SECURITIES OPERATIONS

REGULATORY UPDATE

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SEC Solicits Comment on Strategic Plan for Fiscal Years 2022 - 2026

On August 24, 2022, the U.S. Securities and Exchange Commission ("SEC" or the "Commission") published for comment its draft strategic plan for fiscal years 2022-2026. The draft strategic plan establishes three primary goals:

- Protecting working families against fraud, manipulation, and misconduct;
- Developing and implementing a robust regulatory framework that keeps pace with evolving markets, business models, and technologies; and
- Supporting a skilled workforce that is diverse, equitable, inclusive, and is fully equipped to advance agency objectives.

Among the initiatives to meet these goals, the SEC intends to enhance the use of market and industry data to prevent, detect, and prosecute improper behavior. The SEC also seeks to modernize the design, delivery, and content of disclosures to investors so they can access consistent, comparable, and material information while making investment decisions. The Commission also aims to update existing rules and approaches to reflect evolving technologies, business models, and capital markets. To support its diversity and inclusion efforts, the SEC will focus on recruiting, training, and retaining staff with the right mix of skills, experience, and expertise. The draft plan was prepared in accordance with the Government Performance and Results Modernization Act of 2010, which requires federal agencies to outline their missions, planned initiatives, and strategic goals for a four-year period.

The Commission has encouraged all interested parties to comment on this proposal, which can be submitted using the link provided below.

- **SEC Draft Strategic Plan:** https://www.sec.gov/files/sec_strategic_plan_fy22-fy26_draft.pdf
- **SEC Request for Comment:** https://www.sec.gov/rules/other/2022/34-95588.pdf
- **Submit Comments:** https://www.sec.gov/cgi-bin/ruling-comments
- **Press Release:** https://www.sec.gov/news/press-release/2022-148
- **Comments Due:** 30 days after publication in the Federal Register

SEC ADOPTS AMENDMENTS TO WHISTLEBLOWER RULES

On August 26, 2022, the SEC adopted two amendments to the rules governing its whistleblower program. The first rule change allows the Commission to pay whistleblowers for their information and assistance in connection with non-SEC actions in additional circumstances. The second rule affirms the Commission's authority to consider the dollar amount of a potential award for the limited purpose of increasing an award but not to lower an award. Specifically, the SEC amended Rule 21F-3 to allow the Commission to pay whistleblower awards for certain actions brought by other entities, including designated federal agencies, in cases where those awards might otherwise be paid under the other entity's whistleblower program. The amendments allow for such awards when the other entity's program is not comparable to the Commission's own program or if the maximum award that the Commission could pay on the related action would not exceed $5 million. Further, the amendments affirm the Commission's authority under Rule 21F-6 to consider the dollar amount of a potential award for the limited purpose of increasing the award amount, and it would eliminate the Commission's authority to consider the dollar amount of a potential award for the purpose of decreasing an award. The SEC's whistleblower program was established in 2010 to encourage individuals to report high-quality tips to the Commission and help the agency detect wrongdoing and better protect investors and the marketplace. The program has made significant contributions to the effectiveness of the agency's enforcement of the federal securities laws. Since the program's inception, enforcement matters brought using original information from meritorious whistleblowers have resulted in orders for more than $5 billion in total monetary sanctions. The Commission has awarded more than $1.3 billion to meritorious whistleblowers under the program.

Final Rule: https://www.sec.gov/rules/final/2022/34-95620.pdf
Fact Sheet: https://www.sec.gov/files/34-95620-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-151

SEC ADOPTS PAY VERSUS PERFORMANCE DISCLOSURE RULES

On August 25, 2022, the SEC announced that it had adopted amendments to its rules to require registrants to disclose information reflecting the relationship between executive compensation actually paid by a registrant and the registrant's financial performance. The rules implement a requirement mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Specifically, the amendments require registrants to provide a table disclosing specified executive compensation and financial performance measures for their five most recently completed fiscal years. With respect to the measures of performance, a registrant will be required to report its total shareholder return ("TSR"), the TSR of companies in the registrant's peer group, its net income, and a financial performance measure chosen by the registrant. Using the information presented in the table, registrants will be required to describe the relationships between the executive compensation actually paid and each of the performance measures, as well as the relationship between the registrant's TSR and the TSR of its selected peer group. A registrant will also be required to list three to seven financial performance measures that it determines are its most important performance measures for linking executive compensation to company performance.

Final Rule: https://www.sec.gov/rules/final/2022/34-95607.pdf
Fact Sheet: https://www.sec.gov/files/34-95607-fact-sheet.pdf

Press Release: https://www.sec.gov/news/press-release/2022-149

SEC PROPOSES TO ENHANCE PRIVATE FUND REPORTING

On August 10, 2022, the SEC announced that it had voted to propose amendments to Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds. The Commodity Futures Trading Commission ("CFTC") is concurrently considering proposing the amendments jointly with the SEC. The SEC and CFTC jointly adopted Form PF about a decade ago. Among other things, the proposed amendments would: 1) enhance how large hedge fund advisers report investment exposures, borrowing and counterparty exposure, market factor effects, currency exposure reporting, turnover, country and industry exposure, central clearing counterparty reporting, risk metrics, investment performance by strategy, portfolio correlation, portfolio liquidity, and financing liquidity to provide better insight into the operations and strategies of these funds and their advisers and improve data quality and comparability; 2) require additional basic information about advisers and the private funds they advise including identifying information, assets under management, withdrawal and redemption rights, gross asset value and net asset value, inflows and outflows, base currency, borrowings and types of creditors, fair value hierarchy, beneficial ownership, and fund performance to provide greater insight into private funds' operations and strategies, assist in identifying trends, including those that could create systemic risk, improve data quality and comparability, and reduce reporting errors; and 3) require more detailed information about the investment strategies, counterparty exposures, and trading and clearing mechanisms employed by hedge funds, while also removing duplicative questions, to provide greater insight into hedge funds' operations and strategies, assist in identifying trends, and improve data quality and comparability. The SEC stated that, among other purposes, the proposed amendments are designed to enhance the Financial Stability Oversight Council's ("FSOC") ability to assess systemic risk.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/ia-6083.pdf
Fact Sheet: https://www.sec.gov/files/ia-6083-fact-sheet-0.pdf
Press Release: https://www.sec.gov/news/press-release/2022-141
Comments Due: October 11, 2022

SEC PROPOSES RULES TO IMPROVE CLEARING AGENCY GOVERNANCE

On August 8, 2022, the SEC announced that it had proposed new rules to help improve governance arrangements across all registered clearing agencies by reducing the likelihood that conflicts of interest may influence the board of directors or equivalent governing body of a registered clearing agency. The proposed rule would establish new governance requirements on board composition, independent directors, nominating committees, and risk management committees. The proposed rule would also require new policies and procedures regarding conflicts of interest, board obligations to oversee relationships with service providers for critical services, and a board obligation to consider stakeholder viewpoints. As it relates to clearing agencies that clear security-based swaps, the proposed rule would advance the policy objectives of the Dodd-Frank Act by establishing new requirements for policies and procedures that require such clearing agencies to identify, mitigate, or eliminate conflicts of interest and document those actions.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/34-95431.pdf
Fact Sheet: https://www.sec.gov/files/34-95431-fact-sheet_0.pdf

Press Release: https://www.sec.gov/news/press-release/2022-138
Comments Due: October 7, 2022

SEC ISSUES FIRST FEE RATE ADVISORY FOR FISCAL YEAR 2023

On August 26, 2022, the SEC announced that the fees that public companies and other issuers pay to register their securities with the Commission will increase from $92.70 per million dollars to $110.20 per million dollars, effective October 1, 2022. The new fee rate will be applicable to the registration of securities under Section 6(b) of the Securities Act of 1933 ("Securities Act"), the repurchase of securities under Section 13(e) of the Securities Exchange Act of 1934 ("Exchange Act"), and proxy solicitations and statements in corporate control transactions under Section 14(g) of the Exchange Act. The Commission's projections are calculated using a methodology developed in consultation with the Congressional Budget Office and the Office of Management and Budget. The Commission determined the statutory target amount for fiscal year 2023 to be $815,557,629 by adjusting the fiscal year 2022 target collection amount of $747,806,372 million for the rate of inflation.

SEC Order: https://www.sec.gov/rules/other/2022/33-11095.pdf
Press Release: https://www.sec.gov/news/press-release/2022-152

SEC PROPOSES TO NARROW EXEMPTION FROM NATIONAL SECURITIES ASSOCIATION MEMBERSHIP

On July 29, 2022, the SEC announced that it had re-proposed rule amendments that would narrow the exemption from Section 15(b)(8) of the Exchange Act, which requires any broker or dealer registered with the Commission to become a member of a national securities association unless the broker or dealer effects transactions in securities solely on an exchange of which it is a member. The Financial Industry Regulatory Authority ("FINRA") currently is the only registered national securities association. Exchange Act Rule 15b9-1 provides an exemption from Section 15(b)(8) under which certain SEC-registered dealers may engage in unlimited proprietary trading of securities on any national securities exchange of which they are not a member or in the over-the-counter ("OTC") market without triggering Section 15(b)(8)'s FINRA membership requirement. The proposed amendments would replace this proprietary trading exemption with narrow exemptions from Section 15(b)(8)'s FINRA membership requirement. Under the proposed amendments, a broker-dealer that carries no customer accounts and effects securities transactions other than on a national securities exchange where it is a member would be exempt from Section 15(b)(8) only if those transactions result from routing for order protection purposes by a national securities exchange where the broker-dealer is a member or constitute the execution of the stock leg of a stock-option order.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/34-95388.pdf
Fact Sheet: https://www.sec.gov/files/34-95388-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-133
Comments Due: September 27, 2022

PCAOB STRIKES AGREEMENT WITH CHINESE REGULATORS ON AUDIT FRAMEWORK

On August 26, 2022, the SEC announced that the Public Company Accounting Oversight Board ("PCAOB") had signed a Statement of Protocol with the China Securities Regulatory Commission ("CSRC") and the Ministry of Finance of the People's Republic of China governing inspections and investigations of audit firms based in China and Hong Kong. The agreement marks the first time that the SEC and/or PCAOB have received such detailed and specific commitments from China that they would allow PCAOB inspections and investigations meeting U.S. standards. In particular, Chinese authorities have committed to four specific items: 1) in accordance with the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"), the PCAOB has independent discretion to select any issuer audits for inspection or investigation; 2) the PCAOB gets direct access to interview or take testimony from all personnel of the audit firms whose issuer engagements are being inspected or investigated; 3) the PCAOB has the unfettered ability to transfer information to the SEC, in accordance with the Sarbanes-Oxley Act; and 4) the PCAOB inspectors can see complete audit work papers without any redactions. On this last item, the PCAOB will utilize "view-only" procedures, as it has done in the past with certain other jurisdictions, for targeted pieces of information (*e.g.*, personally identifiable information). In a public statement, SEC Chair Gary Gensler praised the accord but acknowledged that the success of the framework remains to be seen. "The proof will be in the pudding," said Gensler. "While important, this framework is merely a step in the process. This agreement will be meaningful only if the PCAOB actually can inspect and investigate completely audit firms in China. If it cannot, roughly 200 China-based issuers will face prohibitions on trading of their securities in the U.S. if they continue to use those audit firms." Gensler also noted that, considering the time required to conduct these inspections and investigations, inspectors must be on the ground by mid-September 2022 if their work has any chance to be successfully completed by the end of this year.

Gensler Statement: https://www.sec.gov/news/statement/gensler-audit-firms-china-hong-kong-20220826
Fact Sheet: https://www.sec.gov/files/china-sop-fact-sheet.pdf
Q&A Sheet: https://www.sec.gov/files/china-sop-qa_0.pdf

SEC NAMES PRICE AS DIRECTOR OF OFFICE OF CREDIT RATINGS

On August 12, 2022, the SEC announced that Lori Price had been named Director of the Office of Credit Ratings, effective August 14, 2022, after having served as Acting Director of the office since February 2022. The SEC's Office of Credit Ratings is responsible for the oversight of nationally recognized statistical rating organizations ("NRSROs"), including examinations of NRSROs and developing and administering rules affecting NRSROs. Office staff work to ensure that credit ratings are not unduly influenced by conflicts of interest and NRSROs provide greater transparency and disclosures to investors. Price first began working at the SEC in 1987. After leaving in 2000 to work in private practice, she returned in 2003 to work in the Office of the General Counsel. She held several roles of increasing responsibility on her way to becoming Associate General Counsel and leading a team of advisors on some of the agency's most complex rulemaking initiatives and interpretive matters. Price joined the Office of Credit Ratings in August 2020.

Press Release: https://www.sec.gov/news/press-release/2022-142

SEC APPOINTS WINKLER AND GRIPPO AS REGIONAL OFFICE DIRECTORS

On August 15, 2022, the SEC announced that Monique Winkler and Nicholas Grippo had been named as Regional Directors of the SEC's San Francisco and Philadelphia Regional Offices, respectively. Winkler was tapped after having served as Acting Director of the SEC's San Francisco Regional Office since March 2022. As Director of the SEC's San Francisco Regional Office, Winkler will lead a staff of more than 140 attorneys, accountants, investigators, securities compliance examiners, and other personnel involved in the prosecution of enforcement actions and performance of compliance examinations across northern California and the Pacific Northwest. Winkler began working at the SEC's Division of Enforcement as a staff attorney in the San Francisco Regional Office in 2008 and joined the division's Public Finance Abuse Unit in 2010. She was promoted to Assistant Regional Director in 2015 and Associate Regional Director for Enforcement in 2019. Grippo joins the SEC from the U.S. Attorney's Office for the District of New Jersey, where he currently serves as the Chief of the Criminal Division. Before becoming Chief of the U.S. Attorney's Office Criminal Division, Grippo served as the Division's Deputy Chief from January 2020 to July 2021 and as Attorney-in-Charge of the Office's Trenton Branch Office from December 2018 to January 2020. He joined the U.S. Attorney's Office as an Assistant United States Attorney in 2012 and spent five years in the office's Economic Crimes Unit, where he investigated and prosecuted securities fraud and white-collar crimes, including many cases in parallel with the SEC. Among others, Grippo was the lead prosecutor on United States v. Aleksandr Milrud, the Department of Justice's first securities fraud prosecution involving layering, and United States v. Paul Parmar, et al., a $300 million alleged securities fraud scheme involving a go-private transaction. He also worked on the Justice Department's hacking and insider trading cases, United States v. Turchynov, et al., a case involving the hacking of business newswire companies, and United States v. Radchenko, et al., a case involving the hacking of the SEC's EDGAR system. In his new role with the SEC, Grippo will lead a staff of more than 150 attorneys, accountants, investigators, securities compliance examiners, and other personnel involved in the prosecution of enforcement actions and performance of compliance examinations across the mid-Atlantic. Grippo's appointment becomes effective on September 12, 2022.

Winkler Press Release: https://www.sec.gov/news/press-release/2022-144
Grippo Press Release: https://www.sec.gov/news/press-release/2022-143

SEC TAPS THOMPSON FOR SECOND TERM AT PCAOB

On August 2, 2022, the SEC announced the appointment of Anthony "Tony" Thompson to a second term as a Board Member of PCAOB. Thompson joined the Board on January 3, 2022, filling a term that expires on October 24, 2022. His second term will run until October 24, 2027. Prior to joining the PCAOB, Thompson served as the Executive Director and Chief Administrative Officer of the CFTC and held senior positions at the U.S. Department of Agriculture, where he was responsible for leading a workforce of more than 400 personnel and a broad range of programs, including budget and financial management. Before entering civilian government service, Thompson served in the United States Air Force for 32 years, including serving as the Chief Budget Officer for the service branch after previously serving as Chief Financial Officer for a number of U.S. Air Force bases.

Press Release: https://www.sec.gov/news/press-release/2022-136

FINRA PROPOSES SHORTENING REPORTING TIMEFRAME FOR CERTAIN TRACE TRANSACTIONS

On August 2, 2022, FINRA published Regulatory Notice 22-17 to amend FINRA Rule 6730 to reduce the Trade Reporting and Compliance Engine ("TRACE") trade reporting timeframe for transactions in all TRACE-Eligible Securities that currently are subject to a 15-minute reporting timeframe. Specifically, members would be required to submit a report to TRACE as soon as practicable, as is currently the case, but no later than one minute from the time of execution, for transactions in corporate bonds, agency debt securities, asset-backed securities and agency pass-through mortgage-backed securities traded to-be-announced for good delivery. As is the case today, FINRA would make information on the reported transactions publicly available immediately upon receipt of the trade report. Since the implementation of TRACE in 2002, the fixed income markets have changed dramatically, including a significant increase in the use of electronic trading platforms or other electronic communication protocols to facilitate the execution of transactions. FINRA stated that, in response to these changes, it continues to actively consider ways to provide more timely, granular and informative data to, among other things, enhance the value of disseminated transaction data. The proposal outlined in Regulatory Notice 22-17 follows this trend. It also comes after the recent SEC approval of a FINRA proposal to append a modifier to a corporate bond trade that is part of a larger portfolio trade when reporting to TRACE. FINRA stated that it is also contemplating other enhancements to the TRACE reporting and dissemination framework and whether the evolution of trading platforms, market conventions, or other considerations and developments warrant additional changes to the data FINRA collects and disseminates through TRACE.

FINRA Reg Notice 22-17: https://www.finra.org/sites/default/files/2022-08/Regulatory-Notice-22-17.pdf
Comments Due: October 3, 2022

SEC APPROVES FINRA PROPOSAL TO AUGMENT DISSEMINATION OF TRANSACTION DATA FOR TREASURIES

On August 5, 2022, the SEC issued an order approving a FINRA proposal to amend FINRA Rule 6750 to provide that FINRA may publish or distribute aggregated transaction information and statistics on U.S. Treasury securities on a more frequent basis. On March 10, 2020, FINRA began posting on its website weekly, aggregate data on the trading volume of U.S. Treasury Securities reported to TRACE. FINRA Rule 6750, as amended, modified paragraph (b) of Supplementary Material .01 to delete the word "weekly" so as to permit more frequent publication of aggregated U.S. Treasury security transaction information and statistics, such as on a daily basis. According to FINRA, the more frequent aggregated U.S. Treasury security data will continue not to identify individual market participants or transactions and will not include aggregated transaction information and statistics by individual U.S. Treasury security, except for on-the-run U.S. Treasury securities because there is only one on-the-run security at a time for each subtype and maturity. In addition, the aggregate U.S. Treasury security data will continue to be provided at no charge, unless FINRA submits an appropriate rule filing establishing a fee for this data in the future. FINRA originally filed the proposal with the SEC on June 23, 2022. The proposal was later published in the Federal Register on July 1, 2022. The SEC received one comment letter on the proposal prior to its

approval.

SEC Approval Order: https://www.sec.gov/rules/sro/finra/2022/34-95438.pdf

SEC APPROVES FINRA PROPOSAL TO EXPAND TRACE REPORTING REQUIREMENTS

On August 10, 2022, the SEC issued an order approving a FINRA proposal to amend its TRACE-related rules (FINRA Rule 6700 series) to require members to report to TRACE transactions in U.S. dollar-denominated foreign sovereign debt securities for regulatory purposes. FINRA Rule 6730(a) requires each FINRA member that is a party to a transaction in a TRACE-eligible security to report the transaction to TRACE. Almost all U.S. dollar denominated debt securities traded in the U.S., including U.S. dollar-denominated debt securities of foreign private issuers, are TRACE-eligible securities and therefore are subject to TRACE reporting requirements. However, under the previous version of the rule, the term TRACE-eligible security excluded any debt security issued by a foreign sovereign. FINRA's TRACE-related rules, as amended, include U.S. dollar-denominated foreign sovereign debt securities within the definition of TRACE-eligible security, so that these securities would become subject to TRACE reporting. Specifically, FINRA amended paragraph (a) of Rule 6710 to include the term "Foreign Sovereign Debt Security" in the definition of TRACE-eligible security and defined "Foreign Sovereign Debt Security" in paragraph (kk) of Rule 6710 as a debt security issued or guaranteed by the government of a foreign country, any political subdivision of a foreign country (*e.g.*, state, provincial, or municipal governments), or a supranational entity. FINRA originally filed the proposal with the SEC on May 6, 2022. The proposal was later published in the Federal Register on May 17, 2022. The SEC received four comment letters on the proposal prior to its approval.

SEC Approval Order: https://www.sec.gov/rules/sro/finra/2022/34-95465.pdf

FINRA PROPOSES TO REVISE SYNDICATE SETTLEMENT TIMEFRAME FOR CORPORATE DEBT OFFERINGS

On August 12, 2022, the SEC published for comment a FINRA proposal to amend FINRA Rule 11880 to revise the syndicate account settlement timeframe for corporate debt offerings. Underwriting groups ordinarily form syndicate accounts to process the income and expenses of the syndicate. The syndicate manager is responsible for maintaining syndicate account records and must provide to each selling syndicate member an itemized statement of syndicate expenses no later than the date of the final settlement of the syndicate account. Syndicate members record the expected payments from the syndicate manager as "receivables" on their books and records but generally do not receive the payments for up to 90 days after the syndicate settlement date, as currently permitted under FINRA rules. FINRA 11880 was adopted in the late 1980s to help avoid lengthy settlement delays by requiring final settlement of the syndicate account within 90 days following the settlement date. In consideration of the technological advances since the 1980s, FINRA Rule 11880(b), as amended, would establish a two-stage syndicate account settlement approach whereby the syndicate manager would be required to remit to each syndicate member at least 70 percent of the gross amount due to such syndicate member within 30 days following the syndicate settlement date, with any final balance due remitted within 90 days following the syndicate settlement date. In its filing, FINRA did not propose to change the current 90-day requirement for final settlement of the syndicate account for public offerings of equity securities. The

proposed rule change is limited to public offerings of corporate debt securities.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-95494.pdf
Comments Due: September 8, 2022

NASDAQ AMENDS SCHEDULE OF CREDITS AT EQUITY 7, SECTION 118

On August 9, 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 credits at Equity 7, Section 118 to add: 1) a new credit in Tapes A, B and C for displayed quotes/orders, other than supplemental orders or designated retail orders; and 2) a new credit in Tapes A, B and C for non-displayed midpoint orders, other than supplemental orders. Specifically, Nasdaq added a credit of $0.0020 per share executed to Tapes A, B and C, available to a member that: 1) increases its shares of liquidity provided in all securities by at least 20% as a percentage of consolidated volume during the month relative to the month of July 2022; and 2) has shares of liquidity provided of least 5 million average daily volume during the month. In addition, Nasdaq added a supplemental credit of $0.0001 per share executed for midpoint orders, excluding any buy (sell) orders with midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the National Best Bid and Offer ("NBBO") for a member that: 1) provides at least 10 million shares of midpoint liquidity per day during a given month; and 2) increases providing liquidity through midpoint orders by 50% or more relative to the member's July 2022 consolidated volume provided through midpoint orders.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-95450.pdf
Comments Due: September 6, 2022

NASDAQ MODIFIES PRICING SCHEDULE AT EQUITY 7, SECTION 114

On August 9, 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 credits at Equity 7, Section 114 applicable to the designated liquidity provider ("DLP") program. The amendment concerns certain of the market quality metrics ("MQM") for rebates applicable to DLPs in Nasdaq-listed securities. Specifically, Nasdaq added a fifth MQM that concerns auction quality requirements. In order for a DLP to qualify for a DLP standard rebate, it will need to meet four of five of the standard MQMs in the assigned exchange-traded product ("ETP") as measured by Nasdaq to qualify for the standard rebate (rather than the former 4 of 4 of the standard MQMs). In order for a DLP to qualify for an enhanced rebate, a DLP will need to meet all 5 enhanced MQMs. The current MQMs are measured on average in the assigned ETP during regular market hours; however, the auction quality requirements will be measured each auction against the metrics set forth below. The auction quality requirement for the standard rebate requires that the auction price must be within 350 basis points (opening) and 100 basis points (closing) of the first reference price within 30 seconds prior to the market open and within 120 seconds prior to the market close. The auction quality requirement for the enhanced rebate requires that the auction price must be within 150 basis points (opening) and 50 basis points (closing) of the first reference price within 30 seconds prior to the market open and within 120 seconds prior to the market close. Nasdaq also modified Equity 7, Section 114(f)(4) to revise the monthly performance criteria related to secondary DLPs. Specifically, the former MQM stated that a secondary DLP qualified for secondary DLP rebates in ETPs if it met any two of the four

enhanced MQMs. Nasdaq revised the rule to state that a secondary DLP must meet two of the enhanced MQMs, excluding the auction quality requirements metric. According to Nasdaq, this means this MQM will essentially remain unchanged.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-95458.pdf
Comments Due: September 6, 2022

NASDAQ PROPOSES TO ENHANCE RISK MANAGEMENT TOOLS FOR MARKET PARTICIPANTS

On August 12, 2022, the SEC published for comment a Nasdaq proposal to provide market participants with additional, optional settings to manage risk on their order flow. These additional settings provide participants with extra oversight and controls on orders coming into Nasdaq. Once the optional risk controls are set, Nasdaq is authorized to take automated action if a designated risk level for a market participant is exceeded. Such risk settings would provide market participants with enhanced abilities to manage their risk with respect to orders on Nasdaq. All proposed risk settings are optional for market participants and afford flexibility to market participants to select their own risk tolerance levels. The proposed new and amended risk settings are as follows. In its amended rule, Nasdaq added an additional risk setting titled "Restricted Stock List." This control allows a participant to restrict the types of securities transacted by setting a list of symbols for which orders cannot be entered. This control also allows a market participant to set an easy to borrow list, which is a list of symbols for which short sale orders may be entered. Orders for symbols not on the easy to borrow list will not be accepted; however, market participants will have an option to indicate that short sales orders are permitted for all symbols. Nasdaq also added an additional risk setting titled "ADV Check." This control relates to the size of an order as compared to the 20-day consolidated average daily volume ("ADV") of the security and allows a Participant to set a specified percent of ADV that an order size cannot exceed. This control also allows a market participant to specify the minimum value on which such control is based if the average daily volume of the securities is below such value. Other new optional settings that Nasdaq introduced were titled: "Fat Finger Protection," "Rate Thresholds Check," " Gross Exposure Check," and "Market Impact Check;" Nasdaq amended "ISO Control" and "Duplication Control," which were two existing risk settings.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-95495.pdf
Comments Due: September 9, 2022

SEC APPROVES NYSE PROPOSAL TO INTRODUCE DIRECTED ORDERS

On August 4, 2022, the SEC granted accelerated approval and published for comment a proposal by the New York Stock Exchange LLC ("NYSE") to modify NYSE Rule 7.31 to designate subparagraph (f) as describing orders with specific routing instructions and to add directed orders as a new order type. Directed orders are defined in the amended rule as limit orders sent to the NYSE with instructions to be routed upon arrival at its limit price directly to alternative trading system ("ATS") specified by a member that maintains an electronic linkage. Directed orders are available for all securities eligible to trade on the NYSE. Directed orders will not be assigned a working time or interact with interest on the NYSE's book. The ATS to which a directed order is routed would be responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be cancelled. Directed orders must be designated for the NYSE's core trading session, as defined in NYSE rules, and must

have a time-in-force modifier of immediate-or-cancel ("IOC") or "Day." A directed order that is designated with an IOC modifier will be traded in whole or in part on the ATS to which it is routed after receipt of the order, and any untraded quantity would be cancelled.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-95423.pdf
Comments Due: August 31, 2022

NYSE PROPOSES TO MODIFY NYSE OPENBOOK SUBSCRIPTION FEES

On August 5, 2022, the SEC published for comment and granted immediate effectiveness to a proposal by NYSE to modify the subscription fees for its NYSE OpenBook service. Prior to the change, the NYSE offered a non-professional user fee cap for broker-dealers that are subscribers of NYSE OpenBook at $25,000 per month. Without this fee cap, a broker-dealer with 2,500 external, non-professional users who receives NYSE OpenBook would pay $37,500 per month in professional user fees (2,500 users at $15 per month). Under the modified rule and to bring consistency between professional and non-professional users, the NYSE established a professional user fee cap for broker-dealer subscribers of NYSE OpenBook of $35,000 per month. To illustrate the effect of the cap, a broker dealer with 5,000 professional users who receives NYSE OpenBook would pay $300,000 per month in professional user fees (5,000 users at $60 per month per user). In addition, the NYSE established an enterprise fee for broker-dealer subscribers of NYSE OpenBook of $60,000 per month (the sum of the non-professional and professional user fee caps). If a broker-dealer elects to pay the maximum enterprise fee of $60,000, it will not be required to count and report the number of its non-professional and professional users of NYSE OpenBook.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-95442.pdf
Comments Due: September 1, 2022

NYSE & NYSE AMERICAN DELETE RULES GOVERNING OFF-HOURS TRADING FACILITIES

On August 12, 2022, the SEC published for comment proposals, effective immediately upon filing, by the NYSE and NYSE American LLC ("NYSE American") regarding their respective rules that govern off-hours trading. In 2017, in connection with its transition to the Pillar trading platform, the NYSE American adopted NYSE American Rule 7.39E in order to maintain certain functionality in its off-hours trading facility. The NYSE American's off-hours trading facility only accepted aggregate-price coupled orders and its operation was governed by NYSE American Rule 7.39E. Recently, the NYSE American determined to cease offering an after-hours crossing session and decommission its off-hours trading facility. Accordingly, the NYSE American deleted Rule 7.39E. Similarly, the NYSE deleted NYSE Rules 900-907 governing off-hours trading. The NYSE also adopted a new Rule 7.39 governing its off-hours trading facility based on the rule previously adopted by the NYSE American for the Pillar trading platform.

NYSE Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-95498.pdf
NYSE American Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-95499.pdf
Comments Due: September 8, 2022

Notable Enforcement Actions

This month's regulatory actions featured two seven-figure fines for systems, operational and supervisory failures surrounding trade reporting and principal trading. Regulators assessed lower fines for other operational and supervisory failures.

A firm was censured, fined $2.8 million and required to certify that it has corrected the ongoing issue and implemented a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to achieve compliance with Exchange Act Rule 10b-10 and FINRA Rule 2232, for inaccurately disclosing its execution capacity, the customer price, and/or whether the trade was executed on an average price on an estimated 245.4 million confirmations, and also recording an inaccurate market center of execution on an estimated 24.8 million confirmation records. These inaccuracies were caused by underlying issues, each of which persisted for periods ranging from five-and-a-half years to 12 years. These issues included separate programming issues that collectively caused incorrect capacities, a disclosure drafting error that resulted in inaccurate capacities, a configuration issue that caused incorrect customer prices, a coding change that caused incorrect market centers, and a misunderstanding of regulatory guidance that caused the firm to incorrectly identify trades effected in single executions at single prices as average price executions. The firm also failed to reasonably supervise its compliance with confirmation requirements. The firm failed to take reasonable steps to timely act upon certain red flags of potential confirmation deficiencies. In addition, the firm had no supervisory system to review whether its confirmations complied with applicable SEC and FINRA requirements. As a result of two FINRA examinations, the firm knew about several of the systemic confirmation accuracy issues and the lack of WSPs related to confirmations. Almost a year later, the firm established a system and procedures to monitor only whether confirmations were delivered but not whether they were accurate. Following another examination, FINRA notified the firm that its WSPs failed to include a review of the accuracy of its confirmations. The firm later established a supervisory system and WSPs to review the accuracy of its confirmations. The system, which remains in place at the firm today, involves a quarterly review of 18 equities confirmations, including one cash trade confirmation from each of the firm's unique client order flows. Given that the sample does not account for the different trading scenarios within each client order flow, as well as the fact that the firm issues more than 10 million customer confirmations per quarter for equities transactions, the firm's review of 18 confirmations per quarter does not reasonably assess its compliance with confirmation requirements. The firm also failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with Rule 605 of Regulation NMS. The firm's procedures did not require, nor did the firm otherwise conduct, a supervisory review of whether the third-party vendor that produced its Rule 605 reports calculated its statistics in compliance with Rule 605.

The firm's procedures also did not require, nor did the firm otherwise conduct, a supervisory review of whether the vendor categorized the firm's orders in compliance with Rule 605. (**FINRA Case #2015044227201**)
https://www.finra.org/sites/default/files/fda_documents/2015044227201%20Barclays%20Capital%20Inc.%20CRD%2019714%20AWC%20gg%20%282022-1659140415084%29.pdf

A firm was censured and fined $1,250,000 for engaging in principal trading designed to increase the trading volume in certain securities and overstating its advertised trading volume in those securities. The findings state that the firm created and maintained a list that was provided to its equity traders, which contained the names of companies that were current or prospective investment banking clients, ranked how much of each company's stock the firm traded compared to other broker-dealers and included a target trade ranking range, effectively a goal for where the investment banking department wanted the firm to rank. In several instances, the firm's trading volume increased on the first day a stock was added to the list, and in one instance, the firm's principal trading represented as much as 46 percent of the total daily volume in that security. To achieve this result, the firm sometimes entered principal orders to buy and sell shares of stocks on the list in quick succession, sometimes losing money but increasing the firm's volume in those securities. Certain traders at the firm also overstated their advertised trading volume to media sources that published trade rankings, representing that the firm had traded more stock than it had. After receiving an inquiry from FINRA, the firm conducted an internal investigation, self-reported the cause and scope of the over-advertising and instituted remedial changes. The findings also state that the firm's supervisory system was not reasonably designed to achieve compliance with FINRA Rule 5210. Although the firm had a restricted list and a watch list, as well as surveillance to review trading in the securities on those lists, the surveillance only reviewed the traders' personal accounts, not the firm's principal accounts. Moreover, the firm had surveillance reports designed to detect potentially manipulative trading, including wash trades, but the firm had no controls or reviews designed to identify its equity traders' orders to buy and sell stocks in similar or the same quantities within short periods of time in the firm's principal accounts. Finally, the firm had no procedure or designated supervisor to review the firm's trading volume and compare it to the volume reported to third party publishing platforms. (**FINRA Case #2015045039501**)
https://www.finra.org/sites/default/files/fda_documents/2015045039501%20SunTrust%20Robinson%20Humphrey%2C%20Inc.%20nka%20Truist%20Securities%2C%20Inc.%20CRD%206271%20AWC%20va%20%282022-1656721216940%29.pdf

A firm was censured and fined a total of $125,000 for over-tendering 85,000 shares on behalf of an affiliate in a company. The firm miscalculated the affiliate's long position for a partial tender offer ("PTO") because it did not subtract in-the-money call options sold on and after the company's PTO announcement date. All the shares that the firm tendered on behalf of its affiliate, of which 11,560 shares were accepted, were over-tendered. The firm did not have a reasonably designed supervisory system to comply with Rule 14e-4 of the Exchange Act. (**FINRA Case #2019062945701**)
https://www.finra.org/sites/default/files/fda_documents/2019062945701%20Credit%20Suisse%20Securities

%20%28USA%29%20LLC%2C%20CRD%20816%20AWC%20gg%20%282022-1657326019695%29.pdf

A firm was censured and fined $200,000 for reporting short sale transactions to the trade reporting facility ("TRF") and over-the-counter reporting facility without short sale indicators. The firm submitted approximately 15.9 million clearing transactions to the TRFs without short sale indicators because the firm misunderstood its reporting obligations. As a result, the firm failed to update its trade reporting systems to include short sale indicators on non-tape, clearing-only regulatory reports. The firm has since remediated this issue by updating its trade reporting systems. The firm failed to establish and maintain a supervisory system, including WSPs, reasonably designed to comply with its trade reporting obligations for short sales. While the firm conducted supervisory reviews designed to detect inaccuracies in its short sale reporting, those reviews only included the firm's media-reported trade reports. The firm had no supervisory reviews in place to determine whether it accurately reported its non-tape, clearing-only regulatory reports to the TRFs. (**FINRA Case #2016048687501**)
https://www.finra.org/sites/default/files/fda_documents/2016048687501%20Credit%20Suisse%20Securities%20%28USA%29%20LLC%20CRD%20%20816%20AWC%20gg%20%282022-1657498802816%29.pdf

A firm was censured and fined $75,000 for failing to establish and maintain a supervisory system, including WSPs, that was reasonably designed to achieve compliance with Rule 101 of Regulation M. The firm used a committee comprised of senior personnel to determine whether it would become engaged as a distribution participant in public offerings and for notifying the compliance department and relevant supervisors once it approved the firm's engagement as a distribution participant. The compliance department was then required to add the subject security to a restricted list, which was posted on a bulletin board in the firm's trading room in its headquarters. A hard copy of the restricted list was also retained by a single employee in the firm's compliance department. The firm's branch-office personnel did not have access to the bulletin board and therefore may not have been aware of the restricted securities. In addition, the firm's WSPs failed to identify any supervisor or supervisors responsible for achieving compliance with Rule 101 and failed to set forth how the firm would identify any improper trading in restricted securities. In practice, no firm supervisor distributed the restricted list to the firm's other branch offices, reviewed trading activity in restricted securities at branch offices, and the firm had no surveillance system or other method to identify improper trading in restricted securities at its branch offices. In at least one instance, a firm employee unilaterally assessed the application of Rule 101 to a rights offering without any involvement by the committee or supervisory oversight. As a result, the firm acted as a distribution participant in a rights offering, the compliance department and relevant supervisors were not notified of the engagement, and

the offering security was not placed on the firm's restricted list. In addition, the firm did not conduct supervisory reviews of the firm's or its employees' trading in the subject security. The firm and the same employee effected transactions in the security, improperly profiting $50,000 each. (**FINRA Case #2015047957001**)

https://www.finra.org/sites/default/files/fda_documents/2015047957001%20T.R.%20Winston%20%26%20Company%2C%20LLC%20CRD%2010571%20AWC%20gg%20%282022-1659140396664%29.pdf