

August 1, 2019

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SEC AND CFTC ISSUE JOINT PROPOSAL TO ALIGN MARGIN REQUIREMENTS FOR SECURITIES FUTURES

On July 3, 2019, the Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”)(collectively, the “Commissions”) proposed amendments to regulations that establish minimum customer margin requirements for security futures. More specifically, the proposed amendments would lower the margin requirement for an unhedged security futures position from 20% to 15%. Additionally, the Commissions propose certain revisions to the margin offset table consistent with the proposed reduction in margin.

Comments Due: August 26, 2019

Notice Release: <https://www.sec.gov/rules/proposed/2019/34-86304.pdf>

Press Release: <https://www.sec.gov/news/press-release/2019-125>

FINRA FILES PROPOSED RULE CHANGE TO EXPAND OTC EQUITY TRADING VOLUME DATA PUBLISHED ON WEBSITE

On July 1, 2019, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the SEC a proposed rule change to amend Rules 6110 and 6610 to expand the summary firm data relating to non-ATS over-the-counter (“OTC”) equity trading FINRA publishes on its website. The proposed rule change has two primary components. First, FINRA is proposing to publish new monthly aggregate block-size trading data for non-ATS OTC trades in NMS stocks, on the same terms as FINRA currently publishes aggregate block-size trading data for trades in NMS stocks occurring on ATSS. Second, FINRA is proposing to eliminate the current de minimis exception for publication of aggregate non-ATS trading volume across all NMS stocks and OTC Equity Securities and publish each firm’s aggregate non-ATS volume on an attributed basis.

Comments Due: August 1, 2019

Notice Release: <https://www.sec.gov/rules/sro/finra/2019/34-86315.pdf>

Proposed Rule: https://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2019-019.pdf

FINRA PROPOSES A CORPORATE BOND NEW ISSUE REFERENCE DATA SERVICE

On March 27, 2019, FINRA filed with the SEC a proposed rule change to establish a new issue reference data service for corporate bonds. FINRA stated that its proposal is in line with a recommendation from the SEC Fixed Income Market Structure Advisory Committee, which recommended that FINRA establish a new issue data service that would contain specified data elements on TRACE-eligible corporate bond new issues. FINRA would disseminate the corporate bond new issue reference data collected under Rule 6760 upon receipt. That data would be provided to subscribers for fees that FINRA stated are determined on a commercially reasonable basis. In particular, FINRA proposed to make the corporate bond new issue reference data available to any person or organization for a fee of \$250 per month if used for internal purposes only, and for a fee of \$6,000 per month where the subscriber retransmits or repackages the data for delivery and dissemination outside the organization. On May 22, 2019, the SEC designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The SEC has received thirteen comment letters on the proposal. This order institutes proceedings to determine whether to approve or disapprove the proposed rule change.

Comments Due: July 29, 2019

Rebuttal Comments Due: August 12, 2019

Proposed Rule: https://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2019-008.pdf

Notice Release: <https://www.sec.gov/rules/sro/finra/2019/34-86256.pdf>

FINRA PROPOSES RULE CHANGE TO EXEMPTIONS FROM THE ORDER AUDIT TRAIL SYSTEM RECORDING AND REPORTING REQUIREMENTS

On July 12, 2019, FINRA filed a rule proposal with the SEC to amend Rule 7470 (Exemptions to the Order Recording and Data Transmission Requirements) to extend for three years FINRA's ability to exempt certain members from the recording and reporting requirements of the Order Audit Trail System ("OATS") rules for manual orders received by the member. On July 25, 2019, the SEC published a notice to solicit comments on the proposed rule change from interested persons.

Comments Due: 21 days after publication in the Federal Register

Notice Release: <https://www.sec.gov/rules/sro/finra/2019/34-86479.pdf>

FINRA REQUESTS COMMENT ON PROPOSED RULE CHANGE TO REQUIRE REPORTING OF TRANSACTIONS IN U.S. DOLLAR-DENOMINATED FOREIGN SOVEREIGN DEBT SECURITIES TO TRACE

On July 26, 2019, FINRA requested comment on a proposal to expand TRACE reporting requirements to collect information on trades in foreign sovereign debt securities that are U.S. dollar-denominated. Under the proposal, trades in U.S. dollar-denominated foreign sovereign debt securities would be subject to same-day reporting and would not be disseminated publicly. The proposal would not change FINRA's approach to the regulatory reporting framework or jurisdictional reach over trading activity with some foreign component. The proposed reporting requirements for U.S. dollar-denominated foreign sovereign debt securities would follow the current TRACE approach to foreign trades, which generally considers whether FINRA member firms engage in transactions that involve a beneficial change in ownership.

Comments Due: September 24, 2019

Notice Release: http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-19-25.pdf

FINRA REMINDS COMPANIES OF THEIR OBLIGATIONS REGARDING TRACE REPORTING

On July 19, 2019, FINRA issued a Trade Reporting Notice to remind members of their obligation to have systems or processes in place to determine whether a transaction in a TRACE-Eligible Security has occurred and is, therefore, reportable, even if it was not included on the TRACE security master list at the time of the transaction. In those circumstances, members should contact Market Operations to add the TRACE-Eligible Security to the security master list and report the transaction to TRACE. FINRA reminds members that Rule 6730(a)(7) requires all members that engage in a transaction in any TRACE-Eligible Security to contact Market Operations to set up the security if it is not set up in TRACE. In addition, there may be instances where a security once appeared on the TRACE security master list but became inactive and was subsequently removed from TRACE. In such cases, the member transacting in the security must contact Market Operations to request that the security be activated or reactivated in the TRACE system so that the member can report the transaction.

Notice Release: http://www.finra.org/sites/default/files/notice_doc_file_ref/Trade-Reporting-Notice-071919.pdf

FINRA ISSUES NOTICE ON TRADE REPORTING REQUIREMENTS APPLICABLE TO STEP-OUT SUBMISSIONS

On July 16, 2019, FINRA issued a Trade Reporting Notice to remind firms of their obligations when submitting step-outs to FINRA. While step-out submissions are voluntary and not required by rule, if firms elect to use a FINRA equity trade reporting facility to step out of a previously reported trade, they must comply with applicable trade reporting requirements. FINRA occasionally receives questions about the reporting requirements applicable to step-outs. This Notice is a reminder to firms of FINRA's previously published guidance on step-out submissions.

Notice Release: http://www.finra.org/sites/default/files/notice_doc_file_ref/Trade-Reporting-Notice-071619.pdf

FINRA REQUESTS COMMENT ON A PROPOSED RULE CHANGE TO PUBLISH ATS VOLUME DATA FOR CORPORATE BONDS AND AGENCY DEBT SECURITIES ON FINRA'S WEBSITE

On July 9, 2019, FINRA requested comment on a proposal to publish volume and trade count information for corporate and agency debt securities, categorized by individual security (i.e., CUSIP) and Alternative Trading System ("ATS"), in a format similar to that currently published for equity securities. The published data would include both the total number of transactions and aggregate dollar volume traded for transactions in a particular corporate bond or agency debt security executed within the ATS and reported to FINRA during the aggregation period. The ATS data would be aggregated on a monthly basis and published with a three-month delay.

Comments Due: September 7, 2019

Notice Release: http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-19-22.pdf

FINRA ESTABLISHES HIGHER STRATEGY-BASED MARGIN REQUIREMENTS FOR EXCHANGE-TRADED NOTES

On July 1, 2019, FINRA published a Regulatory Notice that, pursuant to FINRA Rule 4210(f)(8)(A), FINRA is establishing higher strategy-based margin requirements for exchange-traded notes (ETNs) and options on ETNs in light of the complex nature of these products. In addition, FINRA is clarifying that ETNs and options on ETNs are not eligible for portfolio margining under FINRA Rule 4210(g), and effective on August 16, 2019, the Option's Clearing Corporation will be removing all ETNs and related options that are currently in the Theoretical Intermarket Margining System model.

Notice Release: http://www.finra.org/sites/default/files/Notice_Regulatory_19-21.pdf

NASDAQ RECEIVES APPROVAL TO ALLOW ODD LOT-SIZED ORDERS TO BE ELIGIBLE FOR MIDPOINT EXTENDED LIFE ORDER

On May 20, 2019, the Nasdaq Stock Exchange (“Nasdaq”) filed a proposed rule change to allow an odd lot-sized order to be eligible for the Midpoint Extended Life Order (“MELO”). MELO is an order type with a non-display order attribute that is priced at the midpoint between the National Best Bid and National Best Offer (“NBBO”) and that will not be eligible to execute until a holding period of one-half second has passed after acceptance of the order by the system. Once a MELO becomes eligible to execute, the order may only execute against other eligible MELOs. The Nasdaq proposes to allow odd lot-sized MELOs in order to provide additional trading opportunities for the order type, particularly in high-priced securities. The proposed rule change was published for comment in the Federal Register on June 4, 2019. The SEC received no comment letters on the proposed rule change. On July 19, 2019 the SEC published an order approving the proposed rule change.

Notice Release: <https://www.sec.gov/rules/sro/nasdaq/2019/34-86416.pdf>

Final Rule: <http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2019/SR-NASDAQ-2019-044.pdf>

NASDAQ PROPOSES RULE CHANGE TO AMEND THE GENERIC LISTING STANDARDS FOR FIXED INCOME SECURITIES IN A PORTFOLIO OF A SERIES OF MANAGED FUND SHARES

On July 17, 2019, Nasdaq filed for the immediate effectiveness of a proposed rule change to amend Nasdaq Rule 5735(b)(1) to amend the generic listing standards for the listing and trading of Managed Fund Shares. Nasdaq Rule 5735(b)(1)(B) sets forth generic listing standards applicable to fixed income securities included in the portfolio of a series of Managed Fund Shares listed on Nasdaq. Nasdaq Rule 5735(b)(1)(B)(v) provides that non-agency, non-GSE and privately-issued mortgage related and other asset-backed securities (“ABS”) components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. The proposed rule change would delete the words “fixed income portion” to provide that the 20% limitation in the rule would apply to the entire portfolio rather than to only the fixed income portion of the portfolio. The SEC has previously approved a proposed rule change by NYSE Arca, Inc. that is substantively identical to the amendment to Nasdaq Rule 5735(b)(1)(B)(v) as proposed.

Comments Due: 21 days after publication in the federal register

Notice Release: <https://www.sec.gov/rules/sro/nasdaq/2019/34-86399.pdf>

Proposed Rule: <http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2019/SR-NASDAQ-2019-054.pdf>

NASDAQ RECEIVES ACCELERATED APPROVAL FOR PROPOSED RULE CHANGE REVISING LISTING STANDARDS

On July 1, 2019, Nasdaq filed with the SEC a proposed rule change to revise Nasdaq's listing standards related to liquidity. The amendment (i) clarifies Nasdaq's intent to impose a new requirement that at least 50% of a company's round lot holders must each hold unrestricted securities with a market value of at least \$2,500; (ii) clarifies that the new listing rule requiring a minimum average daily trading volume for securities trading OTC of at least 2,000 shares over the 30 day period prior to listing (with trading occurring on more than half of those 30 days) includes trading volume of the underlying security on the primary market with respect to an ADR; (iii) clarifies that, in connection with a company applying to list on Nasdaq through a direct listing that has not had sustained recent trading in a private placement market prior to listing, Nasdaq will determine that the company has met the market value of unrestricted publicly held shares requirement if the company satisfies the applicable requirement and provides an independent third-party valuation evidencing a market value of publicly held shares of at least \$250,000,000; and (iv) makes minor technical changes. Nasdaq proposes to revise its initial listing criteria to exclude restricted securities from Nasdaq's calculations of a company's publicly held shares, market value of publicly held shares and round lot holders ("Initial Liquidity Calculations"). To do so, Nasdaq proposes to add three new definitions to define "restricted securities", "unrestricted publicly held shares" and "unrestricted securities" and proposes to amend the definition of "round lot holder."

Comments Due: August 1, 2019

Effective Date: August 4, 2019

Notice Release: <https://www.sec.gov/rules/sro/nasdaq/2019/34-86314.pdf>

Proposed Rule: <http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2019/SR-NASDAQ-2019-009.pdf>

NYSE PROPOSES RULE TO DISCONTINUE ALERTS MARKET DATA PRODUCT OFFERING

On July 26, 2019, the SEC published for comment a notice of filing and immediate effectiveness of a proposed rule change by the New York Stock Exchange LLC ("NYSE") to discontinue the NYSE Alerts Market Data Product Offering. The NYSE is undergoing a multi-phase transition to the Pillar trading platform that began in April 2018, when the NYSE introduced trading of UTP Securities on the Pillar trading platform. The Exchange anticipates that the migration of Exchange-listed securities will be complete by August 22, 2019, at which time the Exchange will fully discontinue the NYSE Alerts product. The categories of information in the NYSE Alerts Market Data product is currently available on one or more of the Exchange's other proprietary market data products.

Comments Due: 21 days after publication in the Federal Register

Notice Release: <https://www.sec.gov/rules/sro/nyse/2019/34-86492.pdf>

NYSE RECEIVES APPROVAL OF RULE CHANGE TO AMEND RULE 123D

On July 11, 2019, the NYSE received approval from the SEC for a proposed rule change to amend Rule 123D to permit the NYSE to declare a regulatory halt in a security that traded in the over-the-counter market prior to the initial pricing on the NYSE. The proposed amendment to delete the clause “or traded in the over-the-counter market pursuant to FINRA Form 211” in NYSE Rule 123D(d) would enable the NYSE to declare a regulatory halt for a security that is having its initial listing on the NYSE and that was traded in the OTC market immediately prior to its initial pricing on the NYSE.

Notice Release: <https://www.sec.gov/rules/sro/nyse/2019/34-86351.pdf>

Proposed Rule: <https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2019/SR-NYSE-2019-32.pdf>

ALLISON HERREN LEE SWORN IN AS SEC COMMISSIONER

On July 8, 2019, Allison Herren Lee was sworn into office as an SEC Commissioner. Commissioner Lee has over two decades of experience as a securities law practitioner. Most recently, she has written, lectured, and taught courses internationally on financial regulation and corporate law. She served for over a decade in various roles at the SEC, including as counsel to Commissioner Kara Stein, and as Senior Counsel in the Division of Enforcement’s Complex Financial Instruments Unit. In addition, Commissioner Lee has served as a Special Assistant U.S. Attorney, was a member of the American Bar Association’s former Committee on Public Company Disclosure, and participated on a USAID project in Armenia, assisting in the drafting of periodic reporting and disclosure provisions for a comprehensive law of the Republic of Armenia on Securities Market Regulation.

Press Release: <https://www.sec.gov/news/press-release/2019-121>

Notable Enforcement Actions

The sole securities operations-related enforcement action this month focused on the accuracy of submitting Reportable Order Events to the Order Audit Trail System.

On May 7, 2019, a firm was fined \$25,000 for submitting Reportable Order Events (“ROEs”) to the Order Audit Trail System (“OATS”) that contained inaccurate, incomplete or improperly formatted data. The findings stated that the firm used a platform for its OATS reporting that was provided by a third-party vendor. The OATS violations were caused by system errors that developed when the firm’s vendor made changes to its platform. (**FINRA Case #2017053084901**)

http://www.finra.org/sites/default/files/fda_documents/2017053084901%20FIS%20Brokerage%20%26%20Securities%20Services%20LLC%20CRD%20104162%20AWC%20jm.pdf