.0009 per share for MOC orders meeting the revised requirements for MOC/LOC Tier 3. Specifically, a member organization executing in the current billing month would need 1) an ADV of MOC activity on the NYSE of at least 0.20% of NYSE (Tape A) CADV; and 2) an ADV of the member organization's total close activity on the NYSE of at least 0.30% of NYSE (Tape A) CADV. The third requirement for MOC/LOC Tier 3, that a member organization's MOC activity comprise at least 35% of the member organization's total close activity, would remain unchanged. As a way of offsetting the proposed higher fees for tiered MOC orders, the NYSE will offer incremental discounts per share on MOC orders for member organizations that meet the requirements of the MOC/LOC Tiers 1-3 in the billing month. In its filing, the NYSE stated that these discounts are designed to align incentives among both trading on the close and intraday trading on the NYSE. Member organizations that have an Adding ADV in Tapes A, B and C securities as a percentage of Tapes A, B and C CADV, excluding any liquidity added by a designated market maker ("DMM"), that is at least 0.50%, would be eligible for an incremental discount per share of $0.0001. Alternatively, a member organization that has an Adding ADV in Tapes A, B and C securities as a percentage of Tapes A, B and C CADV, excluding any liquidity added by a DMM, that is at least 1.00% would instead be eligible for a $0.0002 incremental discount per share.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94543.pdf

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

Notable Enforcement Actions

This month's regulatory actions featured the expulsion of a firm that was formerly one of the largest clearing firms in the United States for sustained, egregious business practices that severely harmed its customers.

A FINRA extended hearing panel expelled a firm from FINRA membership and ordered the firm to pay more than $2.3 million in restitution to customers for converting and misusing customer funds and securities, engaging in unauthorized trading, charging customers unfair prices in securities transactions and unreasonable fees, and making an unauthorized capital withdrawal. A 19-day FINRA hearing panel found that the firm: 1) charged unreasonable and discriminatory fees as a result of its financial troubles, including a $5,000 monthly account fee, a one percent per day illiquidity and volatility fee, and a $1,500 certificate withdrawal fee; 2) appropriated customer positions valued at $1,500 or less for one penny per position and charged a 2.5% market-making and execution fee, resulting in unfair prices and commissions; 3) converted and misused customer funds and securities by removing customer securities it improperly deemed abandoned and worthless; 4) seized customer securities to cover debits related to the firm's excessive and unreasonable fees; 5) engaged in unauthorized trading by moving customers' securities from customer accounts to firm accounts without customer authorization, purportedly to cover outstanding debits and because the firm improperly identified the securities as worthless, and by moving customers' securities from customer accounts to the firm's abandoned securities accounts without customer authorization because the firm improperly identified the accounts as abandoned; and 7) executed an unauthorized capital withdrawal. In addition, the firm provided minimal notice to its customers of its change in business plan and additional fees. Furthermore, because of a change in the firm's back-office system, reduced staffing, and an inadequate telephone system, customers encountered difficulties reaching the firm to ask questions. Many customers encountered difficulties logging into their accounts online and were unable to reach the firm's staff to resolve issues. The FINRA hearing panel decision cited multiple examples demonstrating that none of the firm's customers authorized the firm's transfers of their securities or seizures of cash to cover the $5,000 monthly fee. In one example, the firm charged a $5,000 monthly account fee on December 31, 2018, and redeemed funds from that customer's linked money market fund on January 2, 2019. To cover the unpaid $3,396 (for the $5,000 fee), the firm moved the customer's marketable securities to the liquidate-to-cover-customer-debits account. Moreover, the hearing panel found some customers paid some or all of the $5,000 fee because they were forced to do so in order to regain possession of their other holdings, but no customer authorized a removal of funds and securities to cover the unreasonable fee. In most instances, the customers were not even aware of the $5,000 monthly account fee, let alone that the firm was taking their cash and securities to cover it. Unless the hearing panel's decision is appealed to FINRA's National Adjudicatory Council ("NAC"), or is called for review by the NAC, the hearing panel's decision becomes final after 45 days. (**FINRA Case #2019061232601**)
https://www.finra.org/sites/default/files/fda_documents/2019061232601%20Alpine%20Securities%20Corporation%20CRD%2014952%20Decision%20sl.pdf

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

A firm was censured and fined $350,000 for failing to apply market access controls and procedures to orders routed by one of its risk management systems because it mistakenly treated that system as not having order entry and execution capabilities. The firm mischaracterized the system as not offering order entry and execution functionality and excluded the system from its global electronic trading governance and controls policy, which was intended to identify all firm systems that required the application of market access controls and procedures. As a result, the firm did not apply market access controls and procedures to orders that the system generated and routed. The firm's failure to apply market access controls and procedures to this system resulted in the firm participating in monthly special opening quotations and routing orders for contracts to the market unchecked. As a result of this failure, the firm did not prevent the entry of erroneous orders totaling $11,800,000 rather than the intended $118,000 through participation in a special opening quotation on one day. This caused the firm's index options flow derivatives trading desk to exceed its assigned $4 billion capital limit by approximately $8 billion. After that, the firm temporarily stopped using the system to enter orders. The firm also characterized the system as in-scope for purposes of its global electronic trading governance and controls policy. Subsequently, the firm applied market access controls and procedures to the system's order flow.
(**FINRA Case #2019063248401**)
https://www.finra.org/sites/default/files/fda_documents/2019063248401%20Barclays%20Capital%20Inc.%20CRD%2019714%20AWC%20va%20%282022-1648340421187%29.pdf

A firm was censured and fined $250,000 for failing to establish and maintain a supervisory system or written procedures reasonably designed to achieve compliance with Section 5 of the Securities Act of 1933 ("Securities Act"). The findings state that the firm's written supervisory procedures ("WSPs") were not reasonably designed to avoid becoming a participant in the potential unregistered distribution of securities. The firm's WSPs did not include procedures regarding how to conduct a searching inquiry to determine whether a transaction complied with the registration requirements of Section 5. Instead, the firm's WSPs only stated that a principal should be consulted for assistance. Moreover, even though the firm, in practice, used a pre-clearance form in connection with its Section 5 reviews, the WSPs failed to mention the pre-clearance form. The firm's system for compliance with Section 5 relied entirely on the pre-clearance form that representatives were required to complete prior to the deposit or sale/transfer of microcap shares. The pre-clearance form did not provide any guidance about what documentation the representative should review prior to the deposit or sale of any microcap security to verify the information set forth on the pre-clearance form. The firm also did not have any process for ensuring that representatives completed the pre-clearance form. As a result, the firm accepted deposits of microcap securities without first having received a completed pre-clearance form from the customer's representative. The findings also stated that the firm failed to establish and implement an anti-money laundering ("AML") program reasonably expected to detect and cause the reporting of suspicious transactions in microcap securities. The firm's AML procedures did not

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.

provide guidance about how to identify or address red flags of suspicious trading in microcap securities. The firm's procedures also failed to require that the firm monitor, for AML purposes, information collected during its pre-clearance process for microcap securities. Therefore, even when customers deposited, quickly liquidated and wired the proceeds of microcap securities, the firm's procedures did not require it to review those transactions for potential Bank Secrecy Act reporting. In addition, the firm did not have a reasonable system to identify suspicious trading in microcap securities. The firm's exclusive method for doing so was using an exception report that only surveilled transactions of 50 million shares or more. As nearly all the firm's customers' microcap activity involved fewer than 50 million shares per transaction, this exception report was not tailored to the firm's business. As a result, a small number of firm customers deposited fewer than 50 million shares of microcap securities, liquidated some or all the securities, and withdrew the funds shortly thereafter, without the firm detecting or investigating that activity. (**FINRA Case #2020066627201**)

https://www.finra.org/sites/default/files/fda_documents/2020066627201%20First%20Manhattan%20Co.%20CRD%201845%20AWC%20sl%20%282022-1647217213447%29.pdf

A firm was censured and fined $50,000 for publishing inaccurate data in monthly reports it was required to publish pursuant to Regulation NMS Rule 605. The reports were inaccurate because the firm misclassified, and incorrectly reflected in its Rule 605 reports, certain marketable limit orders in NMS stocks as inside-the-quote limit orders. Specifically, the firm received "parent" limit orders from its customers and, upon receipt, simultaneously routed "child" orders to its alternative trading systems. The firm incorrectly classified these order types for purposes of Rule 605 in one of its alternative trading systems based on the execution price of the child order instead of the limit price of the parent order. This misclassification affected 30 consecutive Rule 605 reports published by the firm. (**FINRA Case #2017053083501**)

https://www.finra.org/sites/default/files/fda_documents/2017053083501%20Liquidnet%2C%20Inc.%20CRD%20103987%20AWC%20sl%20%282022-1648772498822%29.pdf

A firm was censured and fined $25,000 for failing to conduct reasonable due diligence prior to serving as the managing broker-dealer for two private placement offerings involving a manager, who was a director, general partner, or managing member in the case of each issuer. The findings state that the firm was aware that the manager was subject to a consent order and undertaking with the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts. In the consent order, the manager was ordered to cease and desist committing violations of the securities registration provisions of the Massachusetts Securities Act. The order also contained an undertaking that prohibited the manager from acting as a manager, director, officer, partner, or control person of any Massachusetts entity offering or selling securities in the Commonwealth of Massachusetts for a period of five years. The relevant prohibitions contained within the consent order did not terminate until after the firm completed serving as the managing broker-dealer for the offerings. (**FINRA Case #2017055743101**)

https://www.finra.org/sites/default/files/fda_documents/2017055743101%20Nobles%20%26%20Richards%2C%20Inc.%20CRD%20146870%20AWC%20jlg%20%282022-1647130812791%29.pdf

Copyright © 2022 Mediant Communications Inc. All Rights Reserved.