SECURITIES OPERATIONS

REGULATORY UPDATE

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SEC Adopts Amendments to Fund Shareholder Reports and Advertisements

On October 26, 2022, the U.S. Securities and Exchange Commission ("SEC" or the "Commission") adopted rule and form amendments to require mutual funds and exchange traded funds ("ETFs") to transmit concise and visually engaging shareholder reports. In addition, the amendments alter the requirements for the disclosure of fees and expenses in investment company advertisements.

The new amendments require fund companies to produce concise, tailored shareholder reports that highlight certain information, such as fund expenses, performance and portfolio holdings. The instructions for the revamped reports will encourage the use of graphic and text features to make them more engaging. Funds will be required to tag the information in their reports in a structured data format. Further, the rule amendments require funds to make certain information that may be more relevant to investors and financial professionals who desire more in-depth information available online and available for delivery free of charge to investors on request. That information will no longer appear in fund's shareholder reports but will remain available to investors on a website identified in the shareholder report and must be filed semi-annually with the SEC.

In addition to altering the requirements for fund shareholder reports, the SEC adopted amendments to investment company advertising rules to require that fee and expense presentations in registered investment company and business development company advertisements and sales literature be consistent with relevant prospectus fee table presentations and reasonably current. The amendments also address representations of fees and expenses that could be materially misleading.

The SEC is providing an 18-month transition period after the effective date of the amendments to allow mutual funds and exchange-traded funds adequate time to adjust their shareholder reports and transmission practices, as well as comply with the new advertising requirements.

- **Effective Date:** 60 days after publication in the Federal Register
- **Final Rule:** https://www.sec.gov/rules/final/2022/33-11125.pdf
- **Fact Sheet:** https://www.sec.gov/files/33-11125-fact-sheet.pdf
- **Press Release:** https://www.sec.gov/news/press-release/2022-193

SEC PROPOSES NEW REQUIREMENTS FOR SERVICES OUTSOURCED BY INVESTMENT ADVISERS

On October 26, 2022, the SEC proposed a new rule and rule amendments under the Investment Advisers Act of 1940 ("Advisers Act") to prohibit registered investment advisers from outsourcing certain services and functions without conducting due diligence and monitoring of the service providers. The SEC noted in a press release that many investment advisers have engaged third-party service providers to perform certain functions or services as the demand for the asset management industry has grown and client needs have become more complex. Many of the services rendered by third-party service providers are necessary for an investment adviser to provide its advisory services in compliance with the Federal securities laws. The SEC's proposal would require advisers to satisfy specific due diligence elements before retaining a service provider to perform certain advisory services or functions, and to subsequently carry out periodic monitoring of the service provider's performance. The rule would apply to advisers that outsource certain "covered functions," which include those services or functions that are necessary for providing advisory services in compliance with the Federal securities laws and that if not performed or performed negligently would result in material negative impact to clients. In addition, the proposal would require advisers to conduct due diligence and monitoring for all third-party recordkeepers and to obtain reasonable assurances that the recordkeepers will meet certain standards. The proposal would also require advisers to maintain books and records related to the new rule's oversight obligations and to report census-type information about the service providers covered under the rule.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/ia-6176.pdf
Fact Sheet: https://www.sec.gov/files/ia-6176-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-194
Comments Due: December 25, 2022

SEC CHAIR GENSLER CALLS FOR CRYPTO REGULATION AT FSOC OPEN MEETING

On October 3, 2022, SEC Chair Gary Gensler spoke at the Financial Stability Oversight Council's ("FSOC") open meeting, sharing his views on potential regulatory developments regarding cryptocurrencies and other digital assets. Gensler began by dubbing the crypto market as a "highly volatile, speculative investment class." He also opined that the crypto market, while touting to be decentralized, is actually populated by large, concentrated intermediaries. Most notable, Gensler proclaimed that "crypto cannot exist outside of [incumbent] public policy frameworks, regardless of what the crypto industry initially expected or what certain market participants might say today. The policy frameworks include protecting investors and consumers, guarding against illicit activity, and supporting financial stability. Whether you call something a crypto token, stablecoin, or decentralized finance platform ("DeFi"), those public policy goals remain the same." In addition, Gensler remarked that, of the more than 10,000 tokens in the crypto market, he considers the vast majority to be securities and, thus, subject to the securities laws. Gensler went on to state the benefits of broad compliance with the securities laws, as evidenced by incumbent financial markets, and noted his view that currently "a lot of noncompliance with the securities laws" exists in the crypto market.

SEC Chair Gensler Speech: https://www.sec.gov/news/speech/gensler-statement-fsoc-meeting-100322

SEC ADOPTS COMPENSATION RECOVERY LISTING STANDARDS AND DISCLOSURE RULES

On October 26, 2022, the SEC adopted rules to implement Section 10D of the Securities Exchange Act of 1934 ("Exchange Act"), a provision added by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act"). New Exchange Act Rule 10D-1 directs national securities exchanges and associations to establish listing standards that require a listed issuer to: 1) adopt and comply with a written policy for recovery of erroneously awarded incentive-based compensation received by its current or former executive officers in the event it is required to prepare an accounting restatement due to its material noncompliance with any financial reporting requirement under the securities laws, during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement; and 2) disclose those compensation recovery policies in accordance with SEC rules, including providing the information in tagged data format. Further, the final rules, as adopted, require specific disclosure of the listed issuer's policy on recovery of incentive-based compensation and information about actions taken pursuant to such recovery policy. The amendments also require all listed issuers to: 1) file their written recovery policies as exhibits to their annual reports; 2) indicate by check boxes on their annual reports whether the financial statements included in the filings reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis; and 3) disclose any actions they have taken pursuant to such recovery policies.

Effective Date: 60 days after publication in the Federal Register
Final Rule: https://www.sec.gov/rules/final/2022/33-11126.pdf
Fact Sheet: https://www.sec.gov/files/33-11126-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-192

SEC COMMISSIONER UYEDA SPEAKS ON BENEFITS VERSUS COSTS OF CERTAIN POTENTIAL RULEMAKINGS

On October 13, 2022, SEC Commissioner Mark Uyeda delivered remarks before the SEC's Small Business Capital Formation Advisory Committee and shared his opinions on certain recent market and regulatory trends. First, Uyeda spoke to the significant decline in the number of publicly traded companies in recent decades. "After peaking in 1996 at more than 8,000 companies, the number of domestic US-listed public companies decreased nearly 50% by 2019." Uyeda noted that this has resulted in decreased economic opportunities for retail investors, and implied that increased regulatory costs may be a factor driving the decline of companies seeking to go or remain public. Uyeda called for the Commission to "aim to improve the regulatory balance" for public companies, noting that certain potential rulemakings recently contemplated or proposed by the SEC would impose further reporting, disclosure and compliance cost obligations on public companies without a clear material benefit. As an example, Uyeda noted, with respect to the Commission's proposal regarding climate-related disclosures, that "commenters have suggested there may be significant additional compliance costs for public companies, without providing significantly better financial information on which to base their investment decisions." Uyeda also noted that the SEC utilizes an assumption in its rulemaking proposals that the costs for outside legal counsel to comply with SEC reporting obligations is $400 per hour. The assumption has not been updated since 2006.

SEC Commissioner Uyeda Speech: https://www.sec.gov/news/statement/uyeda-sbcfac-20221013

SEC ADOPTS AMENDMENTS TO MODERNIZE RECORDKEEPING REQUIREMENTS

On October 12, 2022, the SEC adopted amendments to the electronic recordkeeping, prompt production of records, and third-party recordkeeping service requirements applicable to broker-dealers, security-based swap dealers (“SBSDs”), and major security-based swap participants (“MSBSPs”). The SEC designed the amendments to modernize recordkeeping requirements given technological changes over the last two decades and to make the rule adaptable to new technologies in electronic recordkeeping. The amendments will also facilitate SEC examinations of broker-dealers, SBSDs and MSBSPs. Prior to the amendments, the SEC’s broker-dealer electronic recordkeeping rule required firms to preserve electronic records exclusively in a non-rewriteable, non-erasable format, known as the write once, read many format. The amendments, once effective, will add an audit-trail alternative under which electronic records can be preserved in a manner that permits the recreation of an original record if it is altered, over-written, or erased. The audit-trail alternative is designed to provide broker-dealers with greater flexibility in configuring their electronic recordkeeping systems so they more closely align with current electronic recordkeeping practices while also protecting the authenticity and reliability of original records. The amendments apply the same requirements to non-bank SBSDs and MSBSPs. Among other things, to facilitate examinations and make them more efficient, the amendments also require broker-dealers and all types of SBSDs and MSBSPs to produce electronic records to securities regulators in a reasonably usable electronic format. The final amendments will become effective 60 days after publication in the Federal Register. The compliance dates for the new requirements will be six months after publication in the Federal Register in the case of broker-dealers and 12 months after publication in the Federal Register in the case of SBSDs and MSBSPs.

Final Rule: https://www.sec.gov/rules/final/2022/34-96034.pdf
Fact Sheet: https://www.sec.gov/files/34-96034-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-187

SEC COMMISSIONER LIZARRAGA OPINES ON PROPOSED ESG-RELATED RULEMAKING PROPOSALS

On October 17, 2022, SEC Commissioner Jaime Lizarraga, speaking at The Future of ESG Data conference in London, UK, praised the rise of environmental, social and governance (“ESG”) sector of the capital markets and investment industries and spoke on the SEC’s recent ESG-related rulemaking proposals. Lizarraga noted that ESG topics are now widely contemplated and acted upon, in the financial sector and elsewhere in policymaking. “Against this backdrop, the SEC issued three rule proposals that would each help facilitate comparable ESG disclosures and focus on ensuring statements made to investors are not false or misleading: 1) enhanced climate risk disclosures by issuers; 2) enhanced ESG disclosures by registered funds and investment advisers; and 3) modernized rules governing ESG-related fund names.” Lizarraga indicated that the proposals are aimed at meeting increasing demand from investors for ESG-related data and proclaimed that, in his opinion, the SEC’s proposals would ensure that investors receive the information they need to make the most informed decisions they can, and that all investors benefit from an SEC disclosure framework where objective, quantitative metrics provide the highest degree of comparability.

SEC Commissioner Lizarraga Speech: https://www.sec.gov/news/speech/lizarraga-speech-meeting-investor-demand-high-quality-esg-data

SEC UPDATES LIST OF FIRMS USING INACCURATE INFORMATION TO SOLICIT INVESTORS

On October 27, 2022, the SEC announced that it had updated its list of unregistered entities that use misleading information to solicit primarily non-U.S. investors. The list is known as the Public Alert: Unregistered Soliciting Entities ("PAUSE") list. The PAUSE list is periodically updated by the SEC's Office of Market Intelligence, in coordination with the Office of Investor Education and Advocacy and the Office of International Affairs. The SEC added 35 soliciting entities, four impersonators of genuine firms and four bogus regulators in its update and included firms that the SEC staff found were providing inaccurate information about their affiliation, location or registration. Under U.S. securities laws, firms that solicit investors generally are required to register with the SEC and meet minimum financial standards and disclosure, reporting and recordkeeping requirements. The SEC publishes the PAUSE list to alert investors to firms falsely claiming to be registered. In addition, the PAUSE list flags those impersonating registered securities firms and bogus regulators who falsely claim to be government agencies or affiliates. Inclusion on the PAUSE list does not mean the SEC has found violations of U.S. federal securities laws or has made a judgment about the merits of any securities offered.

Recent Additions to PAUSE List: https://www.sec.gov/files/2022-10-18-pause.pdf
Full PAUSE List: https://www.sec.gov/investor/oiepauselist.htm
Press Release: https://www.sec.gov/news/press-release/2022-195

SEC NAMES BURT AS REGIONAL DIRECTOR OF DENVER OFFICE

On October 24, 2022, the SEC announced that Jason J. Burt had been named Regional Director of the SEC's Denver Office, after having served as Acting Co-Director since July 2022. As Regional Director of the Denver Office, Burt will lead a staff of more than 100 accountants, attorneys, investigators, litigators, securities compliance examiners, and other personnel involved in the investigation and prosecution of enforcement actions and the performance of compliance examinations focusing on several midwestern and western U.S. states, including Colorado, Kansas, Nebraska, New Mexico, North Dakota, South Dakota and Wyoming. Prior to becoming Acting Co-Director of the SEC's Denver Office, Burt served as the Office's Associate Regional Director, overseeing the region's enforcement program, beginning in 2019. Burt has spent the majority of his 18-year SEC career with the SEC's Department of Enforcement, where he was responsible for investigating and prosecuting many complex and significant enforcement actions including managing the SEC's Share Class Selection Disclosure Initiative, a self-reporting initiative designed by the SEC's Asset Management Unit to return money quickly to investors harmed by inadequate fee disclosures. Burt also spent time in the SEC's Examinations Division. Prior to joining the SEC, Burt worked as an associate at Fried, Frank, Harris, Shriver & Jacobsen LLP. He earned his bachelor's magna cum laude from James Madison University and his law degree with honors from the University of North Carolina School of Law.

Press Release: https://www.sec.gov/news/press-release/2022-190

FINRA LAUNCHES MACHINE-READABLE RULEBOOK INITIATIVE

On October 21, 2022, the Financial Industry Regulatory Authority ("FINRA") announced that it had launched a machine-readable rulebook initiative designed to enhance firms' compliance efforts, reduce costs and aid in risk management. FINRA developed the machine-readable rulebook through the creation of an embedded taxonomy, a method of classifying and categorizing a hierarchy of key terms and concepts, that was tagged to the 40 most frequently viewed FINRA rules. The taxonomy allows users to apply an enhanced search feature to find specific content by starting with a broad topic and then narrowing down to more specific topics through sub-categories and combinations of multiple terms. As part of this initiative, FINRA created a prototype of a rulebook search tool, the FINRA Rulebook Search Tool ("FIRST"). This enhanced search feature is designed to help users, including market participants and members of the public alike, to efficiently identify potentially relevant FINRA rules and their associated requirements using the taxonomy terms. FINRA has launched the FIRST search feature through a user interface on the FINRA website. In addition, FINRA is offering access to the taxonomy terms that have been tagged to each of the 40 rules through an application programming interface ("API") to enable member firms seeking to automate compliance functions to link the FINRA rule content and the taxonomy terms to their internal compliance policies and procedures.

Special Notice: https://www.finra.org/rules-guidance/notices/special-notice-102122
Press Release: https://www.finra.org/media-center/newsreleases/2022/finra-launches-machine-readable-rulebook-initiative
Comments Due: December 20, 2022

FINRA ALERTS FIRMS TO RECENT TREND OF FRAUDULENT ACATS TRANSFERS

On October 6, 2022, FINRA published Regulatory Notice 22-21 to alert firms to a rising trend in the fraudulent transfer of customer accounts through the Automated Customer Account Transfer Service ("ACATS"), an automated system administered by the National Securities Clearing Corporation ("NSCC") that facilitates the transfer of customer account assets from one firm to another. In a situation where customer account information is stolen, a bad actor may use this information to effect ACATS fraud. ACATS fraud is related to the growing threat of new accounts opened online or through mobile applications using stolen or synthetic identities. In general, FINRA advised that ACATS fraud may unfold in the following manner: 1) a bad actor uses a stolen, or a combination of stolen and false, information to open a brokerage account online or through a mobile application in the name of a legitimate customer; 2) upon successfully opening the new brokerage account, the bad actor will, typically within a few days or weeks, initiate an ACATS transfer of the legitimate customer's account held at a different firm to the firm where the new, fraudulent brokerage account was opened; and 3) upon the successful completion of the ACATS transfer, the bad actor will attempt to move the ill-gotten assets to an external account at another financial institution. In the Notice, FINRA reminded its member firms of their regulatory obligations that may apply in connection with ACATS fraud, including FINRA Rules 2090, 3310, 4512, and 11870, the Bank Secrecy Act, and Regulation S-ID (The Identify Theft Red Flags Rule).

FINRA Regulatory Notice 22-21: https://www.finra.org/rules-guidance/notices/22-21

NATIONAL ADJUDICATORY COUNCIL REVISES FINRA SANCTION GUIDELINES

On September 29, 2022, FINRA announced that National Adjudicatory Council ("NAC") had revised FINRA's Sanction Guidelines. The NAC is FINRA's appellate tribunal for disciplinary cases and is composed of a total of 15 industry and non-industry members. It has primary responsibility for considering policies regarding disciplinary sanctions and has periodically revised FINRA's Sanction Guidelines since 1993. FINRA's Sanction Guidelines are intended to assist FINRA's adjudicators, hearing panels and the NAC in imposing a range of sanctions that are consistent and fair in disciplinary proceedings. FINRA's Sanction Guidelines provide firms and individuals with some of the typical securities rule violations and the ranges of disciplinary sanctions that may result from those violations. They also serve as a framework for settlement negotiations between FINRA's Department of Enforcement and member firms or individuals. The NAC's revisions tailored sanctions to differentiate between types of respondents, and otherwise modified FINRA's Sanction Guidelines in the following ways: 1) split each current guideline into separate guidelines for individuals and firms; 2) create separate fine ranges for small and mid-size or large-size firms; 3) remove the upper limit of the fine ranges for mid-size and large-size firms for select guidelines; 4) create anti-money laundering ("AML") guidelines; 5) add additional discussion of non-monetary sanctions for firms; 6) introduce single fine ranges for all actions in the Quality of Markets guidelines and other select guidelines; 7) establish $5,000 as the minimum low end for all firm fine ranges; and 8) delete select guidelines. The revised guidelines became effective on September 29, 2022, and are available on FINRA's website.

FINRA Regulatory Notice 22-20: https://www.finra.org/rules-guidance/notices/22-20
Press Release: https://www.finra.org/media-center/newsreleases/2022/national-adjudicatory-council-enhances-finra-sanction-guidelines

FINRA PUBLISHES 2023 RENEWAL FEE GUIDANCE

On October 14, 2022, FINRA published Regulatory Notice 22-22 to advise broker-dealers and investment adviser firms, registered individuals, and branches of FINRA's registration renewal program for 2023. The Notice was published in advance of FINRA's Preliminary Statement, which it publishes in November to communicate information to broker-dealer and investment adviser firms about renewal fees owed by the firms, their branches and registered individuals. FINRA also publishes a Final Statement in January to confirm or reconcile the actual renewal fees for broker-dealer and investment adviser firms. Beginning November 7, 2022, Preliminary Statements will be available for viewing and printing in FINRA's E-Bill. The Preliminary Statements will reflect fee changes that the SEC approved last year. Some participating jurisdictions may require firms to complete other requirements in addition to the payment of renewal fees to complete their renewal process. Firms should contact each jurisdiction directly for further information on their renewal requirements. A Regulator Directory is located on the North American Securities Administrators Association's ("NASAA") website. If FINRA does not receive a firm's payment by December 12, 2022, FINRA will assess a late fee. In addition, firms risk becoming ineligible to do business in the jurisdictions where their registrations are not renewed if FINRA does not receive payment by December 22, 2022. FINRA recommends that firms remit payment electronically through FINRA's E-Bill, although firms may also send a wire transfer or mail a check.

FINRA Regulatory Notice 22-22: https://www.finra.org/rules-guidance/notices/22-22
Payments Due: December 12, 2022

FINRA PROPOSES TO MAKE PERMANENT ITS CLEARLY ERRONEOUS TRANSACTION PILOT PROGRAM

On September 29, 2022, the SEC published for comment, and granted immediate effectiveness to a FINRA proposal, to make permanent its current pilot program surrounding clearly erroneous transactions (FINRA Rule 11892). 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 and will now be made permanent.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-95939.pdf

NASDAQ AMENDS EQUITY 4, RULE 4757

On October 13, 2022, the SEC published for comment, and granted immediate effectiveness to a proposal by the Nasdaq Stock Market LLC ("Nasdaq"), to amend its Equity 4, Rule 4757, to enhance the anti-internalization functionality available on Nasdaq. The rule, as amended, would give market participants the flexibility to choose to have anti-internalization protection apply to market participants under common ownership. Anti-internalization, also known as self-match prevention, is an optional feature available on Nasdaq that: 1) prevents two orders with the same market participant identifier ("MPID") from executing against each other, or 2) prevents two orders entered through a specific order entry port from executing against each other, in the case of market participants using the OUCH order entry protocol. The OUCH order entry protocol is a Nasdaq proprietary protocol that allows subscribers to quickly enter orders into the system and receive executions. OUCH accepts limit orders from members, and if there are matching orders, they will execute. OUCH only provides a method for members to send orders and receive status updates on those orders. The proposed rule change would permit market participants to direct that quotes and/or orders entered into the system not execute against quotes and/or orders entered across MPIDs that are under common ownership. Nasdaq stated in its filing that it believes this enhancement will provide helpful flexibility for market participants that wish to prevent trading against all quotes and orders entered by market participants under common ownership, instead of just quotes and orders that are entered under the same MPID or under a particular order entry port.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-96069.pdf
Comments Due: November 9, 2022

NASDAQ AMENDS SCHEDULE OF CREDITS AT EQUITY 7, SECTION 118

On October 17, 2022, the SEC published for comment, and granted immediate effectiveness to a Nasdaq proposal, to amend Nasdaq's schedule of credits at Equity 7, Section 118(a) to modify the criteria for an existing credit of $0.0029 per share executed. Prior to the amendment, the qualifying criteria for the credit was any member: 1) with shares of liquidity provided in all securities through one or more of its Nasdaq MPIDs that represent more than 0.60% of consolidated volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or the New York Stock Exchange ("NYSE") that represent more than 0.10% of consolidated volume; and 2) that adds at least 0.175% of consolidated volume during the month in non-displayed orders, excluding midpoint orders, for securities in any tape during the month. In the amended rule, Nasdaq lowered from 0.175% to 0.15% the threshold percentage of consolidated volume added during the month in non-displayed orders, excluding midpoint orders, for securities in any tape during the month. In its filing, Nasdaq states that the prior criteria proved too difficult for members to meet in combination with the other criterion set forth in the credit and, as such, has hindered the credit in achieving its intended purpose.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-96091.pdf
Comments Due: November 14, 2022

NASDAQ TEMPORARILY WAIVES CERTAIN PORT-RELATED FEES

On October 19, 2022, the SEC published for comment, and granted immediate effectiveness to a Nasdaq proposal, to temporarily waive certain port-related fees at Equity 7, Section 115 and Equity 7, Section 130. The rule, as amended, waives newly added OUCH order entry ports, including production and Nasdaq Testing Facility ("NTF") environments, with the updated version of the OUCH order entry protocol, referred to as OUCH 5.0. Nasdaq introduced this new upgraded version of the OUCH order entry protocol to enable Nasdaq to make functional enhancements and improvements to specific order types and order attributes. The amendment to Equity 7, Section 115 provides a 30-day waiver of the OUCH production port fee for up to five newly added OUCH ports with the updated OUCH 5.0 order entry protocol. The fee waiver is being offered for a three-month period, beginning on the date when OUCH 5.0 first becomes available on Nasdaq, which Nasdaq will announce in the future through a Nasdaq Equity Trader Alert. At the end of the three-month period, users will no longer be eligible for the waiver. A user may only receive the 30-day waiver once per port, up to a maximum of five ports, within the three-month window. The amendment to Equity 7, Section 130 provides a 30-day waiver of the $300 NTF fee for up to five newly added OUCH NTF ports with the updated OUCH 5.0 order entry protocol. The NTF provides subscribers with a virtual system test environment that closely approximates the production environment on which they may test their automated systems that integrate with the Exchange. For example, the NTF provides subscribers a virtual system environment for testing upcoming releases and product enhancements, as well as testing firm software prior to implementation. The NTF fee waiver would also be offered for a three-month period, beginning on a date specified by Nasdaq in a Nasdaq Equity Trader Alert. At the end of the three-month period, users would no longer be eligible for the waiver. A user may only receive the 30-day waiver once per port, up to a maximum of five ports, within the three-month window.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-96104.pdf
Comments Due: November 15, 2022

NYSE MODIFIES ITS PRICE LIST

On October 14, 2022, the SEC published for comment, and granted immediate effectiveness to a NYSE proposal, to amend its price list to increase the cap for the maximum average number of shares per day for the billing month in calculating the average monthly consolidated average daily volume ("CADV") for purposes of Step Up Adding Tier 3. Prior to the amendment, the Step Up Adding Tier 3 provided an incremental $0.0006 credit in Tapes A, B and C securities for all orders from a qualifying member organization MPID or mnemonic that sets the national best bid or offer ("NBBO") or a new best bid or offer on the NYSE ("BBO") if the MPID or mnemonic: 1) has 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 50% more than the MPID's or mnemonic's Adding ADV in Tapes A, B and C securities in June 2020 as a percentage of Tapes A, B and C CADV; and 2) affiliated with a supplemental liquidity provider ("SLP") that has an Adding ADV in Tape A securities at least 0.10% of NYSE CADV; and has Adding ADV in Tape A securities as a percentage of NYSE CADV, excluding any liquidity added by a DMM, that is at least 0.20%. The rule, as amended, would bring the current CADV cap in line with the tier's June 2020 baseline month CADV, which is above 13 billion shares. Increasing the CADV cap in line with higher volume for the baseline month CADV would continue to provide a degree of certainty to member organizations adding liquidity to the NYSE. The fee changes became effective on October 3, 2022.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-96084.pdf
Comments Due: November 10, 2022

NYSE MODIFIES RULE 7.44 RELATED TO ITS RETAIL LIQUIDITY PROGRAM

On October 20, 2022, the SEC published for comment, and granted immediate effectiveness to a NYSE proposal to modify NYSE Rule 7.44 related to the NYSE's retail liquidity program. The purpose of the program is to attract retail order flow to the NYSE and allow such order flow to receive potential price improvement. Rule 7.44 provides for a class of market participant called retail liquidity providers ("RLPs"), and non-RLP member organizations are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer, called a retail price improvement order ("RPI Order"). When there is an RPI Order in a particular security, the NYSE disseminates an indicator, known as the retail liquidity identifier ("RLI"), that such interest exists. Retail member organizations ("RMOs") can submit a retail order to the NYSE, which interacts, to the extent possible, with available contra-side RPI Orders and then may interact with other liquidity on the NYSE or elsewhere, depending on the retail order's instructions. According to the NYSE, the segmentation in the program allows retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers. Prior to the amendment, the program was limited to trades in NYSE-listed securities. The rule, as emended, expands the program's availability to all securities traded on the NYSE.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-96112.pdf
Comments Due: November 16, 2022

NYSE AMERICAN AMENDS OPTIONS FEE SCHEDULE

On October 13, 2022, and October 14, 2022, the SEC published for comment, and granted immediate effectiveness, to a series of proposals by the NYSE American LLC ("NYSE American") to amend its options fee schedule in various ways. In the first proposal, the NYSE American amended its options fee schedule to: 1) waive the NYSE American Options Regulatory Fee ("ORF") for the period of November 1, 2022 through January 31, 2023; eliminate the requirement that the NYSE American may only modify the ORF semi-annually; and 3) delete outdated language related to the ORF for August 30, 2019. These changes took effect on September 28, 2022. In the second filing, the NYSE American proposed to modify: 1) the qualifications for the alternative initiating participant rebate for complex CUBE auctions; 2) the qualifications for the credit on customer electronic simple and complex executions; and 3) the amount of the initiating participant credit for single-leg CUBE auctions. The changes proposed in the NYSE's second filing were designed to encourage an increase in volume in a variety of transactions on the NYSE American. These changes took effect on October 12, 2022. In the third filing, the NYSE American proposed to modify the credits for floor broker qualified contingent cross ("QCC") transactions. Specifically, floor brokers may now earn a credit of $0.11 per contract for the first 500,000 contracts and a credit of $0.14 per contract on all contracts above 500,000 in a given month. These changes took effect on October 13, 2022.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-96066.pdf
Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-96074.pdf
Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-96082.pdf
Comments Due: November 9-10, 2022

NYSE AMERICAN ENABLES NEW REGULATORY HALT CAPABILITY

On September 29, 2022, the SEC published for comment, and granted immediate effectiveness to a NYSE American proposal to initiate a new regulatory halt capability for a security that has not been previously listed on a national securities exchange prior to its initial pricing, based on the rules of the NYSE American's affiliate, the NYSE. NYSE American Rule 7.18(d), as amended, provides that the NYSE American may declare a regulatory halt in a security that is the subject of an initial pricing on the NYSE American of a security that has not been listed on a national securities exchange immediately prior to the initial pricing, and that the regulatory halt will be terminated when the security opens. The rule is identical to NYSE Rule 123D(d) except for the removal of the reference to the DMM opening the security since NYSE American DMMs are not responsible for opening or closing individual securities on the NYSE American. The NYSE American stated in its filing that it believes it would be consistent with the protection of investors and the public interest for the NYSE American, as a primary listing exchange, to have to the limited authority to declare a regulatory halt for security that is the subject of an initial pricing on the NYSE American of a security that has not been listed on a national securities exchange immediately prior to the initial pricing.

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-95945.pdf

Notable Enforcement Actions

This month's regulatory actions feature several nine-figure fines for recordkeeping failures and unregistered securities sales. In addition, significant fines were levied for operational and supervisory failures surrounding trade reporting and sales practice violations.

Sixteen firms were fined a combined penalty of more than $1.1 billion for widespread failures related to preserving electronic communications. Thirteen firms were fined $125 million each, two firms were fined $50 million each, and one firm was fined $10 million. An SEC investigation uncovered pervasive off-channel communications at each of the 16 firms through the gathering of communications from the personal devices of a sample of each firm's personnel. The personnel included investment bankers and traders at the junior and senior levels. From January 2018 through September 2021, the firms' employees routinely communicated about business matters using text messaging applications on their personal devices. The firms did not maintain or preserve the substantial majority of these off-channel communications, in violation of the federal securities laws. By failing to maintain and preserve required records relating to their businesses, the firms' actions likely deprived the SEC of these off-channel communications in various SEC investigations. Each of the 16 firms were charged with violating certain recordkeeping provisions of the Exchange Act or the Advisers Act and with failing reasonably to supervise with a view to preventing and detecting those violations. In addition to the significant financial penalties, each firm was ordered to cease and desist from future violations of the relevant recordkeeping provisions and was censured. The firms also agreed to retain compliance consultants to, among other things, conduct comprehensive reviews of their policies and procedures relating to the retention of electronic communications found on personal devices and their respective frameworks for addressing non-compliance by their employees with those policies and procedures. Separately, the Commodity Futures Trading Commission announced settlements with the firms for related conduct. (**SEC File Nos. 3-21164; 3-21165; 3-21166; 3-21167; 3-21168; 3-21169; 3-21170; 3-21171; 3-21172; 3-21173; 3-21174**)
https://www.sec.gov/litigation/admin/2022/34-95919.pdf
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A firm was fined a total of $361 million in fines, disgorgement and interest penalties for violating provisions of the Exchange Act by failing to implement adequate internal controls to track its securities offerings in real time, resulting in the unregistered offer and sale of a significant amount of securities and causing the firm to refile its year-end 2021 financial statements with the SEC. The

firm, following an SEC action in 2017, lost its well-known seasoned issuer ("WKSI") status, resulting in the firm having to quantify the total number of securities that it anticipated offering and selling and pay registration fees for those offerings upon the filing of a new registration statement. Given this requirement, the firm's personnel understood that the firm needed to track actual offers and sales of securities against the amount of registered offers and sales on a real-time basis. No internal control was established for this purpose. As a result of this failure, the firm offered and sold approximately $17.7 billion of securities in unregistered transactions. In addition to the fine, disgorgement and interest penalties, the firm agreed to cease-and-desist from violating the charged provisions of the Exchange Act and to comply with certain undertakings designed to effect compliance with Section 5 of the Securities Act. The firm self-reported its over-issuances to regulators, provided meaningful cooperation during the SEC staff's investigation, and subsequently commenced a rescission offer. (**SEC File No. 3-21181**)
https://www.sec.gov/litigation/admin/2022/33-11110.pdf

A firm was fined and censured $325,000 for publishing equity research reports that included price charts with inaccurate historical stock ratings. The findings state that the firm used a software program that contained a typographical error that caused the price charts in certain research reports to display stock ratings from five years prior to the report, but inaccurately labeled those ratings as being from three years prior to the report. Once the firm identified the issue, it continued to publish research reports containing inaccurate historical stock ratings until the issue was resolved. The firm also failed to establish and maintain a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to achieve compliance with the disclosure requirements for historical stock ratings. Although the ratings inaccuracies arose from an error in the price chart software, they ultimately resulted in inaccurate disclosures in published research reports because the firm had no policy or procedure to enable it to reasonably determine that the historical stock ratings in its research reports were accurate. The firm also failed to accurately disclose required beneficial ownership information in research reports. The firm acquired an investment management company, which increased the firm's overall holdings of many equity securities and thus changed the beneficial ownership disclosures the firm was required to include in its research reports. The firm updated its beneficial ownership feed to include the investment management company securities holdings, but the firm's system rejected the updated feed as potentially erroneous, which resulted in the investment management company's holdings being excluded from the feed used to report the firm's beneficial ownership on research reports. Although the firm's system was designed to notify firm personnel when it rejected a data feed, the system failed to send such notification in this instance due to a software error. The firm identified the issue during its monthly surveillance review of research disclosures and resolved the issue shortly thereafter. As a result of this issue, the firm failed to accurately disclose beneficial ownership information in research reports. Affected reports failed to disclose that the firm or its affiliates held a beneficial ownership stake of one percent or more or erroneously disclosed a beneficial ownership stake of one percent or more where none existed.
(**FINRA Case #2020067484501**)
https://www.finra.org/sites/default/files/fda_documents/2020067484501%20Morgan%20Stanley%20%26%20Co.%20LLC%20%20CRD%208209%20AWC%20gg%20%282022-1662164418494%29.pdf

A firm was censured and fined $325,000 for failing to report and inaccurately reported over-the-counter ("OTC") options positions to the large options positions reporting system ("LOPR"). While updating its OTC LOPR, the firm identified that it had only been reporting positions that originated from its U.S.- based activity. The firm had not been reporting instances in which a U.S. customer traded with the firm's foreign affiliate because its LOPR reporting logic had filtered out, and thus not reported, activity from its non-U.S. affiliate. However, the firm was required to report those positions. The firm's LOPR also did not recognize that certain customers' accounts were under common control. As a result, the firm failed to report to the LOPR account groups as acting in-concert and reported positions with an incorrect acting-in-concert number. In addition, the firm's failure to properly aggregate these account groups led to a failure to report positions. Furthermore, the firm reported OTC options positions to the LOPR without the customers' tax identification number or tax type. The findings also state that the firm failed to establish and maintain a supervisory system reasonably designed to comply with its LOPR reporting obligations. The firm's supervisory system related to LOPR reporting did not provide for, and the firm did not conduct, a review of its LOPR reporting logic to determine whether its system captured all reportable positions, including those transactions between U.S. customers and a foreign affiliate of the firm that the firm incorrectly excluded from its LOPR reports. Later, the firm removed the filter that prevented it from including reportable positions involving foreign affiliates and also implemented additional controls and reviews designed to identify potential issues with its LOPR reporting. In addition, the firm's supervisory system for detecting accounts that were acting in-concert was too restrictive to be effective, because it only linked its acting-in-concert accounts that shared an internal legal entity number or were identified in the system as having the same fund manager. The firm has since implemented changes to its system to more precisely identify accounts required to be designated as acting-in-concert. (**FINRA Case #2019063480501**)

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A firm was censured and fined $300,000 for failing to accurately calculate its customer reserve requirement and failing to maintain a sufficient customer reserve. The firm's customer reserve calculations excluded customer checks that the firm had received but not yet processed for deposit. As a result, the firm failed to make sufficient deposits in its customer reserve account, causing two hindsight deficiencies that totaled approximately $162 million. The firm also failed to establish and maintain a supervisory system reasonably designed to achieve compliance with the Exchange Act and FINRA rules concerning the customer reserve requirement. The firm's written procedures were not reasonably designed to ensure that undeposited customer checks would be included in the firm's customer reserve calculations. The procedures failed to specify how to handle customer checks that had been received but had not yet been processed for deposit. They also lacked any information about the requirement to include undeposited customer checks in the reserve calculation on the date the checks are received. In addition, the firm's supervision of its employees' handling of undeposited customer checks was unreasonably designed to exclude undeposited customer checks from its customer reserve calculation on the date the checks were received. The business unit within the firm that received and processed customer checks prepared a daily report that the firm used to calculate its customer reserve requirement; however, that report did not include customer checks that the firm had received but not yet processed for deposit. The firm did not take any other steps to ensure that those checks were included in the customer reserve calculation on the date they were received. After the firm discovered the hindsight deficiencies, it commenced steps to revise its relevant supervisory procedures. The firm also failed to maintain accurate books and records and filed inaccurate Financial and Operational Combined Uniform Single ("FOCUS") reports. The firm created and maintained inaccurate books and records concerning its customer reserve by improperly calculating its customer reserve requirements. In addition, the firm filed monthly FOCUS reports that did not accurately reflect the amount of the firm's customer reserve obligation. (**FINRA Case #2020068870301**)

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A firm was censured and fined $250,000 for failing to report the short sale indicator for transactions in National Market System ("NMS") securities. A programming error caused the firm to exclude the short sale indicator when reporting short sale transactions to the NYSE Trade Reporting Facility ("TRF"). The firm learned of the issue in connection with FINRA's cycle exam and subsequently corrected the programming error. The findings also state that the firm failed to report the short sale indicator for transactions in OTC equity securities. A similar programming error caused the firm to erroneously exclude the short sale indicator when reporting short sale transactions to the OTC TRF. The firm also failed to reasonably supervise trade reporting to the NYSE and OTC TRFs. The firm conducted supervisory reviews of equity trade reporting, but they were not reasonably designed to achieve compliance with FINRA rules with respect to short sale indicator reporting to the NYSE and OTC TRFs. When the firm began reporting to the NYSE and OTC TRF, it reviewed certain test trades, but those reviews did not detect the absence of the short sale indicator. The firm did not conduct any subsequent reviews to determine if the firm was reporting the accurate short sale indicator to the NYSE and OTC TRFs. (**FINRA Case #2019061500001**)

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A firm was censured and fined $250,000 for failing to establish and implement a written AML (anti-money laundering) program reasonably expected to detect and cause the reporting of suspicious transactions. The firm's written AML procedures assigned the responsibility for surveillance of potentially suspicious transactions to a designated principal and referenced the use of a daily transaction report, but it had no written procedures regarding the use of the report. The firm did not have written procedures designating who was responsible for conducting the reviews of its surveillance system and reports generated from the system, their respective duties, what reports they would review, the factors they would consider when reviewing surveillance reports, how to document such reviews, when and how reviewing personnel would escalate an issue, or when and how the compliance and operations departments should share information from their reviews. In addition, many of the firm's surveillance reports were not reasonably designed to detect suspicious or potentially manipulative transactions. The firm also lacked reasonable written AML procedures to detect and monitor for related customer accounts. The firm relied on customers to notify it that accounts were related and should be linked and had no system in place to monitor for red flags of purportedly unrelated customers using similar or near-identical email or mailing addresses. In addition, the firm accepted and routed customer orders in options but did not have a reasonable system or any surveillance or other tools to detect and report suspicious or potentially manipulative activity specific to options transactions. The firm also did not develop and implement a reasonable system to review, identify, and report patterns of suspicious trading. Reviewers relied on their memory to recall if the same customers or securities appeared in multiple exceptions for two or more days and to review customer trades for anomalous trading patterns. The firm's procedures also provided no guidance for documenting its analysis and investigation of suspicious activity and the firm did not document the findings of its investigations. The findings also stated that the firm failed to timely or reasonably detect, investigate, and respond to red flags of suspicious activities by retail customers, including in initial public offerings ("IPOs") where the firm served as an underwriter. The firm conducted no review to compare customer trading activity or indications of interest to financial information on customer account forms. Multiple investors presented red flags of potential coordinated trading, but the firm failed to detect or perform any AML investigation of these transactions. The firm also failed to detect, investigate, and respond to suspicious movements of money for customers. The findings also include that the firm failed to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the risks of its market access business. The firm's written procedures did not describe the firm's processes to review, escalate, and resolve surveillance exceptions generated for potentially manipulative activity, and its process for generating and reviewing surveillance exceptions was not reasonably designed to identify various forms of suspicious or potentially manipulative trading. (**FINRA Case #2018058605501**)

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A firm was fined and censured $210,000 for failing to establish, maintain, and enforce a supervisory system, including written procedures, reasonably designed to achieve compliance with FINRA Rule 2111 as it pertains to short-term trading of mutual fund class A shares. The firm relied primarily on one person to conduct daily, manual reviews of trading activity in the accounts for all its registered representatives, which at the time numbered over 300. Such daily reviews were not reasonably designed to identify short-term mutual fund switches, which had purchases and sales months apart. The firm did not provide the trade reviewer with support staff to assist with manual trade reviews or automated exception reports that could assist with a review for mutual fund switches. In addition, the firm did not respond reasonably to red flags of unsuitable mutual fund trading in one of its registered representative's customers' accounts. First, the representative's Uniform Termination Notice for Securities Industry Registration (Form U5) from his prior firm – which indicated that he had been terminated while under review for short term mutual fund trading – was a red flag that he represented heightened risk for unsuitable mutual fund switching. However, the firm did not impose any heightened supervision of the representative or the trading activity in his customers' accounts. unnecessary sales charges. The firm has voluntarily made restitution to the affected customers. (**FINRA Case #2018060177801**)

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A firm was censured and fined $200,000 for failing to reasonably supervise a former registered representative who engaged in unsuitable recommendations of structured notes and unauthorized trading in a senior customer's account, who also was the representative's grandmother, and failed to take reasonable action to investigate and address the representative's misconduct, despite the presence of red flags. The representative's supervisor identified that the customer's account had a large position in structured notes and called the customer to confirm basic aspects of her investor profile. However, the supervisor did not explain to the customer that her account was concentrated in structured notes or ascertain whether she understood the features and risks of structured notes. In addition, the representative submitted, and firm supervisors reviewed and approved, suitability forms that indicated the customer's concentration in structured products rose from 14 percent of her liquid net worth to 43 percent within two months. Despite this concentration exceeding the firm's 15 percent guideline, the firm did not contact the customer or otherwise discuss her understanding of the risks of the concentrated position in structured notes. The representative later falsely updated the customer's liquid net worth from $100 million to $155 million in an attempt to avoid further scrutiny of the customer's account. The firm mailed the customer written confirmation of the changes made to her liquid net worth; however, the firm did not call the customer, investigate the significant addition to her liquid net worth, or consider why the increase occurred after the firm began to question the representative about the customer's structured product holdings. Subsequently, the firm imposed certain limitations on the purchase of structured products in the customer's account. The firm also restricted the representative from purchasing additional structured notes altogether but did not place him under any heightened supervision. Overall, the representative purchased more than $108 million in securities, $77 million of which were structured notes, before the firm restricted note purchases. The firm failed to reasonably address the account's trading in structured products and the resulting concentration level. As a result, the structured notes in the customer's account had realized losses of $5.5 million. The representative also placed unauthorized transactions, including forging the customer's signature to facilitate a $5 million unauthorized investment in a private equity fund. The firm received a complaint from the customer who alleged that certain transactions in her account were unauthorized. Although the firm opened an investigation, it did not restrict the customer's account until a month after receiving the complaint. In addition, after receiving the complaint, a $582,849 wire representing the customer's first payment toward the unauthorized private equity fund investment was made from her account. An arbitration panel has since ordered the firm to pay a total of $9 million to the customer. (**FINRA Case #2019063430402**)
https://www.finra.org/sites/default/files/fda_documents/2019063430402%20J.P.%20Morgan%20Securities%20LLC%20CRD%2079%20AWC%20lp%20%282022-1662250807401%29.pdf

A firm was censured and fined more than $416,000 in penalties and restitution to customers for using a published commission schedule that charged commissions on low-principal transactions that were not fair and reasonable. For all equity transactions, the firm imposed a minimum commission of $100, in addition to a handling fee. As a result of the minimum commission, the firm charged at least $266,481 in unfair commissions of transactions on behalf of customers. The commissions charged ranged from over five percent to 93 percent of the transactions' principal value. The findings also state that the firm's supervisory system was unreasonable because in establishing its commission schedule and in setting commissions on transactions, the firm did not appropriately

consider the factors set forth in FINRA Rule 2121.01 for transactions when the minimum $100 commission was imposed. While the firm generally flagged transactions where customers were charged over five percent of principal and reviewed those transactions for excessive commissions, its supervisory system did not flag for review transactions when the firm charged the minimum $100 commission. (**FINRA Case #2020065107401**)

https://www.finra.org/sites/default/files/fda_documents/2020065107401%20Robert%20W.%20Baird%20%26%20Co.%20Inc.%20CRD%208158%20AWC%20lmp%20%282022-1664670000349%29.pdf

A firm was fined and censured $100,000 for failing to comply with the locate requirement of Rule 203 of Regulation SHO of the Exchange Act. The firm inadvertently configured its delivery-versus-payment ("DVP") client accounts to allow short sale orders entered into the firm's order management systems ("OMS") to route for execution without obtaining locates. As a result, the firm failed to obtain locates for short sale orders. The firm also failed to accurately report the capacity symbol for trades. One of the firm's OMSs was incorrectly coded to send a principal capacity symbol for client agency orders to the reporting party. As a result, the firm caused transactions to be reported to the FINRA TRF with the incorrect capacity. Subsequently, the firm switched all agency order routing to an OMS that was correctly coded to report the proper capacity symbol. The findings also include that the firm failed to reasonably supervise for compliance with locate and trade reporting requirements. The firm's supervisory system, including its WSPs, was not reasonably designed to achieve compliance with Rule 203(b) of Regulation SHO. The firm's supervisory system required that a review for locate information be performed but it inadvertently failed to include a locate review for short sale orders in the firm's DVP accounts. Further, the firm conducted a locates supervisory review for custodial accounts, but it incorrectly excluded short sale orders that were accepted for execution but did not execute. In addition, the firm lacked a review to confirm all required trade information, such as capacity, was accurately reported to the FINRA TRF. (**FINRA Case #2019061062701**)

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