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# The SEC Speaks in 2022

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2

Outline: SEC Speaks 2022, Division of  
Trading and Markets



- I. Markets**
- II. Broker-Dealer and Security-Based Swap Entity Activity**
- III. Broker-Dealer Financial Responsibility**
- IV. Trading Practices**
- V. Clearance and Settlement**
- VI. Derivatives Policy**



## I. MARKETS

### A. Market Developments

#### 1. Consolidated Audit Trail

- a. Rule 613 under the Securities Exchange Act of 1934 (“Exchange Act”) required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement, and maintain a Consolidated Audit Trail (“CAT”) that would capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution, as required by Rule 613. Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012).
- b. The SROs submitted the required CAT NMS Plan on September 30, 2014 and thereafter submitted amendments on February 27, 2015, December 24, 2015, and February 8, 2016. The CAT NMS Plan, as amended, was published for comment in the Federal Register on May 17, 2016. On November 15, 2016, the Securities and Exchange Commission (the “Commission” or “SEC”) approved the CAT NMS Plan with modifications. Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016).
- c. On May 15, 2020, the Commission adopted amendments to the CAT NMS Plan to address continued delays in CAT implementation. The proposed amendments are designed to promote: (1) increased transparency regarding the schedule for CAT implementation, in the form of a publicly-disclosed Implementation Plan and Quarterly Progress Reports that have been approved by a Supermajority Vote of the Operating Committee established by the CAT NMS Plan; and (2) increased financial accountability, by tying the Participants’ ability to recover fees, costs, and expenses from Industry Members to the achievement of critical implementation milestones by specified deadlines. Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020).
- d. On August 21, 2020, the Commission proposed amendments to the CAT NMS Plan designed to enhance the security and confidentiality of CAT Data. The proposed amendments to the CAT NMS Plan would: (1) define the scope of the current

information security program; (2) require the establishment of a security-focused working group; (3) require the Plan Processor to create secure analytical workspaces and require Participants to use such workspaces to access and analyze PII and CAT Data when using certain tools; (4) limit the amount of CAT Data that could be extracted using the online targeted query tool; (5) impose requirements relating to certain PII; (6) define a workflow process for customer and account attributes; (7) modify and supplement existing SRO policies and procedures relating to CAT Data confidentiality; (8) refine the existing requirement that CAT Data be used for only regulatory or surveillance purposes; (9) codify and enhance the security of connectivity to the CAT; (10) require corrective actions and breach notifications to impacted CAT Reporters; and (11) make other changes and clarifications to the CAT NMS Plan. Securities Exchange Act Release No. 89632 (Aug. 21, 2020), 85 FR 65990 (Oct. 16, 2022).

- e. On December 18, 2020, the SROs filed an amendment to the CAT NMS Plan to allow for the inclusion of comprehensive limited liability provisions in CAT Reporter Agreements. Securities Exchange Act Release No. 90826 (Dec. 30, 2020), 86 FR 591 (Jan. 6, 2021). The Commission issued an order instituting proceedings to determine whether to approve or disapprove the amendment on Apr. 6, 2021. Securities Exchange Act Release No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021). On October 29, 2021 the Commission disapproved the amendment. Securities Exchange Act Release No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).
- f. On March 31, 2021, the SROs filed an amendment to the CAT NMS Plan to implement a revised funding model for the CAT, as well as to establish a fee schedule for the CAT fees to be charged to themselves. Securities Exchange Act Release No. 91555 (Apr. 14, 2021), 86 FR 21050 (Apr. 21, 2021). The Commission issued an order instituting proceedings to determine whether to approve or disapprove the amendment on July 20, 2021. Securities Exchange Act Release No. 92451 (July 20, 2021), 86 FR 40114 (July 26, 2021). On December 8, 2021, the SROs withdrew this funding model amendment. Securities Exchange Act Release No. 93817 (Dec. 17, 2021), 86 FR 72656 (Dec. 22, 2021).

- g. On April 21, 2021, the Nasdaq and Cboe exchanges submitted proposed rule changes to adopt fee schedules to establish CAT fees applicable to their Industry Members in accordance with the amendment to the CAT NMS Plan that the SROs filed on March 31, 2021. The Commission temporarily suspended the proposed rule changes and instituted proceedings to determine whether to approve or disapprove the proposed rule changes on June 17, 2021. Securities Exchange Act Release No. 92207 (June 17, 2021), 86 FR 33448 (June 24, 2021). On December 16, 2021, the Nasdaq and Cboe exchanges withdrew the proposed rule changes. Securities Exchange Act Release No. 93814 (Dec. 17, 2021), 86 FR 73008 (Dec. 23, 2021).
  - h. On May 13, 2022, the SROs filed an amendment to the CAT NMS Plan to implement a revised funding model for the CAT and to establish a fee schedule for Participant CAT fees. Securities Exchange Act Release No. 94984 (May 25, 2022), 87 FR 33226 (June 1, 2022). The amendment proposes to establish an Executed Share Volume Model for determining fees pursuant to which, for each transaction in Eligible Securities (NMS stocks, listed options, and over-the-counter (“OTC”) securities), the Clearing Broker for the buyer would pay 1/3 of the fee obligation, the Clearing Broker for the Seller would pay 1/3 of the fee obligation, and the Participant on whose trading center the execution occurred would pay 1/3 of the fee obligation. The filing is currently pending.
  - i. On May 20, 2022, the SROs filed an amendment to the CAT NMS Plan to allow for the inclusion of a forum selection clause, governing law and jury waiver provisions, and a disclaimer of warranties clause. The filing is currently pending.
2. Consolidated Equity Market Data

#### New NMS Plan Regarding Consolidated Equity Market Data

On January 8, 2020, the Commission issued a Notice of Proposed Order Directing the Exchanges and Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data. Securities Exchange Act Release No. 87906 (Jan. 8, 2020), 85 FR 2184 (Jan. 14, 2020). The Proposed Order set forth the Commission’s concerns regarding the Equity Data Plan’s provision of equity market data, its views regarding issues arising from the current



governance structure of the Equity Data Plans, and the specific governance provisions that the Commission preliminarily believed would enable the New Consolidated Data Plan to address these concerns and issues. *See id.* at 2164.

On May 6, 2020, after carefully considering public comment received in response to the Notice, the Commission issued an Order Directing the Exchanges and Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data. Securities Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020). The order directed the equities exchanges and the Financial Industry Regulatory Authority (“FINRA”) to file with the Commission by August 11, 2020, a proposed NMS plan for consolidated equity market data containing certain specified provisions relating to plan governance.

On August 11, 2020, the equities exchanges and FINRA submitted a proposed plan, which the Commission published for comment on October 6, 2020. Securities Exchange Act Release No. 90096 (Oct. 6, 2020), 85 FR 64565 (Oct. 13, 2020). The Commission subsequently issued an Order Instituting Proceedings to Determine Whether to Approve or Disapprove a National Market System Plan Regarding Consolidated Equity Market Data. Securities Exchange Act Release No. 90885 (Jan. 11, 2021), 85 FR 4142 (Jan. 15, 2021).

On August 6, 2021, after considering public comments received, the Commission issued an Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data. Securities Exchange Act Release No. 92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (the “CT Plan Order”).

On August 8, 2021, the Nasdaq Stock Market LLC, Nasdaq BX LLC, and Nasdaq PHLX LLC filed a petition with the U.S. Circuit Court for the District of Columbia Circuit, seeking review of the Commission’s August 6, 2021, order. This petition was consolidated with similar petitions by members of the NYSE and Cboe exchange groups to become The Nasdaq Stock Market LLC, et al. v. Securities and Exchange Commission (Nos. 21-1167, 21-1168, 21-1169) (D.C. Cir.).

On August 19, 2021, the Nasdaq, NYSE, and Cboe equities exchange families filed with the Commission a motion to stay the effect of the CT Plan Order pending final resolution of their petitions for review filed in the U.S. Court of Appeals for the D.C.

Circuit (“D.C. Circuit”), which is available on the SEC’s website. *See* Motion for Stay, *available at* <https://www.sec.gov/rules/sro/nms/2021/34-92586-motion-for-stay.pdf>. On September 17, 2021, the Commission denied the stay. *See* Securities Exchange Act Release No. 93051 (Sept. 17, 2021), 86 FR 52933 (Sept. 23, 2021).

Oral argument was held before the D.C. Circuit on March 24, 2022, and, as of June 28, 2022, the court has not decided in the matter.

### 3. LIBOR

- a. On July 12, 2019, the staffs of the Divisions of Trading and Markets, Corporation Finance, and Investment Management and the Office of Chief Accountant issued a staff statement relating to the expected discontinuation of the publication of LIBOR after 2021. The staff emphasized the responsibility of market participants, including, among others, broker-dealers, investment companies, investment advisers on behalf of their clients, and public companies, to prepare to transition from LIBOR to one or more alternative reference rates in order to minimize risk as well as potential negative impacts on shareholders and clients. *Available at* <https://www.sec.gov/news/public-statement/libor-transition>.
- b. This is a major potential issue that affects both derivatives and cash products. Market participants need to analyze and measure their risks and take action to mitigate them as appropriate.
- c. The statement discusses the importance of market participants preparing for the discontinuation of LIBOR, including: (i) analyzing existing and future contracts that may be affected and risks such discontinuation may pose to market participants; (ii) encouraging market participants to proactively deal with amending or replacing existing contracts if necessary, and ensuring that future contracts provide for an effective transition to an alternative reference rate; (iii) encouraging market participants to put appropriate policies, procedures, and operating systems in place in connection with the transition; and (iv) providing adequate disclosure to investors and shareholders regarding potential risks with respect to, and impacts of, LIBOR cessation and transition.
- d. On December 7, 2021, SEC staff issued an additional statement reminding investment professionals of their obligations when recommending LIBOR-linked securities and to remind

companies and issuers of asset-backed securities of their disclosure obligations related to the LIBOR transition. SEC Staff Statement on LIBOR Transition—Key Considerations for Market Participants (Dec. 7, 2021), *available at* <https://www.sec.gov/news/statement/staff-statement-libor-transition-20211207>.

#### 4. MEMX

The Commission granted the application of MEMX LLC for registration as a national securities exchange on May 4, 2020, bringing the number of registered national securities exchanges that trade equities to sixteen. *See* Securities Exchange Act Release No. 88806, 85 FR 27451 (May 8, 2020). MEMX was founded by a number of retail broker-dealers, banks, financial services firms, and market makers. It commenced trading on September 21, 2020.

### B. Rulemakings

1. Proposed Amendments regarding the Definition of “Exchange” and Alternative Trading Systems (“ATSs”) that Trade U.S. Treasury and Agency Securities, National Market System Stocks, and Other Securities. Securities Exchange Act Release No. 94062 (Jan. 26, 2022), 87 FR 15496 (March 18, 2022) (the “Proposal”). Among other things, the Proposal would:
  - a. Amend Rule 3b-16 under the Exchange Act to include within the definition of “exchange” systems that offer the use of non-firm trading interest, as defined under the Proposal, and provide protocols to bring together buyers and sellers of securities. Under the Proposal, an organization, association, or group of persons would constitute, maintain, or provide an exchange if it: (1) brings together buyers and sellers of securities using trading interest; and (2) makes available established, non-discretionary methods (whether by providing a trading facility or communication protocols, or by setting rules) under which buyers and sellers can interact and agree to the terms of a trade and is not subject to an exception under Rule 3b-16(b).
  - b. Eliminate the exemption from compliance with Regulation ATS for an ATS that limits its securities activities to U.S. Government securities or repurchase and reverse repurchase agreements on U.S. Government securities, and registers as a broker-dealer or is a bank. As a result, such ATSs would be

required to comply with the conditions of the Regulation ATS exemption, as applicable.

- c. Subject ATSS that trade U.S. Government securities (“Government Securities ATSS”) to the Fair Access Rule under Regulation ATS with respect to trading in U.S. Treasury securities or agency securities. This proposal would help ensure the fair treatment of potential and current subscribers by a Government Securities ATS that has a large percentage of trading volume in U.S. Treasury securities or agency securities.
- d. Require Government Securities ATSS to file public disclosures on Form ATS-N. This proposal is designed to enhance operational transparency by requiring Government Securities ATSS to file comprehensive public disclosures about potential conflicts of interests arising from trading activity of the ATS’s broker-dealer operator or its affiliates on the ATS and the ATS’s manner of operations, such as order types, priority rules, market data, and fees.
- e. Enhance Commission oversight by providing a process for the Commission to review Form ATS-N filings by Government Securities ATSS and to, after notice and opportunity for hearing, declare a Government Securities ATS’s Form ATS-N ineffective. The proposed review and effectiveness process would be the same as the review process for NMS Stock ATSS who currently file a Form ATS-N.
- f. Amend Regulation SCI to apply to Government Securities ATSS that meet certain trading volume thresholds in U.S. Treasury securities or agency securities. The Proposal is intended to help address technological vulnerabilities and improve the Commission’s oversight of the core technology of key entities in the markets for U.S. Government securities.
- g. Update Form ATS and Form ATS-R to, among other things, require an ATS to disclose on Form ATS-R the transaction volumes in corporate bonds, sovereign debt securities, repurchase or reverse repurchase agreements, and listed options; require both forms to be filed with the SEC electronically through EDGAR; and eliminate confidential treatment of the types of securities that an ATS trades as disclosed on the ATS’s Form ATS and Form ATS-R.

- h. Amend the Fair Access Rule as applicable to ATSS that trade covered securities to: (1) provide minimum requirements for the reasonable written standards for granting, limiting, and denying access to ATS services that must be established, and applied, by an ATS that is subject to the Fair Access Rule, and require that, among other things, the ATS justify why each standard is fair and not unreasonably discriminatory; (2) aggregate the trading volume for a security or a category of securities for ATSS that are operated by a common broker-dealer or by affiliated broker-dealers for purposes of calculating the average transaction volume under the Fair Access Rule; and (3) remove an exclusion for compliance with the Fair Access Rule that is applicable to ATSS that are so-called “passive systems” that trade equities.
  - i. Amend Form ATS-N to provide additional disclosure for NMS Stock ATSS and to provide for disclosures applicable to Government Securities ATSS and entities that would newly fall within the amended Rule 3b-16, as proposed to be revised, and that would operate as NMS Stock ATSS and Government Securities ATSS.
2. Market Data Infrastructure

The Commission unanimously approved the Market Data Infrastructure rules on December 9, 2020. The rules: (1) expand the content of information that is required to be collected, consolidated, and disseminated as part of the national market system; and (2) amend the method by which such NMS information is collected, calculated, and disseminated by introducing a decentralized consolidation model with competing consolidators. While the rules became effective on June 8, 2021, the Commission adopted a three-phase transition period so that the rules can be implemented in an orderly fashion.

On November 5, 2021, pursuant to the Market Data Infrastructure Rules, the CTA/CQ Plans and UTP Plan filed with the Commission proposed amendments to the plans to make changes to plan language required by the rule and to proposed fees for consolidated market data under the decentralized model. *See* Securities Exchange Act Release No. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021) (File No. SR-CTA/CQ-2021-02) (non-fee amendment); Securities Exchange Act Release No. 93625

(Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021) (File No. SR-CTA/CQ-2021-03) (fee amendment); Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021) (File No. S7-24-89) (UTP Plan non-fee filing); Securities Exchange Act Release No. 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (File No. S7-24-89) (UTP Plan fee amendment).

On February 24, 2022, the Commission instituted proceedings to determine whether to approve or disapprove these proposed amendments, and on May 19, 2022, the Commission extended the period within which to conclude these proceedings to July 24, 2022.

On May 24, 2022, United States Court of Appeals for the District of Columbia Circuit denied the petitions of Cboe, Nasdaq, and NYSE that had challenged the Market Data Infrastructure Rules.

## **II. BROKER-DEALER AND SECURITY-BASED SWAP ENTITY ACTIVITY**

### **A. Rulemaking**

1. Proposed Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer. Securities Exchange Act Release No. 94524 (Mar. 28, 2022), 87 FR 23054 (Apr. 18, 2022) (the “Proposed Dealer Rules”), *available at* <https://www.govinfo.gov/content/pkg/FR-2022-04-18/pdf/2022-06960.pdf>.
  - a. The Proposed Dealer Rules would require market participants, such as proprietary (or principal) trading firms, that assume certain dealer-like roles, or that engage in certain levels of buying and selling government securities, to register with the SEC, become a member of an SRO, and comply with federal securities laws and regulatory obligations.
  - b. New Rules 3a5-4 and 3a44-2 under the Exchange Act would further define the phrase “as a part of a regular business” in Sections 3(a)(5) and 3(a)(44) of the Exchange Act to identify certain activities that would cause persons engaging in such activities to be “dealers” or “government securities dealers” and subject to the registration requirements of Sections 15 and 15C of the Exchange Act, respectively.
  - c. Rules 3a5-4 and 3a44-2 would set forth identical qualitative standards designed to identify market participants who assume

certain dealer-like roles, in particular those who act as liquidity providers in the markets.

- d. Rule 3a44-2 would set forth a quantitative standard under which a person engaging in certain specified levels of activity would be deemed to be buying and selling government securities “as a part of a regular business,” regardless of whether it meets any of the proposed rule’s qualitative standards.
- e. The Proposed Dealer Rules do not seek to address all circumstances in which a person may be acting as a dealer or government securities dealer or to replace otherwise applicable interpretations and precedent. Under the Proposed Dealer Rules, no presumption would arise that a person is not a dealer solely because that person does not engage in the activities identified in the proposed rules.
- f. The Proposed Dealer Rules would exclude: (1) any person that has or controls total assets of less than \$50 million; and (2) investment companies registered under the Investment Company Act of 1940.

## **B. Sales Practices**

### **1. Implementation of Regulation Best Interest and Form CRS**

On June 5, 2019, as part of a package of rulemakings and interpretations designed to enhance the quality and transparency of retail investors’ relationships with investment advisers and broker-dealers, the Commission adopted Regulation Best Interest (“Regulation BI”) and Form CRS Relationship Summary (“Form CRS”).

Regulation BI requires broker-dealers and natural persons who are associated persons of a broker-dealer to act in the best interest of their retail customers and not place their own interest ahead of the retail customer’s when they make a recommendation of any securities transaction or investment strategy involving securities. Regulation BI is satisfied only if a broker-dealer complies with four specified component obligations: Disclosure, Care, Conflict of Interest, and Compliance. *See* Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019), *available at* <https://www.sec.gov/rules/final/2019/34-86031.pdf>.

Form CRS requires registered investment advisers and registered broker-dealers to provide a brief relationship summary to retail investors. The relationship summary is intended to inform retail

investors about: the types of client and customer relationships and services the firm offers; the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services; whether the firm and its financial professionals currently have reportable legal or disciplinary history; and how to obtain additional information about the firm. *See* Securities Exchange Act Release No. 86032; Advisers Act Release No. 5247 (June 5, 2019), 84 FR 33492 (July 12, 2019), *available at* <https://www.sec.gov/rules/final/2019/34-86032.pdf>.

The compliance date for Regulation BI and Form CRS was June 30, 2020. Since adoption of the rules, SEC staff have been proactive in providing guidance for firms on their implementation of, and compliance with, Regulation BI and Form CRS. For example, in December 2021 the Standards of Conduct Implementation Committee released a Staff Statement Regarding Form CRS disclosures. This Statement provides some of the Committee’s observations with respect to both the specific disclosure topics required by the form’s instructions as well as with respect to the general requirements pertaining to content, format, and website posting. These materials are available, along with the proposing and adopting releases, comment letters, speeches, press releases, and more on the SEC’s Spotlight Page for “Regulation Best Interest, Form CRS and Related Interpretations.” The webcast and transcripts of the Roundtable are also available on the SEC’s Spotlight Page. *See* SEC Spotlight Page, *available at* <https://www.sec.gov/regulation-best-interest>.

Most recently, in March 2022 SEC staff released the first in an anticipated series of bulletins related to the obligations of broker-dealers and investment advisers when making account recommendations to retail investors, including rollover recommendations. In particular, this bulletin highlights broker-dealers’ obligations under Regulation BI and investment advisers’ obligations under the Investment Advisers Act fiduciary standard to act in retail investors’ best interest and not to place their own interests ahead of the investor’s interests. SEC staff are considering additional bulletins addressing conflicts and consideration of reasonably available alternatives, as well as costs and risks to investors. *Available at* <https://www.sec.gov/tm/iabd-staff-bulletin>.



2. Anti-Money Laundering (“AML”) and Anti-Terrorist Financing Initiatives, and Economic and Trade Sanctions

The Commission, generally through its staff, works with other federal regulators, the SROs, and industry representatives to ensure that regulated entities implement vigorous programs to combat money laundering and terrorist financing and to examine whether regulated entities are in compliance with economic and trade sanctions administered by the U.S. Department of the Treasury’s (“Treasury”) Office of Foreign Assets Control. The Bank Secrecy Act requires all financial institutions (including broker-dealers and mutual funds) to establish and implement AML programs.

a. Technical Assistance

SEC staff provided technical assistance on various Treasury publications, including the 2022 National Strategy for Combating Terrorist and Other Illicit Financing (May 2022) (“2022 Illicit Finance Strategy”), *available at* <https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf>, as well as the National Risk Assessments (Money Laundering, Terrorist Financing, and Proliferation Financing), *available at* <https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf>. The 2022 Illicit Finance Strategy addresses the key risks from the National Risk Assessments and provides a comprehensive statement of Treasury’s key priorities, goals, and plans for safeguarding the U.S. financial system against illicit activity. The National Money Laundering Risk Assessment identifies fraud (which may include securities fraud) as a driver of money laundering activity in terms of the scope of activity and magnitude of illicit proceeds.

SEC staff also are providing technical assistance to Treasury’s Financial Crimes Enforcement Network to help facilitate the timely and effective implementation of the FY2021 National Defense Authorization Act (“NDAA”), which included significant reforms to the U.S. AML regime. The NDAA includes the Anti-Money Laundering Act of 2020 (“AML Act”) and, within the AML Act, the Corporate Transparency Act (“CTA”). The AML Act seeks to strengthen, modernize, and streamline the existing AML regime by promoting innovation, regulatory reform, and industry engagement. The CTA establishes uniform beneficial ownership

reporting requirements for corporations, limited liability companies, and other similar entities formed or registered to do business in the United States and will be implemented by a series of rulemakings that address the reporting, access, and disclosure requirements.

SEC staff continue to provide technical assistance to the Financial Action Task Force, which sets standards and promotes effective implementation of legal, regulatory, and operational measures for combatting money laundering, terrorist financing, and the financing of proliferation of weapons of mass destruction, and participated on subcommittees of the Treasury Bank Secrecy Act Advisory Group to help align U.S. AML programs to perceived compliance and illicit financing risk and implement certain requirements of the newly enacted AML Act.

### 3. Request for Information and Comment on Digital Engagement Practices

On August 27, 2021, the Commission published a request for information and public comment (“Request”) on matters related to the use of digital engagement practices (“DEPs”) by broker-dealers and investment advisers. These tools include behavioral prompts, differential marketing, game-like features (commonly referred to as gamification), and other design elements or features designed to engage with retail investors on digital platforms (*e.g.*, websites, portals, and applications), as well as the analytical and technological tools and methods used in connection with DEPs.

The Commission issued the Request, in part, to develop a better understanding of the market practices associated with firms’ use of DEPs and the related analytical and technological tools and methods.

The Request was issued with the intent to provide a forum for market participants, including investors, and other interested parties to share their perspectives on the use of DEPs and the related tools and methods. This includes potential benefits that DEPs provide to retail investors, as well as potential investor protection concerns.

The Commission also issued the Request to assist the Commission and its staff in better understanding the nature of analytical tools and other technology used by investment advisers to develop and provide investment advice to clients, including: (1) oversight of this technology; (2) how investment advisers and clients have been affected by technology; (3) potential risks to investment

advisers, clients, and the markets more generally related to this technology; and (4) whether regulatory action may be needed to enhance investor protection while preserving the ability of investors to benefit from investment advisers' use of technology.

The public comment period closed on October 1, 2021. *See* Securities Exchange Act Release No. 92766 (Aug. 27, 2021); 86 FR 49067 (Sept. 1, 2021), *available at* <https://www.sec.gov/rules/other/2021/34-92766.pdf>. The comments received from the Request will inform further rulemaking in this area.

### **C. Certain Commission Relief and SEC Staff Statements in Response to COVID-19 (see below for SRO Regulatory Relief in Response to COVID-19).**

*Relief from Fingerprinting Requirements.* In March 2020, the Commission provided relief to transfer agents, broker-dealers, national securities exchanges and their members, and clearing agencies from, among other things, the statutory requirement that partners, directors, officers, and employees be fingerprinted. The Commission issued two subsequent orders extending the expiration date of this relief. The most recent order, issued in June 2020, provided that the relief shall be terminated on a date to be specified in a public notice from SEC staff, which date shall be at least two weeks from the date of the staff public notice. By staff statement dated June 6, 2022, SEC staff provided notice that this relief will terminate, effective September 6, 2022. As mentioned in the staff statement, persons who have any questions about this staff statement, are unable to come into compliance with their obligations before the relief is terminated, or are in need of additional assistance should contact Division of Trading and Markets staff. FINRA also provided frequently asked questions and other guidance to assist its members in coming into compliance with their fingerprinting obligations before the expiration of the relief. *See* Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic, *available at* <https://www.finra.org/rules-guidance/key-topics/covid-19/faq>.

*See* Securities Exchange Act Release No. 88488 (Mar. 20, 2020), *available at* <https://www.sec.gov/rules/exorders/2020/34-88448.pdf>; Securities Exchange Act Release No. 88960 (May 27, 2020), *available at* <https://www.sec.gov/rules/exorders/2020/34-88960.pdf>; Securities Exchange Act Release No. 89170 (June 26, 2020), *available at* <https://www.sec.gov/rules/exorders/2020/34-89170.pdf>. *See also* Division of Trading and Markets Staff Statement Regarding

Termination Notice for Exemptive Relief for Transfer Agents and Other Persons Related to the COVID-19 Response (June 6, 2022), available at <https://www.sec.gov/tm/tm-staff-statement-termination-covid-19-exemptive-relief>.

*Staff Statement on Paper Submissions, Manual Signatures, and Notarization Requirements.* In early April 2020, Division of Trading and Markets staff issued a staff statement, effective through June 30, 2020, regarding certain paper submissions, manual signatures, and notarization requirements. The statement provided that Division of Trading and Markets staff would not recommend enforcement action if filers and registrants make alternate arrangements, as detailed in the statement, for delivery, execution, and notarization of certain paper filings. The statement was updated in June 2020 to indicate that the statement would terminate on the date specified in a public notice, which date will be at least two weeks from the date of the notice. These staff statements are available on the SEC's website. See Division of Trading and Markets Staff Statement Regarding Requirements for Certain Paper Submissions in Light of COVID-19 Concerns (April 2, 2020), available at <https://www.sec.gov/tm/paper-submission-requirements-covid-19>; Updated Division of Trading and Markets Staff Statement Regarding Requirements for Certain Paper Submissions in Light of COVID-19 Concerns (June 18, 2020), available at <https://www.sec.gov/tm/paper-submission-requirements-covid-19-updates-061820>.

*Staff Statement on International Mail Service Suspensions to Certain Jurisdictions.* In June 2020, the Divisions of Investment Management and Trading and Markets issued a joint staff statement regarding the requirements under the federal securities laws to mail certain regulatory communications to shareholders, clients, and customers who have not consented to electronic delivery and who have mailing addresses in international jurisdictions where common carriers have suspended mail service. The statement provides that the Divisions' staff would not recommend enforcement action if certain alternate arrangements are satisfied. This statement expires on the date, as applicable to each specific affected international jurisdiction, that common carriers resume mail delivery. This joint staff statement is available on the SEC's website. See Staff Statement Regarding Temporary International Mail Service Suspensions to Certain Jurisdictions Related to the COVID-19 Pandemic, available at <https://www.sec.gov/tm/temporary-international-mail-service-suspension>.

*Staff Statement on Authentication and Retention Requirements of Rule 302(b) of Regulation S-T.* The Divisions of Corporation Finance,

Trading and Markets, and Investment Management issued a joint staff statement in March 2020 concerning the authentication and document retention requirements under Rule 302(b) of Regulation S-T (specifically, the creation and retention of manual signatures in electronically filed documents). Given that social distancing and other COVID-19 related effects continue, this statement has been updated to note that it will remain in effect until a date specified in a public notice, which date will be at least two weeks from the date of the notice. In November 2020, the Commission issued a final rule to permit the use of electronic signatures in signature authentication documents required under Rule 302(b), as well as amending certain other rules and forms under the Securities Act, Exchange Act, and Investment Company Act to allow the use of electronic signatures in other authentication documents. This joint staff statement is available on the SEC's website. *See* Staff Statement Regarding Rule 302(b) of Regulation S-T in Light of COVID-19 Concerns (June 22, 2020), *available at* <https://www.sec.gov/corpfin/announcement/staff-statement-regarding-rule-302b-regulation-s-t-light-covid-19-concerns>. *See also* Securities Exchange Act Release No. 33-10889 (Nov. 17, 2020), 85 FR 78224 (Dec. 4, 2020), *available at* <https://www.sec.gov/rules/final/2020/33-10889.pdf>.

#### **D. Select SRO Rule Filings**

##### **1. Customer Account Statements**

FINRA Proposed Rule Change to Amend FINRA Rule 2231 (Customer Account Statements) (File No. SR-FINRA-2021-024).

On June 1, 2022, the Commission approved by delegated authority a proposed rule change to amend FINRA Rule 2231 (Customer Account Statements) to, among other things, add new Supplementary Material .02 (Transmission of Customer Account Statements to Other Persons or Entities). Supplementary Material .02 prohibits member firms from sending customer account statements to third parties unless: (1) the customer provided written instructions to the member to send statements to such third parties; and (2) the member sends duplicate account statements directly to the customer either in paper format or electronically. Supplementary Material .02 provides that a FINRA member may cease sending duplicate account statements to a customer where a court of competent jurisdiction has appointed a guardian, conservator, trustee, personal representative, or other person with legal authority to act

on a customer's behalf, and such court-appointed fiduciary provides written instructions to the member and furnishes to the member an official copy of the court appointment that establishes authority over the customer's accounts.

*See Securities Exchange Act Release No. 95018 (June 1, 2022), 87 FR 34728 (June 7, 2022) available at <https://www.govinfo.gov/content/pkg/FR-2022-06-07/pdf/2022-12169.pdf>.*

## 2. Financial Exploitation of Specified Adults

FINRA Proposed Rule Change to Amend FINRA Rule 2165 (Financial Exploitation of Specified Adults) (File No. SR-FINRA-2021-016).

On January 25, 2022, the Commission approved by delegated authority a proposed rule change to amend FINRA Rule 2165 (Financial Exploitation of Specified Adults) to: (1) permit member firms to place a temporary hold on a securities transaction, subject to the same terms and restrictions applicable to a temporary hold on disbursements of funds or securities under the rule, where there is a reasonable belief of financial exploitation of a "specified adult" as defined in the rule; (2) permit member firms to extend for an additional 30 business days a temporary hold, whether on a disbursement or a transaction, if the member firm has reported the matter to a state regulator or agency of competent jurisdiction, or a court of competent jurisdiction; and (3) require member firms to retain records of the reason and support for any extension of any temporary hold, including information regarding any communications with, or by, a State Authority.

*See Securities Exchange Act Release No. 94016 (Jan. 25, 2022), 87 FR 4974 (Jan. 31, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-01-31/pdf/2022-01843.pdf>.*

## 3. Arbitration

### Predispute Arbitration Clauses

FINRA Proposed Rule Change to Amend FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) to Align the Code with the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (File No. SR-FINRA-2022-012).

On May 18, 2022, the Commission published by delegated authority, a Notice of Filing and Immediate Effectiveness for a proposed rule change to, among other things: (1) provide that a party alleging a sexual assault or sexual harassment claim who has

agreed to arbitrate before the dispute arose may elect post-dispute not to arbitrate the claim under the Code; (2) provide that the claim may be arbitrated if the parties agreed to arbitrate it after the dispute arose; and (3) require firms to disclose to the associated person that a party alleging a sexual assault or sexual harassment claim that has agreed to arbitrate before the dispute arose may elect post-dispute not to arbitrate such a claim under the Code, and that such a claim may be arbitrated if the parties have agreed to arbitrate it after the dispute arose. FINRA proposed the rule to align the Code with the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021.

*See Securities Exchange Act Release No. 94942 (May 18, 2022), 87 FR 31592 (May 24, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-05-24/pdf/2022-11062.pdf>.*

#### 4. Security-Based Swaps

FINRA Proposed Rule Change Relating to Security-Based Swaps (File No. SR-FINRA 2021-008).

On January 6, 2022, the Commission approved by delegated authority a proposed rule change to amend FINRA Rules 0180, 4120, 4210, 4220, 4240, and 9610 to clarify the application of FINRA rules to security-based swaps (“SBS”) following the Commission’s completion of its rulemaking regarding SBS dealers and major SBS participants.

*See Securities Exchange Act Release No. 93914 (Jan. 6, 2022), 87 FR 1962 (Jan. 12, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-01-12/pdf/2022-00376.pdf>.*

#### 5. Certain SRO Regulatory Relief in Response to COVID-19 (see above for Certain Commission Relief and SEC Staff Statements in Response to COVID-19)

##### a. Procedural Requirements Relief

FINRA Proposed Rule Change to Temporarily Amend Certain Timing, Method of Service and Other Procedural Requirements in FINRA Rules During the Outbreak of the Coronavirus Disease (COVID-19) (File No. SR-FINRA-2020-015).

On May 20, 2020, the Commission published a Notice of Filing and Immediate Effectiveness for a proposed rule change to temporarily amend FINRA Rules 1012, 1015, 6490, 9132, 9133, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9525, 9559, and 9630 primarily to provide FINRA with temporary relief

to: (i) allow, and in some instances require, FINRA to serve certain documents by electronic mail; (ii) require that applicants, respondents, and other parties file or serve documents by electronic mail in connection with specified proceedings and processes, unless the parties agree to an alternative method of service; (iii) provide extensions of time to FINRA staff, respondents and other parties in connection with certain adjudicatory and review processes; and (iv) allow for oral arguments before the National Adjudicatory Council (“NAC”) to be conducted by video conference. FINRA has subsequently extended the expiration date of the temporary rule amendment in SR-FINRA-2020-015, most recently from March 31, 2022, to July 31, 2022. As noted in more detail further below, FINRA has since filed a proposed rule change to make permanent many of these temporary amendments to allow, and in some cases require, electronic service and filing of documents in disciplinary and other proceedings and appeals.

*See* Securities Exchange Act Release No. 94430 (Mar. 16, 2022), 87 FR 16262 (Mar. 22, 2022), *available at* <https://www.finra.org/sites/default/files/2022-03/sr-finra-2022-004-nof-imm-eff.pdf>.

b. Video Conferencing

FINRA Proposed Rule Change to Temporarily Amend FINRA Rules to Permit Hearings in Connection with Appeals of Membership Application Program Decisions, Disciplinary Actions, Eligibility Proceedings and Temporary and Permanent Cease and Desist Orders to Be Conducted by Video Conference (File No. SR-FINRA-2020-027).

On September 2, 2020, the Commission published a Notice of Filing and Immediate Effectiveness for a proposed rule change to temporarily amend FINRA Rules 1015, 9261, 9524, and 9830 to grant FINRA’s Office of Hearing Officers and the NAC authority to conduct various hearings by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. FINRA has subsequently extended the expiration date of the temporary rule amendment in SR-FINRA-2020-015 and SR-FINRA-2020-027, most recently from March 31, 2022, to July 31, 2022.



*See* Securities Exchange Act Release No. 94430 (Mar. 16, 2022), 87 FR 16262 (Mar. 22, 2022), *available at* <https://www.finra.org/sites/default/files/2022-03/sr-finra-2022-004-nof-imm-eff.pdf>.

Certain exchanges also filed similar temporary amendments to their respective rules, which were also immediately effective. *See, e.g.*, Securities Exchange Act Release No. 94610 (Apr. 5, 2022), 87 FR 21225 (Apr. 11, 2022) (SR-NASDAQ-2022-028), *available at* <https://www.sec.gov/rules/sro/nasdaq/2022/34-94610.pdf>; Securities Exchange Act Release No. 94666 (Apr. 11 2022), 87 FR 22607 (Apr. 15, 2022) (SR-NYSE-2022-17), *available at* <https://www.sec.gov/rules/sro/nyse/2022/34-94666.pdf>. The relevant exchanges also recently extended the expiration date of their temporary rule amendments from March 31, 2022 to July 31, 2022.

c. Remote Office Inspections

FINRA Proposed Rule Changes to Extend the Effectiveness of Temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020 and 2021, and Through June 30 of Calendar Year 2022) under FINRA Rule 3110 (Supervision) (File No. SR-FINRA-2022-001).

On January 20, 2022, the Commission published by delegated authority a Notice of Filing and Immediate Effectiveness a proposed rule change to Extend the Effectiveness of Temporary Supplementary Material .17 (Temporary Relief To Allow Remote Inspections for Calendar Years 2020 and 2021, and Through June 30 of Calendar Year 2022) under FINRA Rule 3110 (Supervision) to include calendar year 2022 inspection obligations through December 31, 2022 within the scope of the supplementary material.

*See* Securities Exchange Act Release No. 94018 (Jan. 20, 2022), 87 FR 4072 (Jan. 26, 2022), *available at* <https://www.govinfo.gov/content/pkg/FR-2022-01-26/pdf/2022-01467.pdf>.

6. Permanent Changes to Procedural Requirements (Electronic Service and Filing)

As noted above, on April 6, 2022, FINRA filed a proposed rule change to make permanent many of the temporary amendments from FINRA-2020-015 to allow, and in some cases require, electronic service and filing of documents in disciplinary and other proceedings and appeals. The proposed rule change would make

permanent changes to amend FINRA Rules 1012, 1015, 6490, 9132, 9133, 9135, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9525, 9559, and 9630. The proposed rule change was published for comment in the Federal Register on April 14, 2022. On May 25, 2022, FINRA consented to extend until July 13, 2022 the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

*See* Securities Exchange Act Release No. 94654 (Apr. 8, 2022), 87 FR 22264 (Apr. 14, 2022) (File No. SR-FINRA-2022-009), *available at* <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2022-009>.

## 7. Continuing Education Transformation

FINRA Proposed Rule Changes to Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) (File No. SR-FINRA-2021-015).

On September 21, 2021, the Commission issued an order approving the rule changes proposed in FINRA-2021-105 to, among other things: (1) require that the Regulatory Element of FINRA's continuing education program for registered persons of FINRA members be tailored to each registration category and completed annually rather than every three years; and (2) provide a way for individuals to maintain their qualifications following the termination of a registration through continuing education.

*See* Securities Exchange Act Release No. 93097 (Sept. 21, 2021), 86 FR 53358 (Sept. 27, 2021), *available at* <https://www.finra.org/sites/default/files/2021-09/sr-finra-2021-015-approval-order.pdf>.

Certain exchanges also filed similar amendments to their respective rules, many of which were also immediately effective. *See, e.g.*, Securities Exchange Act Release No. 94794 (Apr. 26, 2022), 87 FR 25683 (May 2, 2022), *available at* <https://www.govinfo.gov/content/pkg/FR-2022-05-02/pdf/2022-09312.pdf> and Securities Exchange Act Release No. 94400 (March 11, 2022), 87 FR 15286 (Mar. 17, 2022), *available at* <https://www.govinfo.gov/content/pkg/FR-2022-03-17/pdf/2022-05597.pdf>.

## **E. Other**

### Commission Rule of Practice 194

Commission Rule of Practice 194 (“ROP 194”) provides a process for Security-Based Swap Entities (“SBS Entities”) to file applications (or notices in lieu of an application if certain requirements are met) with the Commission seeking to allow statutorily disqualified associated persons to effect or be involved in effecting security-based swaps. In May of 2022, the Division of Trading and Markets issued staff guidance in the form of frequently asked questions related to ROP 194 and posted that guidance to a publicly available webpage on the SEC’s website. *See Applications and Notices by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or Be Involved in Effecting Security-Based Swap Transactions (Rule of Practice 194) (May 10, 2022), available at <https://www.sec.gov/rule-practice-194-applications-and-notices>.* The ROP 194 webpage also includes the three notices submitted under ROP 194 to date. Additionally, SEC staff have received one application related to ROP 194.

## **III. BROKER-DEALER FINANCIAL RESPONSIBILITY**

### **A. Implementation of Capital, Margin, Segregation, and Recordkeeping Requirements for Security-Based Swap Dealers (“SBSDs”) and Major Security-Based Swap Participants (“MSBSPs”)**

On June 21, 2019, the Commission voted to amend existing rules and adopt new rules to implement capital and margin requirements for SBSBDs and MSBSPs for which there is not a prudential regulator (“nonbank SBSBDs and MSBSPs”), segregation requirements for SBSBDs, and notification requirements with respect to segregation for SBSBDs and MSBSPs. On September 19, 2019, the Commission adopted recordkeeping, reporting, and notification requirements for SBSBDs and MSBSPs and additional recordkeeping requirements for broker-dealers to account for their SBS activities. The Commission also amended its existing cross-border rule to provide a mechanism for foreign nonbank SBSBDs and MSBSPs to seek substituted compliance with respect to the capital, margin, and recordkeeping requirements, and to provide guidance on how it will evaluate requests for substituted compliance. The Commission also adopted rule-based requirements that address the application of the segregation requirements to cross-border SBS transactions.

The compliance date for these capital, margin, segregation, and recordkeeping rules was October 6, 2021. To assist potential applicants for substituted compliance under Rule 3a71-6 under the Exchange Act, SEC staff prepared guidance regarding applications for substituted compliance. In addition, the Commission has published the applications of five jurisdictions seeking substituted compliance.

*See Exchange Act Substituted Compliance Applications for Security-Based Swap Markets (Oct. 18, 2021), available at <https://www.sec.gov/page/exchange-act-substituted-compliance-and-listed-jurisdiction-applications-security-based-swap>.*

SEC staff also published a set of Frequently Asked Questions relating to the SBSB and MSBSP capital, margin, segregation, and recordkeeping requirements. *See Responses to Frequently Asked Questions Regarding Financial Responsibility Requirements as Applied to Security-Based Swap Activities of Broker-Dealers and Security-Based Swap Dealers (Oct. 8, 2021), available at <https://www.sec.gov/tm/faqs-financial-responsibility-req-applied-sbs>.*

## **B. Staff No-Action Letter Regarding Net Capital Treatment of Certain U.S. Treasury Exchange-Traded Funds**

On June 2, 2022, SEC staff issued a no-action letter regarding the broker-dealer net capital rule, Rule 15c3-1 under the Exchange Act, in relation to certain U.S. Treasury Exchange-Traded Funds (“U.S. Treasury ETFs”) held by some broker-dealers. Among other things, U.S. Treasury ETFs invest solely in cash and U.S. government securities that are eligible securities under paragraph (a)(11) of Rule 2a-7 under the Investment Company Act of 1940 (“1940 Act”). Currently, paragraph (c)(2)(vi)(D)(1) of Rule 15c3-1 permits a haircut deduction of 2% for money market instruments described in Rule 2a-7 under the 1940 Act. Further, paragraph (c)(2)(vi)(A) of Rule 15c3-1 specifies haircuts for securities issued or guaranteed as to principal or interest by the United States or any agency thereof depending on the maturity, up to a maximum haircut deduction of 6% for such securities with a maturity of 25 years or more. Staff’s letter stated that, pursuant to certain conditions, SEC staff would not recommend enforcement action to the Commission if broker-dealers elected to take: (a) the haircut deduction specified in paragraph (c)(2)(vi)(D)(1) of Rule 15c3-1 (currently 2%) on the market value of the greater of the portion of the broker-dealer’s long or short position in the size of a redemption unit (or multiple of a redemption unit) of U.S. Treasury ETF shares; and (b) the haircut deduction in paragraph (c)(2)(vi)(A) of Rule 15c3-1 (currently 6%) on

the market value of the greater of the portion of the broker-dealer's long or short position held in a size other than a redemption unit (or multiple of a redemption unit) of U.S. Treasury ETF shares.

*See* letter to Kris Dailey from Michael A. Macchiaroli, Associate Director, Division of Trading and Markets (June 2, 2022), *available at* <https://www.sec.gov/divisions/marketreg/mr-noaction/2022/finra-060222-15c3-1.pdf>.

### **C. SRO Proposed Rule Change on Covered Agency Transactions**

On January 20, 2022, the staff of the Division of Trading and Markets approved by delegated authority a proposed rule change filed by FINRA to amend the margin requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements). The proposed rule change would eliminate the maintenance margin requirements for Covered Agency Transactions, and permit a broker-dealer to take a capital charge in lieu of collecting variation margin, subject to a cap. *See* Securities Exchange Act Release No. 94013 (Jan. 20, 2022), *available at* <https://www.sec.gov/rules/sro/finra/2022/34-94013.pdf>. On February 3, 2022, a petition for Commission review of the staff's delegated action was filed. On April 14, 2022, the Commission granted the petition for review and requested that interested persons file statements in support of, or opposition to, the petition by May 10, 2022.

### **D. Proposal to Amend the Broker-Dealer Electronic Recordkeeping Requirements**

On November 18, 2021, the Commission proposed amendments to the electronic recordkeeping requirements of Rules 17a-4, applicable to broker-dealers (including broker-dealers registered as SBSs), and Rule 18a-6, applicable to SBSs not registered as broker-dealers. Rule 17a-4 currently requires a broker-dealer to preserve electronic records exclusively in a non-rewriteable, non-erasable format (also known as a write once, read many ("WORM") format). The proposed amendments to Rule 17a-4 would add an audit-trail alternative to the WORM requirement, under which a broker-dealer would need to use an electronic recordkeeping system that preserves electronic records in a manner that permits the re-creation of an original record if it is altered, over-written, or erased. The proposed amendments to Rule 18a-6, which does not currently include a WORM requirement, would require SBSs

without a prudential regulator to use an electronic recordkeeping system to meet either the WORM or audit trail requirement.

Rule 17a-4 currently requires a broker-dealer using electronic recordkeeping to engage a third party who has independent access to a broker-dealer's records to undertake to furnish promptly to the Commission and other securities regulators the information necessary to download information kept on the electronic storage media to any medium acceptable under the rule. The proposed amendments to Rule 17a-4 would replace the current third-party undertakings requirement with a requirement that a senior officer of the broker-dealer provide the undertaking. Rule 18a-6 currently does not require a third-party undertaking, however, the proposed rule would add a requirement that a senior officer of the SBSB provide the undertakings. The proposed amendments would also require broker-dealers and SBSBs to produce records to regulators in a reasonably usable format and would eliminate the requirement in Rule 17a-4 that a broker-dealer notify its designated examining authority before employing an electronic recordkeeping system. (Rule 18a-6 does not currently have a parallel notification requirement.) Finally, the Commission proposed amendments to Rules 17a-4 and 18a-6 designed to make them more technology neutral.

#### **IV. TRADING PRACTICES**

##### **A. Rule 15c2-11 Fixed Income Final No-Action Letter**

On December 16, 2021, the staff of the Division of Trading and Markets issued a no-action letter extending the timeline for compliance with the amendments to Rule 15c2-11 under the Exchange Act (the "Amended Rule"). In the letter, the staff stated that it would not recommend enforcement action to the Commission under the Amended Rule for brokers or dealers that publish or submit quotations, including continuous quotations, in a quotation medium, for fixed income securities if the broker or dealer has determined that:

1. Phase 1 – the fixed income security or its issuer meets one of the criteria in Appendix A to the no-action letter (which address channels through which certain information about the security or issuer may be publicly available), or that there is current and publicly available financial information (consistent with Rule 15c2-11(b)) about the issuer. Phase 1 will be in place for a one-year period (from January 3, 2022 until, and including, January 3, 2023).

2. Phase 2 – the fixed income security or its issuer meets one of the criteria in Appendix B to the no-action letter (which are a subset of the criteria in Appendix A), or there is current and publicly available financial information about the issuer. Fixed income securities sold pursuant to Rule 144A that do not otherwise meet the criteria in Appendix B would no longer qualify for Phase 2 unless the broker or dealer determines that there is current and publicly available information about the issuer. Phase 2 will be in place for a one-year period (from January 4, 2023 until, and including, January 4, 2024).
3. Phase 3 – the fixed income security qualifies for Phase 2 and: (1) the fixed income security is foreign sovereign debt or a debt security guaranteed by a foreign government; or (2) there is a website link, on the quotation medium on which the security is being quoted, directly to the current and publicly available information about the issuer (consistent with Rule 15c2-11(b)), provided that the broker or dealer has determined at least on an annual basis that the website link and its underlying information is current. Phase 3 commences at the expiration of Phase 2 (on or after January 5, 2024).

Rule 15c2-11 governs the publication or submission of quotations for securities in a quotation medium other than on a national securities exchange. Since 1971, Rule 15c2-11 has applied to the publication or submission of quotations for any security (a defined term that has and continues to include fixed income securities) except “exempted securities,” and Rule 15c2-11 has exempted municipal securities since 1976. The Commission also has stated that Rule 15c2-11 applies to fixed income securities.

Following adoption of the amendments on September 16, 2020, certain market participants began requesting additional time to complete operational and systems changes necessary to comply with Rule 15c2-11. The amendments to Rule 15c2-11 are designed to modernize it and to enhance investor protection by requiring that current and publicly available issuer information be accessible to investors. Accordingly, the phase-in approach outlined above should allow for brokers or dealers that publish or submit quotations for fixed income securities in a quotation medium to achieve the goals of Rule 15c2-11.

See Rule 15c2-11 Fixed Income No-Action Letter 2 (Dec. 16, 2021), available at <https://www.sec.gov/files/fixed-income-rule-15c2-11-nal-finra-121621.pdf>.

The December 16, 2021, no-action letter follows staff's September 24, 2021, no-action letter stating that the staff would not recommend enforcement action to the Commission under the Amended Rule until January 3, 2022, for quotations of fixed income securities published by brokers or dealers in quotation mediums, in order to allow for an orderly and good faith transition into compliance with the Amended Rule. *See* Rule 15c2-11 Fixed Income No-Action Letter (Sept. 24, 2021), *available at* <https://www.sec.gov/files/rule-15c2-11-fixed-income-securities-092421.pdf>.

## **B. Reporting of Securities Loans - Proposed Rule 10c-1 under the Exchange Act**

On November 18, 2021, the Commission proposed a rule to increase the transparency and efficiency of the securities lending market by requiring any person that loans a security on behalf of itself or another person to report the material terms of those securities lending transactions and related information regarding the securities the person has on loan and available to loan to a registered national securities association ("RNSA"). The proposed rule would also require that the RNSA make available to the public certain information concerning each transaction and aggregate information on securities on loan and available to loan. *See* Securities Exchange Act Release No. 93613 (Nov. 18, 2021), *available at* <https://www.sec.gov/rules/proposed/2021/34-93613.pdf>.

On February 25, 2022, the Securities Commission reopened the comment period on proposed Rule 10c-1. The Commission reopened the comment period in light of the Commission's proposal of Rule 13f-2 under the Exchange Act regarding short sale disclosure (*see below*). The reopened comment period specifically solicited comments regarding the potential impact and effects regarding short sale disclosure that the Commission should consider in determining whether to adopt proposed Rule 10c-1 regarding the reporting of securities loans. *See* Securities Exchange Act Release No. 94315 (Feb. 25, 2021), *available at* <https://www.sec.gov/rules/proposed/2022/34-94315.pdf>.



### **C. Short Position and Short Activity Reporting by Institutional Investment Managers - Proposed Rule 13f-2 and Proposed Form SHO / CAT NMS Plan Proposed Amendment**

On February 25, 2022, the Commission proposed a new rule and related form pursuant to the Exchange Act, including Section 13(f)(2), which was added by Section 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The proposed rule and related form are designed to provide greater transparency through the publication of short sale related data to investors and other market participants. Under the rule, institutional investment managers that meet or exceed a specified reporting threshold would be required to report, on a monthly basis using the proposed form, specified short position data and short activity data for equity securities. In addition, the Commission proposed a new rule under the Exchange Act to prescribe a new “buy to cover” order marking requirement, and proposed to amend the national market system plan governing the CAT created pursuant to the Exchange Act to require the reporting of “buy to cover” order marking information and reliance on the bona fide market making exception in the Commission’s short sale rules. The Commission published the proposed text of the proposed amendments to the CAT NMS Plan in a separate notice (*see below*). *See Securities Exchange Act Release Nos. 94313 (Feb. 25, 2021), available at <https://www.sec.gov/rules/proposed/2022/34-94313.pdf> and 94314 (Feb. 25, 2021), available at <https://www.sec.gov/rules/proposed/2022/34-94314.pdf>.*

### **D. Removal of References to Credit Ratings from Regulation M**

On March 23, 2022, the Commission re-proposed amendments to remove the references to credit ratings included in certain Commission rules. The Dodd-Frank Act, among other things, requires the Commission to remove any references to credit ratings from its regulations. The Commission proposed to replace the exception for investment grade securities in Rule 101 under the Exchange Act with two separate exceptions based on different standards: an exception for nonconvertible securities based on probability of default as an indicator of credit-worthiness and an exception for asset-backed securities pursuant to an effective shelf registration statement filed on Form S-3 or F-3. In regards to Rule 102 under the Exchange Act, governing the activity of issuers

and selling security holders during a distribution, the Commission proposed to eliminate the exception for investment-grade nonconvertible debt, nonconvertible preferred securities, and asset-backed securities. See Securities Exchange Act Release No. 94499 (Mar. 23, 2021), available at <https://www.sec.gov/rules/proposed/2022/34-94499.pdf>.

## **V. CLEARANCE AND SETTLEMENT**

### **A. Commission Rulemaking, Commission Policy Statements, and Staff Publications**

#### **1. Shortening the Securities Transaction Settlement Cycle**

On February 9, 2022, the Commission proposed rules to shorten the standard settlement cycle to T+1 and improve the processing of institutional trades by broker-dealers, investment advisers, and certain clearing agencies. First, the Commission proposed to amend 17 CFR 240.15c6-1 (“Rule 15c6-1”) to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1 and to repeal the T+4 standard settlement cycle for firm commitment offerings priced after 4:30 p.m. Second, the Commission proposed 17 CFR 240.15c6-2 (“Rule 15c6-2”) to prohibit broker-dealers from entering into contracts with their institutional customers unless those contracts require that the parties complete allocations, confirmations, and affirmations by the end of the trade date, a practice the securities industry has commonly referred to as “same-day affirmation.” Third, the Commission proposed to amend 17 CFR 275.204-2 (“Rule 204-2”) to require investment advisers that are parties to contracts under Rule 15c6-2 to make and keep records of their allocations, confirmations, and affirmations described in Rule 15c6-2. Fourth, the Commission proposed 17 CFR 240.17Ad-27 (“Rule 17Ad-27”) to require a clearing agency that is a central matching service provider to establish policies and procedures to facilitate straight-through processing. Securities Exchange Act Release No. 94196 (Feb. 9, 2022), 87 FR 10436 (Feb. 24, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-02-24/pdf/2022-03143.pdf>.

## **B. Select Clearing Agency Rule Filings**

1. Equity and Other Corporate Securities
  - a. The Commission approved a proposed rule change filed by The Depository Trust Company (“DTC”) to provide settlement services for transactions cleared through a new central clearing service for securities financing transactions. Securities Exchange Act Release No. 95012 (May 31, 2012), 87 FR 34325 (June 6, 2022) (File No. SR-DTC-2022-002), *available at* <https://www.sec.gov/rules/sro/dtc/2022/34-95012.pdf>.
  - b. The Commission approved a proposed rule change and did not object to an advance notice filed by the National Securities Clearing Corporation (“NSCC”) to establish a new service for central clearing of securities financing transactions. Securities Exchange Act Release Nos. 34998 (May 27, 2022), 87 FR 33528 (June 2, 2022) (File No. SR-NSCC-2022-801), *available at* <https://www.sec.gov/rules/sro/nscclan/2022/34-94998.pdf>; 95011 (May 31, 2022), 87 FR 34339 (June 6, 2022) (SR-NSCC-2022-003), *available at* <https://www.sec.gov/rules/sro/nscclan/2022/34-95011.pdf>.
  - c. The Commission approved a proposed rule change filed by NSCC to provide for a passive acknowledgment process whereby any settling bank that does not timely acknowledge its intention to pay to or collect its settlement balance from NSCC, or refuse to settle for one or more members for which it is the designated settling bank and has not otherwise been in contact with NSCC, would be deemed to have acknowledged its settlement balances, amend the definition of AIP Settling Bank and remove AIP Settling Bank Only Member as a membership category, and codify certain settlement processes. Securities Exchange Act Release No. 93953 (Jan. 11, 2022), 87 FR 2650 (Jan. 18, 2022) (File No. SR-NSCC-2021-013), *available at* <https://www.sec.gov/rules/sro/nscclan/2022/34-93953.pdf>.
  - d. The Commission approved a proposed rule change filed by the Fixed Income Clearing Corporation (“FICC”), DTC, and NSCC to amend each respective clearing agency’s rules relating to confidentiality requirements, Market Disruption Events, and procedures for disconnecting a participant from DTC’s network. Securities Exchange Act Release Nos. 93279 (Oct. 8,

2021), 86 FR 57221 (File No. SR-DTC-2021-011), *available at* <https://www.sec.gov/rules/sro/ficc/2021/34-93280.pdf>; 93280 (Oct. 8, 2021), 86 FR 57208 (Oct. 14, 2021) (SR-FICC-2021-004), *available at* <https://www.sec.gov/rules/sro/ficc/2021/34-93280.pdf>; and 93278 (Oct. 8, 2021), 86 FR 57229 (Oct. 14, 2021) (SR-NSCC-2021-007), *available at* <https://www.sec.gov/rules/sro/nsc/2021/34-93278.pdf>.

- e. The Commission approved a proposed rule change by FICC to remove the Early Unwind Intraday Charge from FICC’s Government Securities Division’s rules and to amend margin model change the treatment of Treasury securities with remaining time-to-maturities equal to or less than a year (“Short-Term Treasuries”). Securities Exchange Act Release No. 93234 (Oct. 1, 2021), 86 FR 55891 (Oct. 7, 2021) (SR-FICC-2021-007), *available at* <https://www.sec.gov/rules/sro/ficc/2021/34-93234.pdf>.
  - f. The Commission approved a proposed rule change filed by NSCC to revise the margin methodology set forth in its Rules & Procedures to remove institutional delivery transactions that are processed through the ID Net Service from the calculation of its members’ required margin. Securities Exchange Act Release No. 93070 (Sept. 20, 2021), 86 FR 53125 (Sept. 24, 2021), *available at* <https://www.sec.gov/rules/sro/nsc/2021/34-93070.pdf>.
2. Options
- a. The Commission approved a proposed rule change filed by Options Clearing Corporation (“OCC”) to provide OCC’s Board of Directors (“Board”) with the discretion to elect either an Executive Chairman or a Non-Executive Chairman to preside over the Board, provide the Board and stockholders with the discretion to elect a Management Director, clarify the respective authority and responsibility of any Executive Chairman or Non-Executive Chairman, and make other clarifying, conforming, and administrative changes to OCC’s rules. Securities Exchange Act Release No. 93102 (Sept. 22, 2021), 86 FR 53718 (Sept. 28, 2021) (OCC-2021-007), *available at* <https://www.sec.gov/rules/sro/occ/2021/34-93102.pdf>.
  - b. The Commission approved a proposed rule change and did not object to an advance notice filed by OCC to adopt to its

rules OCC's policy regarding cash and related investments, and amend OCC's rule governing the use of Clearing Fund contributions to ensure access in the event of the failure of an investment counterparty with whom OCC has invested cash collateral. Securities Exchange Act Release No. 94304 (Feb. 24, 2022), 87 FR 11776 (Mar. 2, 2022) (OCC 2019-009), *available at* <https://www.sec.gov/rules/sro/occ/2022/34-94304.pdf>, and Securities Exchange Act Release No. 94270 (Feb. 17, 2022), 87 FR 11776 (Mar. 2, 2022) (OCC 2021-803), *available at* <https://www.sec.gov/rules/sro/occ-an/2022/34-94270.pdf>.

- c. The Commission approved a proposed rule change filed by OCC to require that its Public Directors may not be affiliated with any designated contract market or futures commission merchant ("FCM"); allow its Board to delegate certain authorities to Board committees; remove language attributing an Exchange Director's vote to constitute stockholder consent; and apply additional conforming amendments to the Board charter and committee charters. Securities Exchange Act Release No. 94988 (May 26, 2022), 87 FR 33535 (June 2, 2022) (OCC-2022-002), *available at* <https://www.sec.gov/rules/sro/occ/2022/34-94988.pdf>.
- d. The Commission approved a proposed rule change filed by OCC to accommodate the issuance, clearance, and settlement of flexibly structured options on exchange-traded funds that are cash-settled and not physically-settled (Cash-Settled Flex Exchange-Traded Fund Options). Securities Exchange Act Release No. 94910 (May 13, 2022), 87 FR 30531 (May 19, 2022) (OCC-2022-003), *available at* <https://www.sec.gov/rules/sro/occ/2022/34-94910.pdf>.
- e. The Commission granted accelerated approval of a proposed rule change and a partial amendment filed by OCC to revise the start-of-day settlement time from 9:00 a.m. Central Time ("CT") to 8:00 a.m. CT that applies to daily payments made by Clearing Members satisfying their margin and Clearing Fund obligations. Securities Exchange Act Release No. 94950 (May 19, 2022), 87 FR 31916 (May 25, 2022) (OCC-2022-004), *available at* <https://www.sec.gov/rules/sro/occ/2022/34-94950.pdf>.
- f. The Commission approved a proposed rule change filed by OCC to specify the value and identify the source of funds in

assessing a non-defaulting Clearing Member's unsecured claims following a Partial Tear-Up, and cap the amount of the special charge that may be levied by the Board of Directors. Securities Exchange Act Release No. 94938 (May 18, 2022), 87 FR 31596 (May 24, 2022) (OCC-2022-005), *available at* <https://www.sec.gov/rules/sro/occ/2022/34-94938.pdf>.

### 3. Security-Based Swaps

#### a. ICE Clear Credit

- i. The Commission approved a proposed rule change by ICE Clear Credit LCC ("ICC") to revise the ICE CDS Clearing: Back-Testing Framework to include additional description on the lookback period for backtesting and other clarifications. Securities Exchange Act Release No. 93388 (Oct. 20, 2021), 86 FR 59258 (Oct. 26, 2021) (ICC-2021-018), *available at* <https://www.sec.gov/rules/sro/icc/2021/34-93388.pdf>.
- ii. The Commission approved a proposed rule change to revise ICC's CDS Instrument On-boarding Policies and Procedures. Securities Exchange Act Release No. 93581 (Nov. 16, 2021), 86 FR 66382 (Nov. 22, 2021) (ICC-2021-019), *available at* <https://www.sec.gov/rules/sro/icc/2021/34-93581.pdf>.
- iii. The Commission approved a proposed rule change to revise ICC's CDS Clearing: Stress-Testing Framework and to adopt and formalize the ICC Indirect Participant Risk monitoring and Review Policy. Securities Exchange Act Release No. 93610 (Nov. 18, 2021), 86 FR 67097 (Nov. 24, 2021) (ICC-2021-020), *available at* <https://www.sec.gov/rules/sro/icc/2021/34-93610.pdf>.
- iv. The Commission approved a proposed rule change to adopt the ICC Counterparty Monitoring Procedures and the ICC Credit Rating System Model Description and Parameterization. Securities Exchange Act Release No. 93705 (Dec. 2, 2021), 86 FR 69699 (Dec. 8, 2021) (ICC 2021-021), *available at* <https://www.sec.gov/rules/sro/icc/2021/34-93705.pdf>.
- v. The Commission approved a proposed rule change to revise ICC's End-of-Day Price Discovery Policies and

- Procedures. Securities Exchange Act Release No. 93795 (Dec. 15, 2021), 86 FR 72291 (Dec. 21, 2021) (ICC-2021-022), *available at* <https://www.sec.gov/rules/sro/icc/2021/34-93795.pdf>.
- vi. The Commission approved a proposed rule change to revise ICC Rule 26R-319 and the ICC Exercise Procedures in connection with the clearing of credit default index options. Securities Exchange Act Release No. 94014 (Jan. 20, 2021), 87 FR 4069 (Jan. 26, 2022) (ICC-2021-023), *available at* <https://www.sec.gov/rules/sro/icc/2022/34-94014.pdf>.
  - vii. The Commission approved a proposed rule change to amend ICC’s Risk Parameter Setting and Review Policy. Securities Exchange Act Release No. 94921 (May 16, 2022), 87 FR 31020 (May 20, 2022) (ICC-2022-002), *available at* <https://www.sec.gov/rules/sro/icc/2022/34-94921.pdf>.
  - viii. The Commission approved a proposed rule change to revise ICC’s Governance Playbook. Securities Exchange Act Release No. 94980 (May 25, 2022), 87 FR 33220 (June 1, 2022) (ICC-2022-003), *available at* <https://www.sec.gov/rules/sro/icc/2022/34-94980.pdf>.
  - ix. The Commission approved a proposed rule change to revise ICC’s Recovery Plan and Wind-Down Plan. Securities Exchange Act Release No. 94983 (May 25, 2022), 87 FR 33223 (June 1, 2022) (ICC-2022-004), *available at* <https://www.sec.gov/rules/sro/icc/2022/34-94983.pdf>.
- b. ICE Clear Europe
- i. The Commission approved a proposed rule change by ICE Clear Europe (“ICEEU”) to adopt a new Clearing Membership Policy and new Clearing Membership Procedures. Securities Exchange Act Release No. 93178 (Sept. 29, 2021), 86 FR 55045 (Oct. 5, 2021) (ICEEU-2021-014), *available at* <https://www.sec.gov/rules/sro/iceeu/2021/34-93178.pdf>.

- ii. The Commission approved a proposed rule change by ICEEU to adopt a new Counterparty Credit Risk Policy and new Counterparty Credit Risk Procedures and retire the existing Futures and Options Capital to Margin and Shortfall Margin Policy and existing Unsecured Credit Limits Procedures. Securities Exchange Act Release No. 93880 (Dec. 30, 2021), 87 FR 513 (Jan. 5, 2022) (ICEEU-2021-015), *available at* <https://www.sec.gov/rules/sro/iceeu/2021/34-93880.pdf>.
  - iii. The Commission approved a proposed rule change to make certain changes to ICEEU's existing Collateral and Haircut Procedures. Securities Exchange Act Release No. 93603 (Nov. 17, 2021), 86 FR 66607 (Nov. 23, 2021) (ICEEU-2021-018), *available at* <https://www.sec.gov/rules/sro/iceeu/2021/34-93603.pdf>.
  - iv. The Commission approved a proposed rule change to amend ICEEU's Liquidity Management Procedures and Investment Management Procedures. Securities Exchange Act Release No. 93845 (Dec. 21, 2021), 86 FR 73833 (Dec. 28, 2021) (ICEEU-2021-020), *available at* [www.sec.gov/rules/sro/iceeu/2021/34-93845.pdf](http://www.sec.gov/rules/sro/iceeu/2021/34-93845.pdf).
  - v. The Commission approved a proposed rule change to amend ICEEU's CDS Clearing Back-Testing Policy and CDS Clearing Stress-Testing Policy to remediate the findings of an independent validation. Release No. 94607 (April 5, 2022), 87 FR 21227 (April 11, 2022) (ICEEU-2022-004), *available at* [www.sec.gov/rules/sro/iceeu/2022/34-94607.pdf](http://www.sec.gov/rules/sro/iceeu/2022/34-94607.pdf).
  - vi. The Commission approved a proposed rule change by ICEEU to amend its Operational Risk Management Policy and add to ICEEU's rule framework the Risk Identification Framework. Release No. 95004 (May 27, 2022), 87 FR 33858 (June 3, 2022) (ICEEU-2022-008), *available at* [www.sec.gov/rules/sro/iceeu/2022/34-95004.pdf](http://www.sec.gov/rules/sro/iceeu/2022/34-95004.pdf).
- c. LCH SA
- i. The Commission approved a proposed rule change by LCH SA to expand the non-cash collateral that a Clearing Member may post with LCH SA to meet margin requirements. Securities Exchange Act Release No. 93176



(Sept. 29, 2021), 86 FR 55061 (Oct. 5, 2021) (LCH SA-2021-002), *available at* [www.sec.gov/rules/sro/lchsa/2021/34-93176.pdf](http://www.sec.gov/rules/sro/lchsa/2021/34-93176.pdf).

- ii. The Commission approved a proposed rule change by LCH SA to amend the: (i) CDS Clearing Rule Book, (ii) CDS Clearing Supplement, (iii) certain CDS Clearing Procedures, and (iv) a Clearing Notice. Securities Exchange Act Release No. 94821 (April 29, 2022), 87 FR 26792 (May 5, 2022) (LCH SA-2022-002), *available at* [www.sec.gov/rules/sro/lchsa/2022/34-94821.pdf](http://www.sec.gov/rules/sro/lchsa/2022/34-94821.pdf).
- iii. The Commission approved a proposed rule change by LCH SA to amend its CDS Clearing Supplement and certain CDS Clearing Procedures relating to the restructuring notification process for swaptions. Securities Exchange Act Release No. 94898 (May 12, 2022), 87 FR 30318 (May 18, 2022) (LCH SA-2022-003), *available at* [www.sec.gov/rules/sro/lchsa/2022/34-94898.pdf](http://www.sec.gov/rules/sro/lchsa/2022/34-94898.pdf).

#### 4. International Standards

SEC staff continue to participate in international organizations, such as the Committee on Payments and Market Infrastructures (“CPMI”), the International Organization of Securities Commissions (“IOSCO”), and the Financial Stability Board (“FSB”).

## VI. DERIVATIVES POLICY

The Office of Derivatives Policy (“ODP”) directs projects relating to key definitional terms and foreign regulatory issues under Title VII of the Dodd-Frank Act. ODP leads the agency’s efforts to implement Title VII in part through leadership in the Security-Based Swap Joint Venture and has led the Division of Trading and Market’s work on substituted compliance. ODP also provides interpretive advice on the regulatory treatment of novel derivative products under the Exchange Act, and administers the new product provisions contained in Sections 717 and 718 of the Dodd-Frank Act. In addition, ODP is tasked with implementing and administering Section 13 of the Bank Holding Company Act of 1956, also known as the Volcker Rule.

## **A. Substituted Compliance**

Rule 3a71-6 permits non-U.S. SBS Entities to comply with certain requirements under the Exchange Act via compliance with foreign requirements that the Commission has determined will produce comparable regulatory outcomes. On November 25, 2019, the Commission published guidance regarding the contents of applications for “substituted compliance.” The guidance is intended to facilitate complete applications that permit informed assessments regarding whether foreign requirements adequately reflect the interests and protections associated with the analogous Exchange Act requirements.

The guidance is available on the SEC’s website. *See Staff Guidance – Information Regarding Foreign Regulatory Requirements for Substituted Compliance Applications* (Dec. 23, 2019), *available at* <https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf>.

Since December 2020, the Commission has issued substituted compliance determination orders for SBS Entities subject to regulation in Germany, France, Spain, Switzerland, and the UK.

All of the applications, Commission notices, and proposed and final determination orders and related memoranda of understanding are available on the SEC’s website. *See Exchange Act Substituted Compliance Applications for Security-Based Swap Markets* (Oct 18, 2021), *available at* <https://www.sec.gov/page/exchange-act-substituted-compliance-and-listed-jurisdiction-applications-security-based-swap>.

## **B. Implementation of SBS and MSBSP Registration and Regulation and Reporting of SBS Transactions to Security-Based Swap Trade Repositories**

On December 18, 2019, the Commission adopted a package of amendments, guidance, and a related order addressing cross-border application of certain security-based swap requirements. The adoption of this package stood up the Commission’s broad security-based swap regulatory regime by triggering the compliance date for SBS Entities to register with the Commission and the implementation period for previously adopted rules under Title VII of the Dodd-Frank Act. The first SBS Entities were required to register on November 1, 2021. As of June 24, 2022, 47 SBS Entities have conditionally registered with the Commission.

As of November 8, 2021, SBS transactions have been reported to two security-based trade repositories, DDR and ITV, and public dissemination of certain transaction information began on February 14, 2022.

The start date for reporting of SBS transactions is also known as the “data collection initiation date.” That date is important for determining the “phase-in termination date” for the SBS de minimis thresholds. The definition of “security-based swap dealer” excludes entities whose SBS dealing activity falls below de minimis thresholds of \$3 billion for CDS (subject to a phase-in threshold of \$8 billion) and \$150 million for other SBS (subject to a phase-in threshold of \$400 million). Rule 3a71-2 under the Exchange Act sets these phase-in thresholds to expire no later than five years after the data collection initiation date, which was November 8, 2021. Absent further Commission action, the phase-in termination date will be November 8, 2026. The Commission announced these dates on May 11, 2022 and published them in the Federal Register on May 17, 2022. *See Securities Exchange Act Release No. 94896 (May 11, 2022), 87 FR 29986 (May 17, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-05-17/pdf/2022-10511.pdf>.*

### **C. SBS Fraud and Manipulation, Chief Compliance Officer Independence and SBS Position Reporting – Proposed Rules 9j-1, 15Fh-4(c) and 10B-1 and Proposed Schedule 10B**

On December 15, 2021, the Commission re-proposed new Rule 9j-1 under the Exchange Act to prevent fraud, manipulation, and deception in connection with security-based swap transactions. The Commission also proposed new Rule 15Fh-4(c) under the Exchange Act to prohibit undue influence over the chief compliance officer of an SBS Entity. Finally, the Commission proposed new Rule 10B-1 under the Exchange Act, together with a new Schedule 10B, to require any person with a security-based swap position that exceeds a certain threshold to promptly file with the Commission a schedule disclosing certain information related to its position. *See Securities Exchange Act Release No. 93784 (Dec. 15, 2021), available at <https://www.sec.gov/rules/proposed/2021/34-93784.pdf>.*

### **D. Coordination with International Bodies and Foreign Authorities**

#### **1. FSB Group on UTI and UPI Governance**

SEC staff participate in working groups of the FSB focused on monitoring the implementation of OTC derivatives market reforms and governance arrangements for the unique transaction identifier

(“UTI”) and unique product identifier (“UPI”), data standards that will be used in reporting OTC derivatives transactions to trade repositories.

## 2. IOSCO Committee 7 on Derivatives

Division of Trading and Markets staff participate in IOSCO’s Committee 7 on Derivatives. Committee 7 focuses on issues related to all types of derivatives products and markets. Committee 7’s membership consists of experts on exchange-traded and OTC derivatives, the G-20 reforms on OTC derivatives, and commodity derivatives.

Committee 7 was formed in 2017 by merging the former IOSCO Committee on Commodity Derivatives and the IOSCO OTC Derivatives Task Force, which the SEC co-chaired. To date, Committee 7 has carried out G-20 mandated projects on “Principles for Oil Price Reporting Agencies” and “Principles for the Regulation and Supervision of Commodity Derivatives Markets” and other important IOSCO projects, including “Efficient Resiliency,” “Third Party Service Providers,” and “Storage and Delivery Infrastructures.”

## 3. Other Coordination Among OTC Derivative Authorities

Senior representatives from the Commission, the Commodity Futures Trading Commission, and a number of foreign authorities with responsibility for the regulation of OTC derivatives convene regularly to discuss cross-border issues related to the implementation of legislation and rules to govern the OTC derivatives markets in their respective jurisdictions.

SEC staff also participate in the OTC Derivatives Regulators’ Forum (“ODRF”), which focuses on data quality and data usage. The technical working group of the ODRF provides a forum for regulators to discuss their use of data, share experiences, and support further standardization of data fields.

## NOTES