SECURITIES OPERATIONS

REGULATORY UPDATE

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SEC Announces Initial Meeting of Asset Management Advisory Committee

On December 20, 2019, the Securities and Exchange Commission ("SEC" or "Commission") announced that its Asset Management Advisory Committee ("AMAC") would hold its initial public meeting on January 14, 2020. The meeting will include a discussion of various aspects of the asset management industry as well as administrative items. The SEC had previously announced the formation of its AMAC in October 2019, and stated that it was formed to provide the Commission with diverse perspectives on asset management and related advice and recommendations. Topics the committee may address include trends and developments affecting investors and market participants, the effects of globalization, and changes in the role of technology and service providers. The committee is comprised of a group of outside experts, including individuals representing the views of retail and institutional investors, small and large funds, intermediaries, and other market participants.

Information about the event:

- Date and Time: January 14, 2020 at 9:00 a.m. ET
- Location: SEC Headquarters, 100 F Street, NE, Washington, DC, in Multi-Purpose Room LL-006 (or via webcast)

Firms should take action now to:

- Review the SEC's press release and meeting notice.
- Engage legal, compliance, and senior business personnel to assess the benefits of attending the meeting or submitting written statements by the SEC's deadline of January 9, 2020.
- Consider contacting the SEC's Division of Investment Management staff with comments or questions.

Notice of Meeting:
https://www.sec.gov/rules/other/2019/34-87835.pdf

Press Release:
https://www.sec.gov/news/press-release/2019-208

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ISS FILES LAWSUIT AGAINST SEC OVER PROPOSED PROXY RULE AMENDMENTS

On October 31, 2019, Institutional Shareholder Services ("ISS") filed a lawsuit against the SEC challenging the SEC's interpretation and guidance put forth in August that applies the proxy solicitation rules to the provision of proxy advice. In a November 5, 2019 post to the Harvard Law School Forum on Corporate Governance and Financial Regulation, ISS General Counsel Steven Friedman stated, "the lawsuit challenges the process by which the guidance was issued and, as important, the substance and legality of the SEC's view on what constitutes a solicitation under the Securities Exchange Act of 1934…we believe [the SEC's position] is inconsistent with both Congress's intent in adopting the Exchange Act and the plain meaning of the law." In an editorial published by the *Financial Times* on November 5, 2019, ISS Chief Executive Officer Gary Retelny added that the SEC's proposals "will disrupt the system for proxy voting, in place for many years, and likely harm the very investors the SEC is charged with protecting" and would "tilt the scales in favor of company management and degrade the important gains in corporate governance achieved since the days of Enron, WorldCom, and the financial crisis."

HLS Forum: https://corpgov.law.harvard.edu/2019/11/05/the-basis-for-iss-lawsuit-against-the-sec/
Financial Times: https://www.ft.com/content/cdcb6ed7-18f4-4729-8dc4-6a577ac44f15

SEC CHAIRMAN CITES IMPROVING PROXY PROCESS AS SIGNIFICANT SEC INITIATIVE IN SENATE TESTIMONY

On December 10, 2019, SEC Chairman Jay Clayton testified before the U.S. Senate Committee on Banking, Housing, and Urban Affairs regarding the SEC's work over the past year and its future initiatives, including its goal of improving the proxy process. "In the past two decades, the proxy process has become one of both increased complexity and importance to investors, issuers and investment advisers." The Commission has taken a number of concrete steps during this year to increase transparency, accountability and functionality in the area of proxy voting, including the issuance of new guidance to investment advisors, as well as proposed rule amendments regarding proxy solicitations and shareholder participation. "Commission attention, as well as increased transparency and accountability, are long overdue. We welcome additional input on these matters, including suggestions for improving our proposals. More generally, I expect our work to modernize and improve the proxy process to continue."

Clayton's Testimony: https://www.sec.gov/news/testimony/testimony-clayton-2019-12-10

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SEC TO UPDATE ACCREDITED INVESTOR DEFINITION

On December 18, 2019, the SEC voted to propose amendments to the definition of accredited investor. The proposal seeks to update and improve the definition to more effectively identify institutional and individual investors that have the knowledge and expertise to participate in the private capital markets. The proposed amendments would allow more investors to participate in private offerings by adding new categories of natural persons that may qualify as accredited investors based on their professional knowledge, experience, or certifications. The proposal would also expand the list of entities that may qualify as accredited investors by, among other things, allowing any entity that meets an investments test to qualify.

Comments Due: 60 days after publication in the Federal Register
Proposed Rule: https://www.sec.gov/rules/proposed/2019/33-10734.pdf
Press Release: https://www.sec.gov/news/press-release/2019-265

SEC ADOPTS FINAL RULES GOVERNING SECURITY-BASED SWAPS

On December 18, 2019, the SEC issued two press releases announcing new Commission actions related to its oversight of the security-based swap market. Specifically, the Commission adopted a package of rule amendments, guidance, and a related order to expand and improve the framework for regulating cross-border security-based swaps, including single-name credit default swaps. The rules are designed to establish a coherent approach to the regulation of margin, capital, segregation, recordkeeping and reporting, and business conduct for security-based swaps. In addition, the rule amendments and guidance reflect consultation with the Commodity Futures Trading Commission ("CFTC"). In addition, the Commission voted to adopt rules requiring the application of risk mitigation techniques to portfolios of uncleared security-based swaps. New Rules 15Fi-3, 15Fi-4, and 15Fi-5 establish requirements for registered security-based swap dealers and major security-based swap participants to: 1) periodically reconcile outstanding security-based swaps with counterparties, 2) engage in certain forms of portfolio compression exercises, as appropriate, and 3) execute written trading relationship documentation with each of their counterparties prior to, or contemporaneously with, executing a security-based swap transaction.

Final Rule (Cross-Border): https://www.sec.gov/rules/final/2019/34-87780.pdf
Press Release (Cross-Border): https://www.sec.gov/news/press-release/2019-263
Final Rule (Risk Mitigation): https://www.sec.gov/rules/final/2019/34-87782.pdf
Press Release (Risk Mitigation): https://www.sec.gov/news/press-release/2019-262

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SEC APPROVES FINRA PROPOSAL TO ESTABLISH NEW ISSUE DATA SERVICE FOR CORPORATE BONDS

On December 4, 2019, the SEC approved a Financial Industry Regulatory Authority ("FINRA") proposal to enhance the collection and dissemination of new issue reference data for corporate bonds, consistent with an October 29, 2018 recommendation from the SEC's Fixed Income Market Structure Advisory Committee ("FIMSAC"). As previously reported, the SEC published FINRA's original proposal for comment on April 2, 2019. FIMSAC's recommendation urged FINRA to establish a consolidated, comprehensive, and accurate data set for corporate bond new issues. Currently, market participants rely on corporate bond reference data providers for this information, and each reference data provider collects and disseminates new issue reference data in different ways, causing inaccuracies and inconsistencies. In line with FIMSAC's recommendation, FINRA designed its amendments to FINRA Rule 6760 to build upon its existing requirements and to establish a new issue data service with more comprehensive information regarding corporate bonds.

Approval Order: https://www.sec.gov/rules/sro/finra/2019/34-87656.pdf

SEC APPROVES FINRA PROPOSAL TO PUBLISH AGGREGATED TRANSACTION INFORMATION AND STATISTICS ON U.S. TREASURIES

On December 20, 2019, the SEC approved a FINRA proposal to amend FINRA Rule 6750, which will allow FINRA to publish or distribute aggregated transaction information and statistics on U.S. Treasury Securities. As previously reported, the SEC published FINRA's original proposal for comment on November 14, 2019. Pursuant to the proposed rule change, the aggregated U.S. Treasury Securities data would not be published or distributed by individual security, except for aggregated data that includes on-the-run U.S. Treasury Securities that may have had only one on-the-run security during the aggregated period. In addition, the aggregated data would not identify individual market participants or transactions. FINRA will provide the aggregated data on U.S. Treasury Securities at no charge unless and until it establishes a fee for such data by submitting an appropriate rule filing.

Approval Order: https://www.sec.gov/rules/sro/finra/2019/34-87837.pdf

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SEC APPOINTS DAVID BOTTOM AS CHIEF INFORMATION OFFICER

On December 19, 2019, the SEC announced that David Bottom has been appointed as the SEC's Chief Information Officer. In this role, Bottom will be responsible for overseeing the security and overall functions of the SEC's information technology systems. Most recently, Bottom served as Chief Information Officer and Chief Data Officer at the Office of Intelligence and Analysis in the Department of Homeland Security. Bottom also served for 10 years as a senior executive at the National Geospatial-Intelligence Agency, including as Director of its Information Technology Directorate and Deputy Director of Enterprise Operations. "I am pleased to welcome David to the SEC as our Chief Information Officer," said Chairman Jay Clayton. "David's substantial experience working with complex information technology systems, including in the intelligence sector, will serve the agency well as we continue to focus on the security and operational effectiveness of our systems at the SEC." Bottom officially joins the agency in January 2020.

Press Release: https://www.sec.gov/news/press-release/2019-270

SEC NAMES KRISTINA LITTMAN AS CHIEF OF CYBER UNIT

On December 2, 2019, the SEC announced that Kristina Littman has been named Chief of the Division of Enforcement's Cyber Unit, a national, specialized unit that focuses on protecting investors and markets from cyber-related misconduct. Littman succeeds Robert Cohen, who left the Commission in August 2019. Littman joined the SEC's Division of Enforcement in 2010 as a staff attorney in the Philadelphia Office. Since then, she has held senior attorney positions in the Market Abuse Unit and the Trial Unit. "Kristy's innovative thinking and extensive experience within the Commission have made her an invaluable advisor and, most importantly, a tireless defender of America's investors," said Chairman Clayton.

Press Release: https://www.sec.gov/news/press-release/2019-247

FINRA EXPANDS TRANSPARENCY OF OTC EQUITY TRADING VOLUME

On December 2, 2019, FINRA announced, effective immediately, that it would publish new data about over-the-counter ("OTC") trading volume occurring outside of alternative trading systems ("ATSs"). Specifically, FINRA will publish: 1) monthly aggregate block-size trading data for OTC trades in National Market System ("NMS") stocks executed outside an ATS, on a one-month delayed basis, and 2) aggregate non-ATS volume for each firm, by eliminating the de minimis exception for firms executing fewer than, on average, 200 non-ATS transactions per day during the applicable reporting period. The data is available free of charge on FINRA's website (see link below). Additional details are available in Regulatory Notice 19-29 and in a Technical Notice highlighting the new data that will be published.

Regulatory Notice 19-29: https://www.finra.org/rules-guidance/notices/19-29
Technical Notice: https://www.finra.org/filing-reporting/otc-transparency/reminder-finra-otc-transparency-data-changes-effective-monday
Press Release: https://www.finra.org/media-center/newsreleases/2019/finra-expands-transparency-otc-equity-trading-volume

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FINRA TO MODIFY TRANSACTION CREDITS FOR FINRA/NASDAQ TRF PARTICIPANTS

On December 12, 2019, the SEC published for comment a FINRA proposal to modify the securities transaction credits that apply to FINRA members that utilize the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago (collectively, the "FINRA/Nasdaq TRFs"). The FINRA/Nasdaq TRFs are facilities of FINRA that are operated by Nasdaq, Inc. and for which FINRA has sole regulatory responsibility. Pursuant to FINRA Rule 7610A, FINRA members that report OTC trades in NMS stocks to the FINRA/Nasdaq TRFs may qualify for revenue sharing payments, in the form of transaction credits. The proposed rule change would award participants that achieve a market share of less than 1.0% but greater than or equal to 0.50% in securities in Tapes A and C, or greater than or equal to 0.35% for Tape B securities, with 85% of attributable revenues for securities in all Tapes. FINRA has filed the proposed rule change for immediate effectiveness. The operative date is January 1, 2020.

Comments Due: January 18, 2020
Notice Release: https://www.sec.gov/rules/sro/finra/2019/34-87725.pdf

NASDAQ TO AMEND TRANSACTION FEES

On December 10, 2019, the SEC published for comment a proposal by The Nasdaq Stock Market LLC ("Nasdaq") to amend its transaction fees at Equity 7, Section 118(a). The proposed rule change would adjust: 1) the criteria for members to qualify for a credit, and 2) the categories of credits for members that enter orders with midpoint pegging that receive price improvement with respect to the national best bid and best offer ("NBBO"). Specifically, Nasdaq would increase the order volume threshold in Tapes A, B and C securities needed to qualify for its $0.00305 per share executed credit from 1.25% to 1.5%. In addition, firms entering orders with midpoint pegging that execute at prices that are less aggressive than the midpoint of the NBBO will be entitled to receive credits applicable to other non-displayed orders. Nasdaq designated the proposed amendments to be operative on December 2, 2019.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2019/34-87708.pdf

NASDAQ PROPOSES NEW RULE FOR OFF-EXCHANGE RWA TRANSFERS

On December 20, 2019, the SEC published for comment a Nasdaq proposal to adopt a new rule titled "Off-Exchange RWA Transfers" at The Nasdaq Options Market LLC ("NOM") Rules at Options 6, Section 6. The proposed rule is intended to facilitate the reduction of risk-weighted assets ("RWA") attributable to open options positions. SEC Rule 15c3-1 requires registered broker-dealers, unless otherwise exempted, to maintain certain specified minimum levels of capital. Certain firms that are subsidiaries of a bank holding company have additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Nasdaq has proposed the new rule to enhance the ability of such firms to provide liquidity in their appointed classes by allowing the transfer of existing options positions through an efficient off-exchange transfer process.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2019/34-87820.pdf

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NASDAQ TO EXTEND PENNY PILOT PROGRAM FOR OPTIONS CLASSES IN CERTAIN ISSUES

On December 20, 2019, the SEC published for comment a Nasdaq proposal to amend Chapter 3, Section 3 of the NOM rules to extend through June 30, 2020, or the date of permanent approval if earlier, the penny pilot program for options classes in certain issues (the "NOM Penny Pilot"). Under the NOM Penny Pilot, the minimum price variation for all participating options classes is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. The NOM Penny Pilot had been set to expire on December 31, 2019. Nasdaq has proposed to extend the time period to allow for further analysis of its structure.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/nasdaq/2019/34-87831.pdf

NYSE PROPOSED RULE OFFERING DEDICATED NMS NETWORK CO-LOCATION SERVICES TO UNDERGO SEC PROCEEDINGS

On December 9, 2019, the SEC issued an order instituting proceedings to determine whether to approve or disapprove a proposal by the New York Stock Exchange LLC ("NYSE") to amend its co-location fee schedules to offer co-location users access to the "NMS Network"—an alternate, dedicated network providing connectivity to data feeds for NMS plans. The NYSE currently offers co-location services for last sale and quotation information for Tape A- and Tape B-listed securities as well as all exchange options. Users can currently connect to the NYSE's existing NMS plans over the same network connections through which they access other co-location services. The NYSE's proposal would offer co-location users access to the NMS Network as a new service providing dedicated network access for users to connect to the NMS feeds at lower latency than is currently available, for a fee.

Rebuttal Comments Due: January 17, 2020
Order Instituting Proceedings: https://www.sec.gov/rules/sro/nyse/2019/34-87699.pdf

NYSE PROPOSES NEW RULE TO ESTABLISH PRE-TRADE RISK CONTROLS

On December 11, 2019, the SEC published for comment an NYSE proposal to add Rule 7.19 to establish a set of pre-trade risk controls giving firms the option to set credit limits and other pre-trade risk controls for a firm's trading on the NYSE. As proposed, the new rule would also authorize the NYSE to take action if those credit limits or other pre-trade risk controls are exceeded. The optional controls would allow firms to each define different pre-set risk thresholds and to choose the automated action the NYSE would take if those thresholds are breached, which would range from notifying the firm that a limit has been breached, blocking new orders, or canceling orders until the firm has been reinstated to trade on the NYSE.

Comments Due: January 7, 2020
Notice Release: https://www.sec.gov/rules/sro/nyse/2019/34-87715.pdf

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NYSE TO AMEND PRICE LIST

On December 12, 2019, the SEC published for comment a NYSE proposal to amend its price list to: 1) adopt a new credit for adding liquidity in Tapes A, B and C securities, and 2) revise the requirements for separate credits related to liquidity providers in Tapes B and C securities. The purpose of this proposed change is to incentivize firms to increase the liquidity-providing orders in Tapes A, B and C securities they send to the NYSE, which would support the quality of price discovery on the NYSE and provide additional liquidity for incoming orders. In its filing, the NYSE noted that equity trading is currently dispersed across 13 exchanges, 31 alternative trading systems, and numerous broker-dealer internalizers and wholesalers, all competing for order flow. The NYSE stated in its filing that it believes the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes.

Comments Due: January 8, 2020
Notice Release: https://www.sec.gov/rules/sro/nyse/2019/34-87724.pdf

NYSE TO DECREASE FEES FOR CERTAIN MARKET DATA PRODUCTS

On December 19, 2019, the SEC published for comment an NYSE proposal to: 1) amend the fees for its NYSE BBO and NYSE Trades products by modifying the application of the access fee, 2) amend the fees for NYSE Trades by adopting a credit applicable to the redistribution fee, and 3) adopt a one-month free trial for all NYSE market data products. Specifically, the NYSE is seeking to reduce the access fees by more than 93% for subscribers of NYSE BBO and NYSE Trades that receive a data feed and use those market data products in a display-only format. It is also seeking to provide for a credit applicable to the redistribution fee for subscribers of NYSE Trades that use that market data product for display purposes. The NYSE has proposed to implement the proposed fee changes on February 3, 2020.

Comments Due: 21 days after publication in the Federal Register
Notice Release: https://www.sec.gov/rules/sro/nyse/2019/34-87803.pdf

NYSE AMERICAN TO AMEND MM FAANG CREDIT

On December 17, 2019, the SEC published for comment a proposal by the NYSE American LLC ("NYSE American") to amend the NYSE American Options Fee Schedule to modify its incentive program designed to encourage market makers to provide more competitive prices and deeper liquidity in options on the NYSE FANG+ Index, which trades under the symbol FAANG. Currently, the NYSE American offers a $5,000 credit to market maker organizations that execute at least 500 total monthly contract sides that open a position in FAANG on the NYSE American. The credit is currently capped at $50,000 per month. As proposed, the NYSE American would add an alternative, higher monthly credit of $10,000 for market makers that execute at least 2,000 total monthly contract sides that open a position in FAANG on the NYSE American, with an overall incentive cap at $25,000. Accordingly, if more than two firms qualify, they must share $25,000 pro rata. The NYSE American also proposes to reduce the fewest number of qualifying firms from 11 to six.

Comments Due: January 13, 2020
Notice Release: https://www.sec.gov/rules/sro/nyseamer/2019/34-87779.pdf

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OCC PROPOSAL TO MODIFY CLEARING FUND METHODOLOGY POLICY, AND CLEARING FUND AND STRESS TESTING METHODOLOGY APPROVED BY SEC

On December 11, 2019, the SEC issued an order approving a proposal by the Options Clearing Corporation ("OCC") to modify its clearing fund and stress testing rules and methodology. As previously reported, the SEC published the OCC's original proposal for comment on October 23, 2019. The approved rule will modify OCC's clearing fund and stress testing framework by: 1) adopting a new set of stress scenarios to be used in the monthly sizing of OCC's clearing fund that are designed to capture the risks of extreme moves in individual or small subsets of securities, 2) improving its model for determining price shocks for futures on the CBOE Volatility Index, 3) modifying the methodology for allocating clearing fund contribution requirements to standardize the margin risk component of the allocation formula for all clearing firms, 4) adopting an additional threshold for notifying senior management of certain intra-day margin calls based on sufficiency stress test results, 5) correcting certain rules concerning OCC's cooling-off period and replenishment and assessment powers, and 6) making certain other clarifying and conforming changes to OCC's rules, policy, and methodology description. In a related but separate filing also made on December 11, 2019, the SEC issued an order approving OCC's proposal to enhance its management of exposure to specific wrong-way risk in connection with its role as a central counterparty.

Final Rule (Clearing Fund): https://www.sec.gov/rules/sro/occ/2019/34-87717.pdf
Final Rule (Wrong-Way Risk): https://www.sec.gov/rules/sro/occ/2019/34-87718.pdf

DTC TO ENHANCE DISTRIBUTION SERVICE AND INCREASE FEE RELATING TO TAX EVENTS

On December 12, 2019, the SEC published for comment a proposal by the Depository Trust Corporation ("DTC") to enhance the DTC announcements feature within the DTC distributions service with respect to corporate action events that do not involve the payment of funds or distribution of securities through DTC, but which may result in a taxable event for holders. DTC's current distribution service includes the announcement, collection, allocation and reporting by DTC, on behalf of its participants, of dividend, interest and principal payments for eligible securities held by participants at DTC. This information facilitates participants' ability to reconcile their records with DTC before the date DTC has been instructed by the issuer or issuer's agent to allocate a distribution. Certain corporate events create tax liabilities for holders of convertible securities based on the corporate event's effect on the equity underlying the convertible and are subject to specific rules and regulations of the Internal Revenue Service. DTC's proposal would provide announcements relating to these securities to participants in accordance with the provisions of the distributions guide relating to tax events.

Comments Due: January 8, 2020
Notice Release: https://www.sec.gov/rules/sro/dtc/2019/34-87729.pdf

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Notable Enforcement Actions

This month's enforcement actions demonstrate that regulators are imposing increasingly stiff penalties for operational and supervisory failures, underscoring the need to continually test controls embedded in automated systems.

A firm was censured and fined $6.5 million for supervisory violations and violations of various provisions of Rule 15c3-5 of the Securities Exchange Act of 1934 ("Market Access Rule"). Over the course of four years, 2010 to 2014, the firm offered its clients, which included broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access to numerous exchanges. The firm executed more than 300 billion shares on behalf of its direct market access clients. During part of that time, certain of the firm's direct market access clients engaged in trading activity that generated more than 50,000 alerts of multiple self-regulatory organizations ("SROs") for potential manipulative trading, including spoofing, layering, wash sales and pre-arranged trading. Three of the firm's direct market access clients accounted for the majority of the 50,000 alerts for potentially manipulative activity. The same three clients at their peak accounted for about 20 percent of the firm's overall order flow. The SROs found that during most of the relevant time period, the firm did not establish a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its direct market access clients. As a result, orders for billions of shares entered the U.S. markets without being subjected to post-trade supervisory reviews for such potential manipulative activity. The firm was put on notice of gaps in its surveillance system by correspondence with one of its direct market access clients and by an internal audit report. In addition, from 2011 to 2017, the firm violated the Market Access Rule's provisions related to the prevention of erroneous orders, the setting of credit limits and the firm's annual review of the effectiveness of its market access controls and supervisory procedures. (**FINRA Case #2012034734501**)
https://www.finra.org/sites/default/files/2019-12/credit-suisse-awc-122319.pdf

A firm reached a $4 million settlement with the SEC for failing to properly handle "pre-released" American Depositary Receipts ("ADRs"). The practice of "pre-release" allows ADRs to be issued without the deposit of foreign shares, provided brokers receiving them have an agreement with a depositary bank and the broker or its customer owns the number of foreign shares that corresponds to the number of shares the ADRs represent. The firm improperly borrowed pre-released ADRs from other brokers when it should have known that those brokers did not own the foreign shares needed to support those ADRs. The firm also failed to reasonably supervise its securities lending desk personnel concerning borrowing pre-released ADRs. The settlement represents the SEC's 14th enforcement action against a bank or broker resulting from its widespread investigation into abusive ADR pre-release practices, which has thus far resulted in monetary settlements exceeding $431 million. As a part of its settlement, the firm agreed to disgorge more than $2.2 million in ill-gotten gains, pay over $468,000 in prejudgment interest, and a $1.25 million penalty for total monetary relief of nearly $4 million. (**SEC File No. 3-19614**)
https://www.sec.gov/litigation/admin/2019/34-87680.pdf

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A firm was censured and fined $2.9 million for failing to establish and maintain a reasonable supervisory system governing the delivery of prospectuses for exchange-traded funds (“ETFs”), exchange-traded notes (“ETNs”) and mutual funds, and for failing to enforce its WSPs. The firm’s prospectus delivery process for ETFs and ETNs involved manually inputting coding for individual securities into third-party software to trigger the delivery of a prospectus when a customer purchased the security. The firm relied on a single employee to manually assign the trailer codes to ETFs and ETNs on a security-by-security basis and had no supervisory systems or controls in place to monitor or supervise the employee’s performance of these duties. As a result, the firm did not detect that the employee had inadvertently caused the system to overwrite the trailer codes that triggered prospectus delivery and failed to identify new ETFs and ETNs requiring a trailer code. Even after discovering the extent of the coding errors, the firm’s efforts to address the issues were not effective. The firm’s supervisory system related to prospectus delivery for mutual funds also was not reasonably designed. The firm merged with an affiliate and began using a new automated vendor system to identify mutual fund purchases requiring prospectus delivery. The vendor system did not correctly designate for prospectus delivery certain customer mutual fund orders placed through the firm’s managed accounts platform. The firm’s supervisory system included a written procedure obligating it to designate an employee to conduct periodic supervisory reviews to determine whether products were properly coded for prospectus delivery. However, with respect to mutual funds, the firm failed to assign these supervisory duties, thereby failing to enforce this procedure, and thus these duties were not performed for more than eight years. In addition to the fine and censure, the firm was required to provide a written certification to FINRA that it has established and implemented a supervisory system and written procedures reasonably designed to achieve compliance with FINRA rules and the federal securities laws applicable to prospectus delivery. (**FINRA Case #2015046652401**)
https://www.finra.org/sites/default/files/fda_documents/2015046652401%20RBC%20Capital%20Markets%2C%20LLC%20CRD%2031194%20AWC%20jm%20%282019-1574468386405%29.pdf

A firm was fined $1.25 million for best execution violations related to its customers’ equity orders and related supervisory failures that spanned from October 2016 to November 2017. As part of the settlement, the firm also agreed to retain an independent consultant to conduct a comprehensive review of the firm’s systems and procedures related to best execution. FINRA found that for more than a year, the firm—which offers its customers the ability to trade in equity securities without being charged commissions—routed its customers’ non-directed equity orders to four broker-dealers, all of which paid the firm for that order flow. This arrangement is known in the brokerage industry as payment for order flow. In addition, the firm did not reasonably consider the execution quality factors promulgated in FINRA Rule 5310 that the firm could have obtained from alternative markets. Instead, the firm focused only on the execution quality of its pre-existing routing destinations, all of which paid the firm for that order flow. In addition, the firm did not perform systematic best execution reviews of several order types, such as nonmarketable limit orders, stop orders, and orders received outside of regular trading hours. Hundreds of thousands of orders per month fell outside the firm’s review process. In addition, the firm’s supervisory system was not reasonably designed to achieve compliance with its best execution obligations. The firm’s supervisory system disregarded several order types and factors

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to be considered in conducting its best execution reviews. In addition, the firm's WSPs concerning best execution and required reviews merely recited the regulatory requirements. They provided no description of the firm's supervisory system or guidance as to how it should achieve compliance. (**FINRA Case #2017056224001**)
https://www.finra.org/sites/default/files/2019-12/robinhood-awc-121919.pdf

Five firms were sanctioned and paid combined fines of $1.4 million for failing to reasonably supervise compliance with FINRA Rule 2090 ("Know Your Customer Rule") for custodial accounts held at the firms. The Know Your Customer Rule requires member firms and their associated persons to use reasonable diligence to determine the "essential facts" about every customer and "the authority of each person acting on behalf of such customer." The five firms that were sanctioned permitted customers to open Uniform Transfers to Minors Act ("UTMA") and Uniform Gifts to Minors Act ("UGMA") accounts, yet failed to establish, maintain, and enforce reasonable supervisory systems and procedures to track or monitor whether custodians timely transferred control over custodial property to UTMA and UGMA account beneficiaries. As a result, UTMA account custodians authorized transactions in UTMA accounts months, or even years, after the beneficiaries reached the age of majority and after the custodians had become obligated to transfer the custodial property. In addition to the fines, the firms agreed to review their policies, systems, and procedures to ensure that they are reasonably designed to supervise custodial accounts and to achieve compliance with the Know Your Customer Rule.
(**FINRA Case #2018060039001**) https://www.finra.org/sites/default/files/2019-12/citigroup-global-markets-awc-122619.pdf
(**FINRA Case #2017053791901**) https://www.finra.org/sites/default/files/2019-12/jp-morgan-awc-122619.pdf
(**FINRA Case #2018058621001**) https://www.finra.org/sites/default/files/2019-12/lpl-financial-awc-122619.pdf
(**FINRA Case #2018060038701**) https://www.finra.org/sites/default/files/2019-12/morgan-stanley-awc-122619.pdf
(**FINRA Case #2018059381801**) https://www.finra.org/sites/default/files/2019-12/merrill-lynch-awc-122619.pdf

A firm was fined $900,000 and its former Chief Executive Officer ("CEO") was permanently barred from the securities industry in all capacities for failing to comply with the Market Access Rule and multiple SRO supervisory rules. For several years, the firm provided market access to foreign traders who engaged in various forms of manipulative trading on U.S. equity and options exchanges, including layering, spoofing, and cross-product manipulation. The firm and its former CEO substantially assisted this trading through a master-sub account held at the firm and failed to reasonably supervise it. Notwithstanding numerous red flags and ongoing investigations into the activity by the SEC and multiple SROs, the firm and its former CEO allowed the manipulative trading to continue for years. The firm and its former CEO even provided office space, computer servers, trading software, and other services to the master-sub account used by those customer-traders.
(**FINRA Case #2011029713004**)
https://www.finra.org/sites/default/files/2019-12/Lek_Acceptance_Offer_of_Settlement_121719.pdf

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A firm was censured and fined $150,000 for failing to properly state the portfolio margin requirements for accounts at various points in time. The firm incorrectly treated certain OTC equity securities, which are not margin eligible, as marginable securities. As a consequence, the firm understated the margin requirements for these accounts by millions of dollars. The firm mistakenly categorized the OTC traded equities at issue as margin eligible because of an incorrect definition of margin eligible securities used by the firm. (**FINRA Case #2016049875801**)
https://www.finra.org/sites/default/files/fda_documents/2016049875801%20ABN%20AMRO%20Clearing%20Chicago%20LLC%20CRD%2014020%20AWC%20va%20%282019-1572740384682%29.pdf

A firm was censured and fined $140,000 for failing to comply with FINRA's short interest reporting requirements and related supervision obligations. The findings stated that the firm experienced an issue in its short interest reporting logic that excluded certain short interest positions from its submissions to FINRA. The findings also stated that the firm's supervisory system was not reasonably designed to achieve compliance with its short interest-reporting obligations. Specifically, the firm failed to establish and maintain a supervisory system, including WSPs, to confirm that its reporting system captured all reportable short interest positions. In addition, the firm did not have a supervisory system to review for the accuracy of its short interest positions reported to FINRA. (**FINRA Case #2016049448301**)
https://www.finra.org/sites/default/files/fda_documents/2016049448301%20Apex%20Clearing%20Corporation%20CRD%2013071%20AWC%20va%20%282019-1573777189509%29.pdf

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