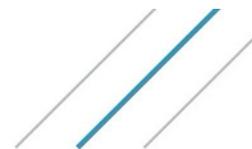


# SECURITIES OPERATIONS

REGULATORY UPDATE



A PUBLICATION OF  mediant

May 1, 2020

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## SEC FORMS CROSS-DIVISIONAL COVID-19 MARKET MONITORING GROUP

On April 24, 2020, the U.S. Securities and Exchange Commission (“SEC” or “Commission”) announced the formation of an internal, cross-divisional COVID-19 Market Monitoring Group. This temporary, senior-level group will assist the Commission and its various divisions and offices in actions and analysis related to the effects of COVID-19 on market participants and responding to requests for information, analysis and assistance from fellow regulators and other public sector partners. The COVID-19 Market Monitoring Group will work closely with personnel from across the agency, including staff in the Division of Economic and Risk Analysis, Division of Trading and Markets, Division of Investment Management, Division of Corporation Finance, Office of Municipal Securities, Office of Credit Ratings, Office of Compliance Inspections and Examinations (“OCIE”), Office of International Affairs, Office of the Chief Accountant and the SEC’s Activities-Based Monitoring Committee, among others. The group will also assist in the SEC’s efforts to coordinate with and support the COVID-19-related efforts of other federal financial agencies and other bodies, including the President’s Working Group on Financial Markets, Financial Stability Oversight Council and the Financial Stability Board, among others.

**Press Release:** <https://www.sec.gov/news/press-release/2020-95>

## SEC PROPOSES TO MODERNIZE FRAMEWORK FOR FUND VALUATION PRACTICES

On April 21, 2020, the SEC announced that it had voted to propose a new rule that would establish a framework for fund valuation practices. The rule is designed to clarify how fund boards can satisfy their valuation obligations in light of market developments, including an increase in the variety of asset classes held by funds and an increase in both the volume and type of data used in valuation determinations. The proposed rule would establish requirements for satisfying a fund board’s obligation to determine fair value in good faith for purposes of the Investment Company Act of 1940. The rule would require a board to assess and manage material risks associated with fair value determinations; select, apply and test fair value methodologies; oversee and evaluate any pricing services used; adopt and implement policies and procedures; and maintain certain records. Recognizing that most fund boards do not play a day-to-day role in the pricing of fund investments, the proposed rule would permit a fund’s board to assign the determination of fair value to the fund’s investment adviser, subject to additional conditions and oversight requirements. These detailed conditions include specific reporting by the adviser both periodically and promptly; clear specification of responsibilities and reasonable segregation of duties among the adviser’s personnel; and additional recordkeeping. The proposal makes clear that a board’s effective oversight of this process must be active.

**Comments Due:** July 21, 2020

**Proposed Rule:** <https://www.sec.gov/rules/proposed/2020/ic-33845.pdf>

### SEC PROVIDES FOR PHASED CAT REPORTING TIMELINES WITH CONDITIONAL RELIEF DUE TO COVID-19

On April 20, 2020, the SEC announced that it had voted to issue two exemptive orders to move Consolidated Audit Trail (“CAT”) implementation forward. The first Commission order establishes a phased CAT reporting timeline for broker-dealers, and the second Commission order permits introducing brokers that meet certain requirements to follow the small broker-dealer reporting timeline. The first order focuses on allowing for equity and options reporting in phases, considering the complexity of reporting events. In order to address the impact of COVID-19 while preserving progress toward existing milestones, the first order also allows for a delayed start to CAT reporting conditioned upon compliance with certain other obligations. These obligations include milestones related to testing and releases of CAT functionality, as well as all other compliance dates for broker-dealer reporting to the CAT. The second order focuses on those introducing brokers that meet the net capital requirements for small broker-dealers under Rule 0-10(c)(1) under the Securities Exchange Act of 1934 (the “Exchange Act”), but fail to qualify as small broker-dealers. This order provides exemptive relief permitting these firms to follow the CAT reporting timeline applicable to small broker-dealers. Upcoming CAT milestones include June 22, 2020, the initial equities reporting date for large broker-dealers and small broker-dealers that currently report to the Financial Industry Regulatory Authority’s (“FINRA”) Order Audit Trail System (“OATS”), and July 20, 2020, the initial options reporting date for large broker-dealers.

**SEC Exemptive Order No. 1:** <https://www.sec.gov/rules/exorders/2020/34-88702.pdf>

**SEC Exemptive Order No. 2:** <https://www.sec.gov/rules/exorders/2020/34-88703.pdf>

**Press Release:** <https://www.sec.gov/news/press-release/2020-92>

### SEC ENHANCES STANDARDS FOR CRITICAL MARKET INFRASTRUCTURE

On April 9, 2020, the SEC announced that it had adopted amendments to its rules for securities clearing agencies to apply enhanced standards to all SEC-registered central counterparties and central securities depositories. The rule amendments build on rules adopted by the Commission in 2016 pursuant to the Dodd-Frank Act to establish enhanced standards for the operation and governance of securities clearing agencies deemed systemically important and those that are central counterparties for security-based swaps. Securities clearing agencies subject to the SEC’s enhanced standards must adhere to requirements regarding, among other things, their policies and procedures for financial risk management, governance, recovery planning, operations, and disclosures to market participants and the public. Prior to these amendments, only certain systemically important clearing agencies and clearing agencies for security-based swaps were subject to these enhanced standards. The rule, as adopted, applies these enhanced standards to all SEC-registered central counterparties and central securities depositories.

**Effective Date:** 60 days after publication in the Federal Register

**Final Rule:** <https://www.sec.gov/rules/final/2020/34-88616.pdf>

**Press Release:** <https://www.sec.gov/news/press-release/2020-86>

## SEC'S OCIE PUBLISHES RISK ALERTS REGARDING REGULATION BEST INTEREST AND FORM CRS

On April 7, 2020, the SEC's OCIE announced that it had issued two risk alerts entitled "Examinations that Focus on Compliance with Regulation Best Interest" and "Examinations that Focus on Compliance with Form CRS." These risk alerts provide broker-dealers and investment advisers with advance information about the expected scope and content of the initial examinations for compliance with Regulation Best Interest and Form CRS. Regulation Best Interest and Form CRS are key components of a broader package of rules and interpretations, adopted contemporaneously on June 5, 2019, to enhance the quality and transparency of retail investors' relationships with broker-dealers and investment advisers. The compliance date for Regulation Best Interest and Form CRS is June 30, 2020. Initial examinations of Regulation Best Interest will focus on assessing whether broker-dealers have made a good faith effort to implement policies and procedures reasonably designed to comply with Regulation Best Interest, including the operational effectiveness of broker-dealers' policies and procedures. Initial examinations of Form CRS will focus on assessing whether firms have made a good faith effort to implement Form CRS, including reviewing the filing and posting of a firm's relationship summary as well as its process for delivering the relationship summary to existing and new retail investors.

**Reg BI Alert:** <https://www.sec.gov/files/Risk%20Alert-%20Regulation%20Best%20Interest%20Exams.pdf>

**Form CRS Risk Alert:** <https://www.sec.gov/files/Risk%20Alert%20-%20Form%20CRS%20Exams.pdf>

**Press Release:** <https://www.sec.gov/news/press-release/2020-82>

## SEC ADOPTS OFFERING REFORMS FOR BDCs AND REGISTERED CLOSED-END FUNDS

On April 8, 2020, the SEC announced that it had voted to adopt rule amendments to implement certain provisions of the Small Business Credit Availability Act and the Economic Growth, Regulatory Relief, and Consumer Protection Act relating to business development companies ("BDCs") and other closed-end funds. As directed by Congress, the rules will allow business development companies and other closed-end funds to use the securities offering rules that are already available to operating companies. The amendments are designed to streamline the registration, offering and investor communications processes for BDCs and registered closed-end funds and will provide important benefits to market participants and investors, including advancing capital formation and modernizing and streamlining disclosures. The Commission has designed the reforms to allow eligible funds to engage in a streamlined registration process that has long been available to operating companies, including modernized communications and prospectus delivery procedures and requirements.

**Final Rule:** <https://www.sec.gov/rules/final/2020/33-10771.pdf>

**Press Release:** <https://www.sec.gov/news/press-release/2020-83>

## SEC PROVIDES RELIEF TO REGULATION A AND REGULATION CROWDFUNDING COMPANIES DUE TO COVID-19

On March 26, 2020, the SEC announced the provision of additional temporary regulatory relief to market participants in response to the effects of COVID-19. To address potential issues filers may have in securing the notarization required to gain access to make filings on the EDGAR system, the Commission has adopted a temporary final rule that provides relief from the notarization requirement from March 26, 2020 through July 1, 2020, subject to certain conditions. To address potential compliance issues for Regulation A and Regulation Crowdfunding issuers, the Commission has adopted temporary final rules that extend the filing deadlines for specified reports and forms that companies must file pursuant to those regulations. The rules provide, subject to certain conditions, affected companies with an additional 45 days to file certain disclosure reports that would otherwise have been due between March 26, 2020 and May 31, 2020. To address potential compliance issues municipal advisors may have in timely submitting annual update filings, the Commission has issued a temporary conditional exemptive order that provides, subject to certain conditions, affected municipal advisors with an additional 45 days to file annual updates to Form MA that would have otherwise been due between March 26, 2020 and June 30, 2020.

**Effective Date:** March 30, 2020

**Temporary Final Rule:** <https://www.sec.gov/rules/interim/2020/33-10768.pdf>

**Temporary Conditional Exemptive Order:** <https://www.sec.gov/rules/exorders/2020/34-88491.pdf>

**Press Release:** <https://www.sec.gov/news/press-release/2020-74>

## SEC EXTENDS CONDITIONAL EXEMPTIONS FROM REPORTING AND PROXY DELIVERY REQUIREMENTS

As previously reported, on March 25, 2020, the SEC announced that it is extending the filing periods covered by its previously enacted conditional reporting relief for certain public company filing obligations under the federal securities laws, and that it is also extending regulatory relief previously provided to funds and investment advisers whose operations may be affected by COVID-19. In addition, the SEC's Division of Corporation Finance issued its views regarding disclosure considerations and other securities law matters related to COVID-19. To address potential compliance issues, the Commission issued an order that, subject to certain conditions, provides public companies with a 45-day extension to file certain disclosure reports that would otherwise have been due between March 1 and July 1, 2020. The Commission also issued orders that would provide certain investment funds and advisers with additional time with respect to holding in-person board meetings and meeting certain filing and delivery requirements.

**Exchange Act Relief:** <https://www.sec.gov/rules/exorders/2020/34-88465.pdf>

**Investment Advisers Act Relief:** <https://www.sec.gov/rules/other/2020/ia-5469.pdf>

**Investment Company Act Relief:** <https://www.sec.gov/rules/other/2020/ic-33824.pdf>

**CorpFin Disclosure Guidance:** <https://www.sec.gov/corpfin/coronavirus-covid-19>

**Press Release:** <https://www.sec.gov/news/press-release/2020-73>

## SEC PROVIDES RELIEF FOR BDCs DUE TO COVID-19

On April 8, 2020, the SEC announced that it would provide temporary, conditional exemptive relief for BDCs to enable them to make additional investments in small and medium-sized businesses, including those with operations affected by COVID-19. The relief is designed to provide additional flexibility for BDCs to issue and sell senior securities in order to provide capital to such companies, and to participate in investments in these companies alongside certain private funds that are affiliated with the BDC. The relief is subject to investor protection conditions, including specific requirements for obtaining an independent evaluation of the issuances' terms and approval by a majority of a BDCs' independent board members.

**Temporary Conditional Exemptive Order:** <https://www.sec.gov/rules/exorders/2020/ic-33837.pdf>

**Press Release:** <https://www.sec.gov/news/press-release/2020-84>

## SEC TO HOST VIRTUAL COFFEE BREAKS DISCUSSING SMALL BUSINESS CAPITAL RAISING

On March 31, 2020, the SEC's Office of the Advocate for Small Business Capital Formation ("ASBCF") announced that it would host a series of virtual "coffee breaks" to engage with the public to discuss updates, trends, and perspectives on how COVID-19 is impacting raising capital. Each virtual coffee break will spotlight what's happening in a particular area of the market, incorporating feedback from entrepreneurs, investors, and other market participants. The ASBCF hosted its first virtual coffee break on April 3, 2020 and discussed updates in online investment capital raising. The next virtual coffee break is scheduled for Friday, May 1, 2020 at 1:00 p.m. EDT, and will feature guests from the National Diversity Coalition ("NDC") and U.S. Small Business Association ("SBA").

**Virtual Coffee Break Event Registration:** <https://www.nationaldiversitycoalition.org/events>

**SEC Virtual Coffee Break Event Website:** <https://www.sec.gov/virtualcoffee>

**Press Release:** <https://www.sec.gov/news/press-release/2020-77>

## SEC, OTHER U.S. FEDERAL AGENCIES EXTEND COMMENT PERIOD FOR PROPOSED CHANGES TO VOLCKER RULE

As previously reported, on January 30, 2020, five federal agencies, including the SEC, published for comment a proposal to modify regulations implementing the Volcker Rule's general prohibition on banking entities investing in or sponsoring hedge funds or private equity funds, known as "covered funds." The joint agency proposal would improve and streamline the covered funds portion of the Rule, address the treatment of certain foreign funds, and permit banking entities to offer financial services and engage in other permissible activities that do not raise concerns that the Volcker Rule was intended to address. In addition to the SEC, the proposed changes were jointly developed by the Federal Reserve Board, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency. The proposal had asked for comments to be submitted by April 1, 2020. The five federal agencies announced on April 2, 2020 that they would consider comments submitted prior to May 1, 2020 considering potential disruptions resulting from the coronavirus.

**Press Release:** <https://www.sec.gov/news/press-release/2020-79>

### FINRA ISSUES NOTICE ON CYBERSECURITY TOPICS, WORK PROCESS ADJUSTMENTS RELATED TO COVID-19

On March 26, 2020, FINRA issued an Information Notice which included various cybersecurity measures for firms and associated persons to consider as work processes adjust in response to COVID-19. The alert provided firms and associated persons with measures they may use to help strengthen their cybersecurity controls in areas where risks may increase in the current environment. The Notice also included information specifically for small firms with limited resources to help them address possible cybersecurity issues associated with remote work. Among other measures, FINRA suggested that associated persons use a secure Virtual Private Network (“VPN”) or a third-party secure website protocol connection to access their firm’s network, check for and apply all software and security patch updates for operating systems and applications, and be increasingly sensitive to common cyber-attacks such as phishing and social engineering scams. FINRA also suggested that firms increase training for staff related to remote work resources and potential cyber-risks.

**Information Notice:** <https://www.finra.org/sites/default/files/2020-03/Information-Notice-032620.pdf>

### FINRA ANNOUNCES ESTABLISHMENT OF U.S. REGULATORY WORKING GROUP TO ADDRESS DUPLICATION

On April 8, 2020, FINRA published an Information Notice to inform members of the existence and role of the Cross-Market Regulation Working Group (“CMRWG”), which was established under the U.S. Subgroup of the Intermarket Surveillance Group (“ISG”) to focus on ways to reduce unnecessary regulatory duplication. The ISG is an international group of exchanges, market centers, and market regulators that perform front-line market surveillance in their respective jurisdictions. The ISG was formed to facilitate the coordination and development of programs and procedures to identify possible fraudulent and manipulative activities across markets and to facilitate information sharing related to those efforts. FINRA, The Nasdaq Stock Market LLC (“Nasdaq”), the New York Stock Exchange (“NYSE”), and the NYSE American LLC (“NYSE American”) are members of the CMRWG. The CMRWG advised in the Notice that individuals or firms that receive what they consider to be duplicative requests should notify the senders of such requests via email at the dedicated email addresses for each CMRWG participant that are highlighted in the Notice.

**Information Notice:** <https://www.finra.org/sites/default/files/2020-04/Information-Notice-040820.pdf>

## FINRA, NASDAQ, NYSE TO EXTEND PILOT PROGRAMS FOR CLEARLY ERRONEOUS TRANSACTIONS

On March 27, 2020, the SEC published for comment parallel proposals by FINRA and Nasdaq to extend until October 20, 2020 the current pilot programs related to FINRA Rule 11892 and Nasdaq Rule 11890 regarding clearly erroneous transactions in exchange-listed securities (“Clearly Erroneous Transaction Pilots”). On April 7, 2020, the SEC published a parallel filing by the NYSE to amend NYSE Rule 7.10. As previously reported, on October 18, 2019, the Clearly Erroneous Transaction Pilots were extended through April 20, 2020. In their respective filings, FINRA, Nasdaq and the NYSE stated that the additional six-month pilot period is necessary for them to consider permanent proposals for clearly erroneous transaction reviews.

**Comments Due (NYSE):** May 4, 2020

**Notice Release (FINRA):** <https://www.sec.gov/rules/sro/finra/2020/34-88495.pdf>

**Notice Release (NASDAQ):** <https://www.sec.gov/rules/sro/nasdaq/2020/34-88504.pdf>

**Notice Release (NYSE):** <https://www.sec.gov/rules/sro/nyse/2020/34-88580.pdf>

## FINRA TO PROVIDE MEMBER FIRMS WITH ADDITIONAL TIME TO COMPLY WITH AMENDMENTS TO RULE 6730

On April 3, 2020, the SEC published for comment a FINRA proposal to provide member firms with additional time to comply with the amendments adopted by SR-FINRA-2019-014 related to transactions in U.S. Treasury Securities executed to hedge certain primary market transactions. As previously reported, on June 21, 2019, the SEC approved SR-FINRA-2019-014, which amended FINRA Rule 6730 to: 1) provide members until the close of Trade Reporting and Compliance Engine (“TRACE”) System Hours on the next business day (*i.e.*, until 6:29:59 p.m. ET on T+1) to report transactions in U.S. Treasury Securities executed to hedge a P1 transaction; and 2) require members to append a new trade modifier when reporting TRACE transactions in U.S. Treasury Securities that are executed to hedge a P1 transaction. On September 19, 2019, FINRA published Regulatory Notice 19-30 announcing SEC approval of the proposed rule change and establishing an effective date of June 1, 2020. In light of significant impacts that the spread of COVID-19 may have on member firms, FINRA proposed to extend the effective date of the amendments adopted by SR-FINRA-2019-014 related to U.S. Treasury Security hedge transactions to allow members additional time to prepare for implementation of the new requirements. The proposed rule change was designated “non-controversial” and was thus deemed effective upon the SEC’s receipt of the filing.

**Notice Release:** <https://www.sec.gov/rules/sro/finra/2020/34-88556.pdf>

## NASDAQ TO AMEND RULE 4759, NYSE TO AMEND RULE 7.37 TO INCLUDE LONG TERM STOCK EXCHANGE

On April 8, 2020, the SEC published for comment parallel proposals by Nasdaq and the NYSE to amend Nasdaq Rule 4759 and NYSE Rule 7.37, respectively, to include the Long Term Stock Exchange, Inc. (“LTSE”) in the list of proprietary and network processor feeds that Nasdaq and the NYSE utilize for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions. Nasdaq proposed to specify that LTSE will be an additional market center source for quotation data by including LTSE in the Rule 4759 table.

**Comments Due:** May 5, 2020

**Notice Release (NASDAQ):** <https://www.sec.gov/rules/sro/nasdaq/2020/34-88587.pdf>

**Notice Release (NYSE):** <https://www.sec.gov/rules/sro/nyse/2020/34-88601.pdf>

## NASDAQ TO PERMIT TRANSFERS OF OPTIONS POSITIONS

On April 16, 2020, the SEC published for comment a Nasdaq proposal to adopt a new rule related to the Nasdaq Options Market (“NOM”) titled “Transfer of Positions” within NOM Options 6, Section 5. The NOM does not currently allow transfers. The proposal specifies several limited circumstances under which a market participant may affect transfers of positions, including situations where no change of ownership occurs. The rule would permit market participants to move positions from one account to another without first exposure of the transaction on the NOM. The rule would also permit transfers upon the occurrence of significant, non-recurring events. The proposed rule is similar to a Chicago Board Options Exchange rule already in effect.

**Comments Due:** May 14, 2020

**Notice Release:** <https://www.sec.gov/rules/sro/nasdaq/2020/34-88668.pdf>

## NYSE TO EXTEND “HOT HANDS” FEE WAIVER

On May 31, 2020, the SEC published for comment an NYSE proposal to extend the temporary fee waiver related to its “hot hands” co-location service through the earlier of the reopening of the Mahwah, New Jersey data center or May 15, 2020. The waiver of the hot hands fee was originally through March 29, 2020. The hot hands fee allows remote users of the Mahwah, New Jersey data center to utilize on-site personnel to maintain user equipment, support network troubleshooting, rack and stack a server in a user’s cabinet, power recycling, and install and document the fitting of cable in a user’s cabinet. The hot hands fee is \$100 per half hour. The termination of the temporary fee waiver will be announced at a future date through an NYSE customer notice.

**Notice Release:** <https://www.sec.gov/rules/sro/nyse/2020/34-88518.pdf>

## NYSE TO TEMPORARILY MODIFY PROXY DELIVERY REQUIREMENTS THROUGH MAY 31, 2020

On April 23, 2020, the SEC published for comment an NYSE proposal to modify its application of the proxy delivery requirements of NYSE Rule 451(b)(1) through and including May 31, 2020. NYSE Rule 452 provides for limited circumstances in which a member organization may vote shares it holds on behalf of its “street” name customers when the beneficial owner has not provided voting instructions with respect to certain “routine” matters, subject to certain limitations. The NYSE has been made aware that the recent ongoing spread of COVID-19 throughout the United States and the social distancing and stay-at-home measures imposed by many state and local governments has severely disrupted the operations of the primary intermediary responsible for distributing proxy materials on behalf of NYSE member organizations. The primary intermediary has informed the NYSE that it is having difficulty in some cases meeting the specification of Rule 451(b)(1) to transmit proxy materials to beneficial owners at least 15 days prior to shareholder meetings, due to delays in receiving the printed materials from issuers for distribution and also because its own processing times have been slowed down by reduced staffing levels caused by the disruption associated with the spread of COVID-19. The NYSE has proposed to modify its application of Rule 451(b)(1) temporarily for shareholder meetings occurring on or before May 31, 2020 such that member organizations would be permitted to vote uninstructed shares as long as proxy materials are transmitted to beneficial owners no later than 10 days prior to the shareholder meeting.

**Comments Due:** 21 days after publication in the Federal Register

**Notice Release:** <https://www.sec.gov/rules/sro/nyse/2020/34-88736.pdf>

## NYSE WIRELESS CONNECTIVITY FEE PROPOSALS RECEIVE DESIGNATION OF LONGER PERIOD FOR SEC ACTION

On April 1, 2020, the SEC published two notices designating a longer period for Commission action on various proposals by the NYSE to establish and/or amend its wireless connectivity fee schedules related to its data centers. As previously reported, on February 11, 2020, the SEC published for comment a proposal by the NYSE to establish a schedule of wireless connectivity fees and charges with wireless connections between the Mahwah, New Jersey data center and three data centers that are owned and operated by third parties unaffiliated with the NYSE: 1) Carteret, New Jersey, 2) Secaucus, New Jersey, and 3) Markham, Canada. Under the proposed rule change, market participants that purchase such a wireless connection will be charged an initial and monthly fee. The NYSE also proposed to amend its schedule of wireless connectivity fees to add wireless connectivity services that transport the market data of the NYSE and its affiliates. The Commission stated that it has received comment letters related to the NYSE’s proposals and is extending the period for Commission action so that it has sufficient time to consider the proposed rule changes and comment letters. The Commission designated May 18, 2020 and May 25, 2020 as the dates by which it would act on the NYSE’s respective proposals.

**SEC Order No. 1:** <https://www.sec.gov/rules/sro/nyse/2020/34-88539.pdf>

**SEC Order No. 2:** <https://www.sec.gov/rules/sro/nyse/2020/34-88540.pdf>

## NYSE PROPOSED CAT NMS PLAN COMPLIANCE RULE TO UNDERGO SEC PROCEEDINGS

On April 20, 2020, the SEC issued an order instituting proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove an NYSE proposal to amend its compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was originally published for comment by the SEC on January 3, 2020 and was published in the Federal Register for comment on January 23, 2020. On March 5, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020. The Commission received no comment letters on the proposal. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.” The proposal would make the following changes to the NYSE’s CAT NMS Plan compliance rule: 1) revise data reporting requirements for a firm’s designated identification number based on a proposed amendment to the CAT NMS Plan filed with the Commission; 2) amend the dates for required testing and reporting; 3) amend the rules to require market participants to submit trade reports for executions and cancellations for cancelled trades to FINRA’s Trade Reporting Facilities, FINRA’s OTC Reporting Facility or FINRA’s Alternative Display Facility; 4) revise the timestamp granularity requirement to require market participants with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report time stamps up to nanoseconds when reporting market participants’ data to the central repository; 5) revise the reporting requirements for circumstances in which a market participant uses an established trading relationship for an individual customer, instead of an account, on the order reported to CAT; and 6) revise the CAT reporting requirements so market participants would not be required to report to the central repository dates of birth, social security numbers, or account numbers for individuals.

**Comments Due:** 21 days after publication in the Federal Register

**Rebuttal Comments Due:** 35 days after publication in the Federal Register

**SEC Order:** <https://www.sec.gov/rules/sro/nyse/2020/34-88700.pdf>

## NYSE TO ELIMINATE CERTAIN OBSOLETE FEES

On April 14, 2020, the SEC published for comment an NYSE proposal to eliminate fees related to trading floor booth reservations, radio paging services and cellular phones. Until the effectiveness date of the NYSE's proposed changes, which the NYSE designated as April 1, 2020, the NYSE had offered a fee of \$12,000 per position, subject to a cap of \$240,000 per member organization, to reserve Next Generation Trading Floor booth trading positions. The fee was adopted in 2010 in connection with the creation of the NYSE's "Next Generation Trading Floor." The NYSE has not charged the fee in over seven years. In addition, the NYSE had offered radio paging service fees to support floor broker beepers of \$408.50 for the unit and first channel and \$139.75 for each additional channel. Floor brokers no longer use beepers, and the NYSE has not charged the fee in over two years. The NYSE had also provided approved portable phones, but discontinued that service in 2017 and, thus, is eliminating the related fee.

**Comments Due:** May 11, 2020

**Notice Release:** <https://www.sec.gov/rules/sro/nyse/2020/34-88630.pdf>

## MSRB TO PROVIDE TEMPORARY RELIEF TO DEALERS AND MUNICIPAL ADVISORS DUE TO COVID-19

On April 20, 2020, the SEC published for comment a proposal by the Municipal Securities Rulemaking Board ("MSRB") to provide dealers and municipal advisors additional time to comply with certain obligations for a temporary period of time and temporarily suspend late fees on payments owed to the MSRB. In an effort to provide regulated entities an opportunity to better manage and allocate resources in the operational environment caused by the COVID-19 pandemic, the MSRB is proposing to: 1) suspend late fees owed for the period of March 1, 2020 through July 31, 2020; 2) modify the date by which compliance obligations must be completed under certain MSRB rules for a temporary period; and 3) extend the compliance date of rule changes that have yet to be implemented. The proposed rule change was designated "non-controversial" and was thus deemed effective upon the SEC's receipt of the filing.

**Comments Due:** 21 days after publication in the Federal Register

**Notice Release:** <https://www.sec.gov/rules/sro/msrb/2020/34-88694.pdf>

## Notable Enforcement Actions

*Many of this month's enforcement actions focused on trade reporting violations and resulted in severe penalties.*

A firm was censured and fined \$3.2 million for submitting to the SEC incomplete and inaccurate securities trading information known as "blue sheet data." For almost five years, the firm made numerous deficient blue sheet submissions, related to approximately 35 million transactions, that contained missing or inaccurate data, largely due to inadequate processes designed to validate the accuracy of its submissions and undetected coding errors. In addition, the firm violated the broker-dealer books and records and reporting provisions. Besides the censure and fine, the firm engaged in remedial efforts to address the cause of its deficient submissions, including the retention of an outside consultant and the adoption of new policies and procedures for processing blue sheet requests. **(SEC File No. 3-19743)**

<https://www.sec.gov/litigation/admin/2020/34-88567.pdf>

A firm was censured and fined \$250,000 for failing to reasonably avoid displaying, or engaging in a pattern or practice of displaying, locking or crossing quotations in over-the-counter ("OTC") equity securities. The findings state that the firm did not take into consideration certain technological limitations in its different systems involved in both the sending of OTC link messages and the entering, processing and displaying of orders. Those technological limitations, which included a variety of system coding and hardware issues and a reliance on manual processes to implement these policies and procedures, caused delays in sending OTC link messages and, in certain instances, caused OTC link messages not to be sent at all. The findings also state that the firm failed to immediately execute, route or display customer limit orders in OTC equity securities. One of the firm's trading systems was programmed to automatically display orders received from the firm's broker-dealer customers. However, orders that would lock or cross the market would not automatically display but would instead drop into a trader's queue pending manual action. In addition, certain orders that would not lock or cross the market were excluded from automation based upon risk criteria specified by the firm. The findings include that the firm reported last sale reports of transactions in NMS equity securities to the FINRA/NASDAQ Trade Reporting Facility with an incorrect contra capacity code. A coding error in the firm's systems caused principal account type indicator codes, correctly entered by a single firm customer, to result in an incorrect agency capacity code to the FINRA/NASDAQ Trade Reporting Facility. The firm also failed to timely and accurately report the correct time of execution in transactions in TRACE eligible securities and failed to supervise transactions in TRACE-eligible securities to achieve compliance with its reporting obligations under FINRA Rule 6730.

**(FINRA Case #2015045441001)**

[https://www.finra.org/sites/default/files/fda\\_documents/2015045441001%20Virtu%20Americas%20LLC%20%28fka%20KCG%20Americas%20LLC%29%20CRD%20149823%20AWC%20va%20%282020-1583453970390%29.pdf](https://www.finra.org/sites/default/files/fda_documents/2015045441001%20Virtu%20Americas%20LLC%20%28fka%20KCG%20Americas%20LLC%29%20CRD%20149823%20AWC%20va%20%282020-1583453970390%29.pdf)

A firm was censured and fined \$90,000 for submitting inaccurate, incomplete, or improperly formatted information to FINRA's OATS. The findings state that the improperly formatted information failed to contain the "Not Held" special handling code for an order that originated with a foreign affiliate of the firm. The firm identified a software error that affected orders received electronically from that foreign affiliate. That software error caused all but one of the firm's failures to report the "Not Held" special handling code, with the one other instance resulting from human error. The firm also failed to make publicly available all information required in order to comply with Rule 606 of Regulation National Market System ("NMS"). The firm failed to report the material aspects of its relationship with certain venues to which it routed non-directed orders for execution, including any arrangements for payment for order flow and any profit-sharing relationship. In addition, the firm's supervisory system, including its written supervisory procedures ("WSPs"), were not reasonably designed to achieve compliance with relevant rules concerning the accuracy of OATS reporting and to achieve compliance with respect to the rules applicable to trading reporting and market-making activity. (**FINRA Case #2015044231302**)

[https://www.finra.org/sites/default/files/fda\\_documents/2015044231302%20BNP%20Paribas%20Securities%20Corp.%20%20CRD%2015794%20AWC%20va%20%282020-1583540368845%29.pdf](https://www.finra.org/sites/default/files/fda_documents/2015044231302%20BNP%20Paribas%20Securities%20Corp.%20%20CRD%2015794%20AWC%20va%20%282020-1583540368845%29.pdf)

A firm was censured and fined \$75,000 for reporting Reportable Order Events ("ROEs") to OATS that contained inaccurate, incomplete or improperly formatted data with respect to order events time stamped in milliseconds. The findings state that the firm failed to establish and maintain a system to supervise the activities of each associated person, including WSPs, reasonably designed to achieve compliance with applicable rules regarding the accuracy of order event time stamps reported to OATS. The firm's supervision of its OATS reporting accuracy included a review of its monthly OATS report cards. OATS' automated daily feedback and monthly report cards, however, do not provide feedback for milliseconds reporting, among other fields. (**FINRA Case #2018057548201**)

[https://www.finra.org/sites/default/files/fda\\_documents/2018057548201%20ACS%20Execution%20Services%2C%20LLC%20CRD%2017972%20AWC%20va%20%282020-1585527567125%29.pdf](https://www.finra.org/sites/default/files/fda_documents/2018057548201%20ACS%20Execution%20Services%2C%20LLC%20CRD%2017972%20AWC%20va%20%282020-1585527567125%29.pdf)

A firm was censured and fined \$30,000 for failing to transmit ROEs to OATS due to system issues that arose during its transition between third-party order management systems. The findings state that due to the same system issues, the firm transmitted ROEs containing inaccurate, incomplete, or improperly formatted data to OATS. (**FINRA Case #2017053704501**)

[https://www.finra.org/sites/default/files/fda\\_documents/2017053704501%20Wedbush%20Securities%2C%20Inc.%20CRD%20877%20AWC%20va%20%282020-1584663567805%29.pdf](https://www.finra.org/sites/default/files/fda_documents/2017053704501%20Wedbush%20Securities%2C%20Inc.%20CRD%20877%20AWC%20va%20%282020-1584663567805%29.pdf)