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United States

Recent Developments at the SEC
On September 5, 2018, the United States Senate confirmed Elad Roisman as Commissioner for the US Securities and Exchange Commission (SEC). The SEC now has a full five Commissioners. In the near future, however, there will be another vacancy on the Commission as Commissioner Kara Stein must step down at the end of the year.

FCPA Enforcement and Possible Changes
The US Department of Justice (DOJ) and the SEC have been aggressively pursuing Foreign Corrupt Practices Act (FCPA) cases with three large cases settling in the past few months. A recent decision by the US Second Circuit Court of Appeals, however, may hinder the enforcement efforts by the regulators.

Two financial services firms agreed to settle charges by the DOJ and the SEC that they violated the FCPA by working together in a scheme to bribe Libyan government officials to obtain investments by Libyan state-owned institutions. The firms paid a Libyan “broker” for its supposed “introductory” services to secure investments with Libyan state-owned institutions when it knew the “broker” was using some of the funds to bribe Libyan officials. In total, the two firms settled the matter for $652 million in fines and disgorgement. In another matter, the DOJ and the SEC found that a financial services firm awarded employment to friends and family of Chinese government officials to win banking business. In that case, the firm agreed to pay fines and disgorgement of more than $72 million.

The Second Circuit’s recent decision in United States v. Hoskins, however, may limit the scope of the FCPA. In that case, the court ruled that a foreign national without ties to any US entity could not be liable as a conspirator or accomplice for conduct outside the United States, though the government’s “agency” theory remains viable. As a result, US regulators will have to carefully consider whether and how to pursue individual liability for FCPA violations, which had been a priority in recent years.

For more information regarding the impact of the Hoskins decision, see the Eversheds Sutherland Legal Alert.

Federal Prosecutors Charge Chinese Trader With Illegal Insider Trading
In July, federal prosecutors accused Chinese trader Shaohua Yin of purchasing shares of Lattice Semiconductor Corp. before an acquisition announcement, after having been tipped off by a former private-equity colleague. Prosecutors charged Yin with 14 counts of securities fraud and one count of conspiracy and alleged that his illicit trading resulted in $5 million in profit. Just last year, the SEC charged Yin with insider trading relating to the same announcement as well as in other companies.

Prosecutors allege Yin bought millions of shares of Lattice through accounts opened in the names of family members and associates from March 2016 to February 2017 based on tips he received from his friend Benjamin Chow. At the time, Chow’s private equity firm was negotiating to purchase Lattice at a premium. Earlier this year, Chow was found guilty of one count of conspiracy to commit securities fraud and seven counts of securities fraud.

In announcing the indictment, FBI Assistant Director Paul Delacourt said: “Yin’s alleged use of material, nonpublic information as a road to revenue produced millions in unlawful proceeds. The FBI and our partners at the Securities and Exchange Commission will
continue to investigate subjects who use criminal tactics that illegally create overnight millionaires and threaten the credibility of the marketplace."

**Executive Order Creates Task Force on Market Integrity and Consumer Fraud**

DOJ Deputy Attorney General Rod Rosenstein, SEC Chairman Jay Clayton, Consumer Financial Protection Bureau Acting Director Mick Mulvaney, and Federal Trade Commission Chairman Joseph Simons have announced the creation of a new cross-agency task force to combat corporate and consumer fraud. Created by White House executive order, the Task Force on Market Integrity and Consumer Fraud will combat fraud against consumers—especially the elderly, service members, and veterans—and corporate fraud against the general public and the government. Rosenstein expects a focus on fraud against the government, the financial markets, and consumers; procurement and grant fraud; securities and commodities fraud; digital currency fraud; money laundering; health care fraud; tax fraud; and other financial crimes.

Rosenstein stated the goal of the Task Force was to deter fraud rather than to prosecute fraud. However, when prosecution is necessary, the Task Force intends to comply with a policy rolled out in May that directs the DOJ to avoid duplicative fines resulting from multiple agencies “piling on” fines related to the same misconduct. Rosenstein said the Task Force would coordinate with local, state, federal, and foreign authorities to achieve a joint result without prolonging investigations or wasting investigative resources.

“By working together, we can achieve more effective and efficient outcomes,” Rosenstein said. “Drawing on our pooled resources, including subject-matter expertise, data repositories, and analysts and investigators, we can identify and stop fraud on a wider scale than any one agency acting alone.”

SEC Chairman Clayton praised the initiative and highlighted the SEC’s efforts to combat retail securities fraud and the importance of inter-agency cooperation. Clayton expects the task force to focus on cyber-enabled crime, including fraudulent initial coin offerings (ICOs), stating, “I know cyber-enabled crime is an area of focus that the SEC shares with many others on this Task Force.”

**Firm Fails to Detect or Prevent Misappropriation of Client Funds**

A firm agreed to pay a $3.6 million civil penalty and to accept certain undertakings to settle a matter with the SEC where the firm allegedly failed to adopt policies and procedures reasonably designed to prevent firm personnel from misusing or misappropriating client funds.

The firm had limited systems in place to monitor for unauthorized third-party transactions and/or wire transfers of client funds. Specifically, the firm’s procedures allowed third-party disbursement of up to $100,000 per day through the use of “Verbal Request Forms” without any means of authenticating or testing that the client had authorized the transaction. In addition, the firm had a fraud software program that assessed wire transfers against certain risk indicators, but the software was not reasonably calibrated to assess the risks created by its procedures. As a result, the firm failed to identify a financial advisor that initiated unauthorized third-party transactions totaling over $7 million, misappropriating an additional $5 million.

Upon learning of the issue from the client, the firm initiated an internal investigation, notified the SEC, and ultimately entered into a settlement agreement with the clients in which it agreed to pay back the misappropriated funds with interest. The firm developed significant enhancements to its policies, procedures, systems, and controls related to monitoring for misuse of client funds, increased its expenditures for its anti-fraud program, and hired additional fraud operations personnel.

In addition to paying a penalty of $3.6 million, the firm agreed to complete an initial certification that the enhanced policies and procedures are fully operational. Then, the firm agreed to assess the implementation and adequacy of the enhanced policies and procedures and certify that they are adequate and sufficient to provide reasonable assurance of compliance with all applicable rules and regulations.

**SEC Uses Deferred Prosecution Agreement in Insider Trading Matter**

The SEC settled an insider-trading matter with a former senior officer of Sequenom, Inc. (Sequenom), charging that he had tipped a friend about a planned acquisition of Sequenom by Laboratory Corporation of America Holdings.

The senior officer, who reported directly to the CEO, not only was aware of the potential for an acquisition, but had signed a confidentiality agreement months earlier agreeing not to disclose the company’s efforts to address its outstanding debt obligations. A few days before the announcement of the acquisition, the senior officer advised his friend (Individual A) that he should purchase Sequenom shares due to the impending acquisition. Individual A purchased 18,000 shares just days before the announcement and on the day of the announcement sold all the shares, realizing a profit of $26,643.

As a result of this trading activity so near a major corporate event, the SEC sent an administrative subpoena to Individual A, who immediately provided full and complete cooperation in connection with the investigation. He identified the senior officer of Sequenom as the tipper, which the SEC was not aware of, provided details as to when, where, and how he received the non-public information; and even provided information regarding follow-up conversations with the senior officer in which he confirmed that he had benefitted financially from trading on the tip. As a result of his cooperation, the SEC agreed to enter into a deferred prosecution agreement with Individual A in which he agreed to disgorge the $26,643 in profit he realized from the transactions.

Based on the information received from Individual A, the Sequenom senior officer agreed to settle charges that he engaged in insider trading. He was permanently enjoined from future violations, prohibited from acting as an officer or director of a public company for five years, and agreed to pay a penalty of $26,643.
A Week of “Firsts” in Cryptocurrency Prosecution

On September 11, 2018, a number of “firsts” occurred in the prosecution of cryptocurrency-related activities. The SEC brought its first-ever enforcement action involving a registration violation for a cryptocurrency fund; the Financial Industry Regulatory Authority (FINRA) filed its first enforcement complaint against a registered representative for marketing and making false statements relating to unregistered cryptocurrency securities; and a federal court in New York was the first to deny a motion to dismiss a criminal indictment for an allegedly fraudulent cryptocurrency scheme.

With respect to the SEC, it continues its multi-faceted regulation of cryptocurrencies and ICOs and, indeed, appears to be broadening its scope. As funds investing in cryptocurrency continue to proliferate, investment companies (and their managers) must make sure their funds adhere to the applicable registration obligations regardless of what assets they invest in—including cryptocurrencies—and must accurately represent their funds’ regulatory status to investors.

FINRA’s enforcement action likely represents the first of many cryptocurrency-related actions. Its focus, however, given its narrower jurisdiction, is limited to any associated person or firm that is involved in cryptocurrency transactions, such as a registered representative. Now with FINRA not just watching but acting, broker-dealers should closely examine the regulatory impact of their conduct or business in the cryptocurrency space.

Finally, illegal cryptocurrency-related conduct is not just subject to injunctions and civil penalties. The DOJ appears poised to prosecute actors criminally for violations of federal securities laws. In those cases, juries—likely with little or no experience with securities laws—may end up deciding whether certain cryptocurrencies qualify as securities under the relevant fact-intensive test.

To read more about these cases, see the Eversheds Sutherland Legal Alert.

Eversheds Sutherland Study Finds FINRA Fines Up and Restitution Down in First Half of 2018

By reviewing FINRA’s monthly Disciplinary and Other FINRA Actions publications, Eversheds Sutherland (US) LLP has found that in the first six months of this year FINRA’s fines are slightly up while restitution is down significantly from 2017. Meanwhile, FINRA continued to emphasize certain program areas from 2017.

FINRA reported a slight increase in fines during the first half of 2018 compared to the first six months of 2017. FINRA reported $25.9 million in fines through June 2018 compared to $23.5 million reported during the same period in 2017. Historically, FINRA’s reported fines increase significantly during the second half of the calendar year. Nonetheless, if FINRA continues to assess fines in 2018 at the current rate, the year-end fines would total approximately $51.8 million, compared to $65 million in 2017. That would represent a 20% decrease and would be the lowest total since 2010, when FINRA ordered $42 million in fines.

FINRA’s restitution orders have been significantly down this year. It ordered $4.9 million in restitution during the first six months of 2018. This compares with $38.1 million ordered during the same period in 2017. Nearly half of the restitution reported in the first six months of 2018 came from one settlement where FINRA ordered $2 million in restitution.

The top enforcement issues for FINRA during the first half of 2018 in terms of total fines were:
- Anti-Money Laundering: $9.4 million in fines (11 cases);
- Trade Reporting: $8.4 million in fines (37 cases);
- Suitability: $5.6 million in fines (54 cases);
- Variable Annuities: $4.6 million in fines (14 cases); and
- Books and Records: $3.5 million (33 cases).

Find out more about FINRA’s midyear trends in Eversheds Sutherland’s study.
United Kingdom

FCA Decision Notice for Principle 3 breach: First case to be completed under new process for partly contested cases

On September 27, 2018, the Financial Conduct Authority (FCA) published its Decision Notice (dated June 7, 2018) to Linear Investments Ltd (Linear Investments), an FCA-authorized firm offering a range of brokerage services, including access to trade execution via electronic direct market access.

The FCA decided to impose a financial penalty of £409,300 on Linear Investments under section 206 of the Financial Services and Markets Act 2000. Linear Investments agreed at an early stage of the FCA’s investigation to settle all issues of fact and liability and therefore qualified for a 30% discount under the FCA’s executive settlement procedure. Linear Investments disputed the penalty imposed and has referred the issue of penalty to the Upper Tribunal (Tax and Chancery Chamber). The Upper Tribunal will determine what (if any) the appropriate action is for the FCA to take, and remit the matter to the FCA with such directions as it considers appropriate.

The FCA found that Linear Investments breached Principle 3 of the Principles for Businesses by failing to take reasonable care to organize and control its affairs responsibly and effectively with adequate risk management systems relating to the detection and reporting of potential instances of market abuse between January 2013 and August 2015.

From January 2013 to May 2015, the volume of trading routed by Linear Investments to its brokers was such that it was not capable of being adequately monitored by the manual oversight process then in place at Linear Investments.

In November 2014, Linear Investments became aware that it needed to conduct its own post-trade surveillance. Until then, Linear Investments had mistakenly considered the requirement to analyze and report suspicious trades was effectively being carried out on its behalf by underlying brokers. Linear Investments subsequently took steps to source and implement an automated post-trade surveillance system. After its deployment, there was a period of time in which Linear Investments had to ensure the system was appropriately calibrated and tested, so that it operated effectively.

As a result, during the relevant period, Linear Investments failed to take reasonable care to ensure it could effectively conduct market abuse surveillance. This increased the risk that potentially suspicious trading would go undetected.

A related FCA press release stated that this was the first case to be completed under the new process introduced for partly contested cases. It allows firms or individuals under investigation to agree to certain elements of the case and to contest others, meaning they are still eligible for a discount of up to 30%.

FCA bans former UBS trader following Upper Tribunal decision

On August 23, 2018, the FCA published its Final Notice to Mr. Arif Hussein, a former derivatives trader at UBS, London, prohibiting him from performing any function relating to any regulated activity.

The FCA gave Mr. Hussein a Decision Notice in January 2016 notifying him that it had decided to bar him. The FCA had found that Mr. Hussein had acted recklessly and without integrity in relation to certain GBP LIBOR submissions made on behalf of UBS,
and had concluded that he was not a fit and proper person. Mr. Hussein referred the FCA’s decision to the Upper Tribunal. The Upper Tribunal dismissed Mr. Hussein’s reference in June 2018.

**FCA Enforcement Annual Performance Report 2017/18**

On July 19, 2018, the FCA published its Enforcement Annual Performance Report for 2017/18. The report provides an overview of the FCA’s enforcement activities during 2017/18. Key statistics for 2017/18 include:

- The value of financial penalties imposed by the FCA in 2017/2018 dropped again with the FCA imposing only £69.9 million in financial penalties during this period. This constitutes a drop of 61% compared with the value of financial penalties imposed in 2016/2017, which totaled £181 million. In 2015/2016 the total value of financial penalties totaled £884.6 million, but this included exceptional fines related to FX and LIBOR misconduct.
- As of March 31, 2018, the FCA had 504 open enforcement investigations, up from 410 enforcement investigations that it had opened a year earlier on April 1, 2017.
- The FCA has seen a particularly significant increase in the number of enforcement investigations it has open in two areas, namely financial crime (86, up from 56 as at the end of March 2017) and culture and governance (61, up from only 12 as at the end of March 2017).
- In 2017/2018, the FCA closed a total of 208 enforcement investigations. Only 16 of these closed cases resulted in public enforcement outcomes against firms (six) and individuals (ten). During 2017/2018, the average length of concluded enforcement cases that resulted in an agreed settlement was 32.3 months, a significant increase from an average of 23.2 months in 2016/2017.

**FCA Market Watch Issue 56**

On September 24, 2018, the FCA published Issue 56 of Market Watch, its newsletter on market conduct and transaction reporting issues. Highlights include:

- The calibration of firms’ surveillance systems: Firms are reminded that every business is unique. Therefore, relying on peer standards will not necessarily satisfy the requirements under the Market Abuse Regulation (Regulation 596/2014) (MAR). Each firm is responsible for making its own judgments about alert calibration, and firms risk failing to comply with MAR if they assume that because a certain calibration is appropriate for their peers, it must be appropriate for them.
- Assessing the risk of market abuse: Firms are reminded that the lists of indicators for fictitious devices, false or misleading signals and price securing in MAR are not exhaustive. Firms treating them as such may fail to identify the risk of, and so fail to detect and report, other types of market manipulation that are still within the broader scope of Article 12(1)(a) and (b) of MAR.
- Fixed income surveillance: Submission of Suspicious Transaction and Order Reports (STORs) across asset classes remains inconsistent. The FCA believes that submissions continue to be too low in fixed income products. It goes on to provide further observations from its recent visit program.
- Firm rationales for failings: The FCA notes that these have two themes. First, some firms appear to consider that their own failings can be excused by a perception that some of their peers are failing in the same way. Second, on STOR visits where the FCA observes potential failings, firms occasionally tell it that the responsible employee has only recently joined and does not feel they are responsible for a predecessor’s arrangements, which is of limited relevance.
- Payment for order flow (PFOF): Following its Dear CEO letter on PFOF, which was published in December 2017, the FCA provides an update on its recent work. It shares its high-level findings and sets out the planned next steps, which includes scrutiny of the specific controls for correctly classifying individual transactions. The FCA will also look at the policies applied by firms, focusing particularly on how they manage potential conflicts, and the extent of their compliance monitoring and oversight activity.

**Judgment overturned on litigation privilege in internal investigation (Court of Appeal)**

In The Director of the SFO v Eurasian Natural Resources Corporation Ltd, [2018] EWCA Civ 2006, the Court of Appeal overturned the High Court decision in Director of the Serious Fraud Office v Eurasian Natural Resources Corporation Ltd, [2017] 1 WLR 4205, concerning the extent to which litigation privilege could be applied in internal investigations. ENRC successfully argued that documents prepared during the internal investigation, both by its lawyers and a firm of forensic accountants, were protected by litigation privilege.

For more information on this decision, see this Eversheds Sutherland Legal Alert.

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Hong Kong

CBIRC and SFC sign MoU to enhance supervisory cooperation and exchange of information of Cross-Boundary Regulated Entities

In June, the China Banking and Insurance Regulatory Commission (CBIRC) and the Securities and Futures Commission (SFC) entered into a Memorandum of Understanding (MoU) regarding the cooperation and exchange of information in connection with the supervision and oversight of regulated entities of the CBIRC or the SFC that operate on a cross-boundary basis in Hong Kong and Mainland (Cross-Boundary Regulated Entities).

The MoU facilitates the CBIRC and the SFC to cooperate with each other in the interest of fulfilling their respective mandates, particularly in the areas of investor protection, promoting the competence and integrity of Cross-Boundary Regulated Entities, fostering market and financial integrity, reducing systemic risk, and maintaining financial stability.

Launch of investor identification for northbound trading under Stock Connect

In August, the SFC reached an agreement with the China Securities Regulatory Commission (CSRC) to implement an investor identification regime for northbound trading under Mainland–Hong Kong Stock Connect on September 17, 2018.

The investor identification regime’s purpose is to facilitate more effective monitoring and surveillance by the CSRC and Mainland stock exchanges to safeguard market integrity.

As announced in 2017, the SFC and the CSRC agreed, on a reciprocal basis, to introduce a similar investor identification regime for southbound trading to assist one another in performing their regulatory functions under Stock Connect. The SFC advises that the investor identification regime for southbound trading will be implemented as soon as practicable.

SFC consultation addresses risks in securities margin financing

In August, the Securities and Futures Commission launched a two-month consultation on proposed guidelines to clarify, codify and standardize the risk management practices for securities margin financing (SMF).

The proposed guidelines will provide qualitative guidance as well as quantitative benchmarks for margin lending policies and key risk controls to prevent SMF brokers from expanding margin loans beyond their financial capability.

Key proposals include requiring SMF brokers to put in place prudent controls to prevent excessive leverage and overconcentration, both in terms of securities collateral and individual margin clients. Brokers would also be required to set and enforce specific policies for margin calls and conduct monthly stress tests. The proposed guidelines will also set out clearer guidance for haircuts for securities acceptable as collateral.
Navigating the issues
Securities Enforcement Global Update | Fall 2018

SFC cautions against disguised margin financing
In August, the SFC, in the course of its ongoing supervision of licensed corporations (LCs), observed that some LCs carrying on asset management activities may have aided and abetted unlicensed affiliates or third parties to provide securities margin financing in the guise of investments.

The suspected margin financing arrangements involve unlicensed affiliates of the LCs or third parties who appear to fund the purchase of securities jointly with the LCs’ clients. The SFC believes these arrangements may operate through discretionary accounts or private funds and have features similar to margin calls and margin interest. Therefore, the SFC contends that these arrangements are disguised to avoid regulatory requirements aimed at protecting investors and market integrity.

SFC implements open-ended fund companies regime
In July, the SFC announced the implementation of the new open-ended fund companies (OFCs) regime. This will enable investment funds to be established in corporate form in Hong Kong, in addition to the current unit trust form.

The Code on Open-ended Fund Companies and relevant forms for the implementation of the OFC regime took effect on 30 July 2018. Following the completion of the legislative process, the legislation for OFCs came into effect on the same day.

SFC amends takeovers rules
In July, the SFC released consultation conclusions on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs, which will apply with immediate effect.

Measures introduced to enhance investor protection included empowering the Takeovers Panel to require compensation be paid to shareholders who have suffered as a result of a breach of the Codes as well as increasing the threshold for independent shareholder approval of a whitewash waiver to 75%. Further changes included amendments to clarify the power of the Takeovers Executive, the Takeovers Panel and the Takeovers Appeal Committee to issue compliance rulings, and that persons dealing with them must do so in an open and cooperative manner.

The SFC advises that the Takeovers Executive should be consulted where there is any doubt about the application of the revised Codes, particularly where the timing may produce major difficulties for transactions that have already been announced.

Hong Kong Enforcement Highlights

CCB International Capital Limited
In July, the SFC publically reprimanded and fined CCB International Capital Limited (CCBIC) HK$24 million for failing to discharge its duties as the sole sponsor in the listing application of Fujian Dongya Aquatic Products Co., Ltd (Fujian Dongya) in 2013 and 2014.

The SFC’s investigation found that CCBIC failed to: (1) conduct all reasonable due diligence on Fujian Dongya before submitting the listing application; (2) conduct proper customer due diligence; and (3) keep a proper audit trail or written record of its due diligence work.

HPI Forex Limited
In August, the SFC has publically reprimanded and fined HPI Forex Limited (HPI) HK$2 million for mishandling client money. The SFC’s disciplinary action came after an admission by HPI that it had transferred up to HK$8 million of client money to the accounts of its overseas brokers between March 2013 and April 2014.

The SFC found that HPI: (1) transferred client money from its segregated client account maintained at a bank in Hong Kong to its accounts with two overseas brokers on six occasions; (2) used the client money transferred to one of the two overseas brokers to conduct proprietary transactions; and (3) remitted all client money from its overseas brokers’ accounts back to the segregated client account in Hong Kong after discovering that the conduct might constitute a breach of the Securities and Futures (Client Money) Rules (CMR).

The SFC found that HPI breached the Code of Conduct and the CMR by failing to maintain client money in a segregated client account in Hong Kong with an authorized financial institution. Further, HPI’s use of the client money to conduct proprietary transactions also constituted a breach of its fundamental duty as a licensed intermediary to ensure that client assets are promptly and properly accounted for and adequately safeguarded.

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Singapore

The Monetary Authority of Singapore Outlines Its Enforcement Approach to Deter, Detect, and Investigate Breaches of Rules and Regulations

On September 24, 2018, the Monetary Authority of Singapore (MAS) published an Enforcement Monograph providing insight into how it detects, investigates, and takes action against breaches of rules and regulations administered by it. The laws coming under MAS’ purview are set out in the Schedule to the MAS Act, Chapter 186.

The Enforcement Monograph contains five sections:

1. The role of enforcement within MAS’ oversight of the financial industry;
2. The role of other government agencies and organizations in the enforcement of laws and regulations under MAS’ purview;
3. How MAS proactively identifies breaches of laws and regulations;
4. MAS’ investigative approach; and
5. The range of enforcement actions open to MAS.

In particular, the Enforcement Monograph describes the methodology behind how MAS selects matters for formal regulation. Formal investigation of a matter is undertaken only after considering a range of factors including the seriousness of misconduct, public interest, and the availability of evidence required to prove the misconduct.

MAS has recourse to criminal investigation powers for the conduct of investigations jointly with the Commercial Affairs Department (CAD) of the Singapore Police Force, under the Joint Investigation Agreement. This covers all offences under the Securities and Futures Act, as well as the Financial Advisors Act. MAS also has statutory investigation powers under the written laws it administers, which are statute-specific. Should enforcement action be necessitated following investigation, MAS has a broad range of enforcement actions available to it, including the ability to commence civil penalty actions, or to refer a case for criminal prosecution.

In providing detailed insight into MAS’ enforcement processes, it is hoped that the publication of the Enforcement Monograph will serve to deter misconduct, and promote market integrity and consumer confidence in Singapore.

Civil Penalty Actions Taken for Insider Trading

Since March 2015, the joint investigations arrangement between MAS and CAD sees both governmental bodies jointly investigating potential market misconduct offences from the outset. This arrangement allows investigators to draw from MAS’ role as a financial regulator and from CAD’s financial crime investigation and intelligence capabilities.

This joint investigations arrangement has recently led to civil penalty action taken against one Ms. Tagi for insider trading in the shares of Genting Singapore PLC (Genting).

Ms. Tagi, as Genting’s Vice President of Finance, possessed non-public price-sensitive information concerning Genting’s financial results. Ahead of Genting announcing its financial losses on May 14, 2015, for the quarter ending March 31, 2015, Ms. Tagi sold 175,000 Genting shares on April 14, 2015, and April 24, 2015. This enabled her to avoid a loss of $13,625 arising from the fall in
Genting’s share price following the announcement of Genting’s financial losses.

Ms. Tagi had admitted to contravening the insider trading provision under the Securities and Futures Act and paid a civil penalty of S$50,000.

Separately, MAS had issued a 5-year prohibition order (PO) against one Mr. Tay for insider trading.

In 2011, Mr. Tay, as the Vice President of CIMB Bank Berhad (CIMB), had possessed non-public price-sensitive information that two companies listed on the Singapore Exchange had received takeover offers. With that information, he arranged for another person to purchase shares of the two companies on his behalf. The share prices of both companies rose after the companies announced the takeover offers, and Mr. Tay made a profit of about $30,000.

The PO prohibits Mr. Tay from carrying out any regulated activity and from taking part in the management, acting as a director, or becoming a substantial shareholder of any capital market services firm under the Securities and Futures Act. Aside from the PO, Mr. Tay was also fined $180,000 in May 2017.

**Prohibition Orders for Fraudulent and Dishonest Conduct**

MAS recently issued 12-year POs against one Mr. Lee under the Securities and Futures Act and the Financial Advisers Act for carrying on business in a regulated activity without the requisite license and for misappropriation.

Between 2005 and 2010, Mr. Lee was employed by United Overseas Bank (UOB). While at UOB, he set up a company to invest in shares and foreign-exchange on behalf of other investors, without holding a Capital Markets Services license. Around 2010, he left UOB to manage his company full-time. In the course of carrying out his fund management business, he misappropriated about $520,000 from monies entrusted to him by clients that he had served while he was with UOB.

The POs prohibit Mr. Lee from performing any regulated activity and from taking part in the management, acting as a director, or becoming a substantial shareholder of any capital market services firm under the Securities and Futures Act and any financial advisory service under the Financial Advisers Act.

Mr. Lee was also sentenced to 4 years and 9 months in prison and fined $550,000 in November 2017.

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Dubai

DFSA has released Phase 2 Consultation on AML, CTF and Sanctions

The Dubai Financial Services Authority (DFSA) has released Consultation Paper No. 120 – Proposed Changes to the DFSA’s Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Regime – Phase 2.

Consultation Paper No. 120 follows Consultation Paper No. 118 and is the second phase of proposed changes to the AML framework ahead of the next Mutual Evaluation (ME) report for the United Arab Emirates (UAE) by the Financial Action Task Force (FATF), which will take place in the second half of 2019.

Changes required to enhance certain areas of the DFSA’s Anti-Money Laundering (AML) regime to ensure compliance with the 2012 FATF Recommendations are set out in Consultation Paper No. 120.

SCA approves the Draft Regulations as to Derivatives Contracts

The Securities and Commodities Authority (SCA) has continued to pursue its aim of making the UAE compliant with international standards and practices by developing the structure of the business activities and financial services associated with the securities sector.

The Board of the SCA, in an aim to promote the regulatory system and legislative framework, has issued a decision to regulate the derivatives contracts. The SCA has defined derivatives as financial contracts with a value specified by the contracting parties.

Financial Services Regulatory Authority (FSRA) launches new regulatory framework for Abu Dhabi Global Market (ADGM)

Following the release of Consultation Paper No. 2 on the “Introduction of a Crypto Asset Regulatory Framework in the ADGM” in April 2018, new guidance has been released that increases consistency with international standards such as that of the Swiss Financial Market Supervisory Authority, by stressing the individuality of each case and introducing sub-classification of a digital assets / instruments. New regulations surrounding “Operating a Crypto Asset Business” have been introduced concerning the arranging, buying, selling, provision of custody, marketing, and various other elements of this industry.

DFSA and other international financial regulators establish Global Financial Innovation Network (GFIN)

GFIN is a recently established group of various leading global regulators aiming to work together to improve financial stability, integrity, customer outcomes and inclusion through responsible adoption of emerging technologies and business models. These goals are consistent with the DFSA’s goals of ensuring sustainable and internationally effective financial services development and innovation.

DFSA’s participation within this organization strengthens bilateral cooperation agreements between itself and various Australian, Malaysian, and Hong Kong financial institutions. It will also complement existing initiatives regarding FinTech.
Regulation for digital tokens, securities and commodities

In early September the Minister of Economy and the Chairman of the Securities and Commodities Authority of the UAE announced new plans for regulation around procedures for the trading of digital tokens, securities and commodities. This is in addition to regulating initial coin offerings (ICOs) and recognition of them as securities.

This is yet another example of the UAE bringing the securities sector in alignment with international best standards and practices at a time when regulators internationally are pushing towards regulation of ICOs.

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On May 17, 2018, the French Financial Market Authority (Autorité des marchés financiers, or AMF) issued its annual report for 2017 and early 2018, which sets the priorities of the AMF for next year. The report included the following objectives:

- Prepare for the exit of the United Kingdom and the 27 members in Europe, thanks to the strengthening of the European Securities and Markets Authority (ESMA);
- Go along with economic operators in the implementation of the Markets in Financial Instruments Directive (MiFID 2), which came into force on January 3, 2018;
- Redefine the AMF’s supervision of companies by implementing short-term controls on the investment services providers and by increasing the operator’s responsibility on document communication and transparency of information;
- Integrate the challenges of sustainable finance into the missions and activities of the AMF by acquiring technical expertise in the areas of social, societal and environmental responsibility (Corporate Social Responsibility policy) and socially responsible investment (SRI); and
- Strengthening the IT systems for data protection.

On June 27, 2018, AMF President Robert Ophèle highlighted four challenges for the AMF for the next years:

- The European financial supervision raised by Brexit: The planned reform of the European Supervisory Authorities (ESA)—which revisits the powers, governance and resources of the ESMA—might not put an end to contradictory national interpretations of European regulations and will not lead to a coherent European approach to relations with the United Kingdom.
- The increase of financial regulations: The accumulation of European regulations, which aims to give consumers standardized information on products, could be counterproductive and discourage issuers and intermediaries who might abandon the investment with retail customers for the benefit of institutional customers, and reduce the range of products offered to focus on less risky products and thus limit their risks.
- The financial innovation and the marketing of toxic products: Find a balance between encouraging innovation and the fight against toxic investments. The AMF particularly wants the scope of the law from December 2016 on transparency, the fight against corruption and the modernization of economic life (Sapin 2 law) to be extended to block access to sites offering illicit investments in various goods like crypto-assets.
- The AMF repressive role with the personal data protection: Fear of a disproportionate application of the General Data Protection Regulation (GDPR) on repression of insider trading and data exchanges with third-country authorities during investigations.
The new law on Business Growth and Transformation provides regulation and security for Initial Coin Offering (ICO)

In three years, ICOs have been a huge success: Hundreds of projects have raised tens of billions of dollars. In France, several projects have been launched but, for lack of a clear regulatory and fiscal framework, the practice is not as dynamic as elsewhere. For the moment, the ICO operators apply the classic financial law and the documents of the operation, such as the general conditions, are drafted freely by the project promoters or their lawyers.

The law on Business Growth and Transformation (PACTE), which is currently debated by the deputies, has recently adopted several provisions to regulate ICOs.

The new Article 26 of the PACTE law will therefore authorize the AMF to issue a visa to operators wishing to issue tokens intended in particular into the French market for the financing of a project or activity, provided that they comply with certain rules to avoid evident abuse and to inform and protect the investor.

In concrete terms, this will take the form of an optional authorization system, with or without a visa issued by the AMF. Issuers of ICO who wish to apply for a visa will represent a guarantee of credibility of the operation. This visa will be issued only if certain guarantees are given to investors as a mechanism for securing funds raised during the ICO. However, visa-free ICOs will not be prohibited.

The purpose of this visa is to allow the identification of serious projects and greater investor protection pending real European and international regulations.

In addition, the law provides that issuers of ICOs who have obtained an AMF visa will be able to open an account more easily in French banks. So far, ICO operators have a lot of trouble opening a bank account, thanks to the visa; it is expected that “banks will have to put in place objective, non-discriminatory and proportionate rules to govern the access of issuers of tokens having obtained the visa of the AMF to the deposit and payment accounts services which they hold.”

The AMF and the Autorité de contrôle prudentiel et de résolution (ACPR) warn against websites offering investment services on crypto-assets

In two press releases dated March 15, 2018, and September 27, 2018, the AMF and the ACPR warned against websites proposing to invest in crypto-assets or crypto-asset derivatives without the necessary authorization.

The financial regulation from the Sapin 2 law obliges companies that offer crypto-assets to acquire rights in assets that put forward the possibility of performance or its economic equivalent, to comply with the intermediation regime in various goods. As a consequence, such companies must have a registration number issued by the AMF.

In July 2017, the AMF set up a blacklist of companies offering investment on diamonds for the public, without complying with financial regulations. This list is now extended to those proposing to invest in cryptocurrencies or in cryptocurrency derivatives.

The AMF did not specify whether other sanctions would be considered for blacklisted companies. However, the AMF could go further and initiate judicial actions to block websites that do not have a valid registration number.

This has already happened in 2014, when the AMF endeavored to block access from France to two financial services sites published in Great Britain and Switzerland, which had pages translated into French to target customers established in France and to offer them the opening of accounts, but did not have any of the approvals required by French law. The AMF has thus initiated an action against the main French internet service providers—Orange, SFR, Bouygues Telecom, Free—to block the websites.
The AMF forced to remind the applicable rules regarding downward speculation and financial reporting following the fall in the Casino share price

Muddy Waters, a financial fund specializing in short-selling (to sell in the long term an asset that is not held on the day of the negotiated sale but will be held the day of the planned delivery) and in aggressive strategies consisting of downward speculation (bet on the decline of the share price by selling the shares and then buy them at a lower cost), attacked the French retail group Casino.

On August 31, 2018, Muddy Waters tweeted that a subsidiary of the Casino Group, Casino Finance, had not published its company accounts for 2017. This tweet initiated the simultaneous sale of Casino shares held by many hedge funds, lowering the share price of Casino by nearly 10%.

This incident forced the AMF to publish a press release to remind the regulatory limits of short selling and financial communication regarding downward speculation.

The AMF reiterated the prohibition again selling a security without having borrowed it or to have taken the necessary measures to ensure reasonable delivery of the security at maturity. The press release also reminded that issuers of investment recommendations must inform the financial markets of their interests and possible conflicts of interest, and also declare their net or long positions when they exceed 0.5% of the capital.

The press release also reminds that it is prohibited to disseminate information that gives or is likely to give false or misleading information. The AMF notes an increase in the financial information provided via the internet and social networks, and therefore recommended that investors have the greatest vigilance in the information sources and to verify the credibility and the sincerity of the information.

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Central Bank fines Dublin-based insurer PartnerRe €1.5m
Dublin-based insurer PartnerRe Ireland Insurance dac (PRIID) and its sister company, Partner Reinsurance Europe SE (PRESE), have been fined €1,540,000 by the Central Bank of Ireland for breaches of their solvency obligations and corporate governance requirements. The fine is one of the largest on record and comes in respect of breaches of the EU-wide Solvency II regime and the Corporate Governance Requirements for Insurance Undertakings 2015.

The Central Bank’s Director of Enforcement and Anti-Money Laundering, Seána Cunningham, said the Solvency II regime “requires firms to maintain sufficient capital to ensure that they can meet their obligations to policyholders. The Central Bank’s investigations found that PRIID and PRESE submitted regulatory returns to the Central Bank, which overstated their solvency positions. This was due to both firms incorrectly calculating their Solvency Capital Requirement. As a result, both entities were required to re-submit their regulatory returns to the Central Bank. This revealed that they had not only presented the Central Bank with an inaccurate picture of their respective solvency positions, but also in the case of PRIID, it resulted in a breach of its Solvency Capital Requirement.”

Central Bank issues key messages for industry on cybersecurity, accountability and money laundering controls
Central Bank Director of Insurance Supervision, Sylvia Cronin, recently spoke to the Insurance Supervision Agency of Slovenia on cyber risks. Encouraging firms to be more ambitious in managing cyber risks, she said “it is crucial that any regulatory framework avoids becoming a ‘checklist’ exercise in compliance; in an environment of rapidly emerging and evolving risk, a principles-based approach that has the flexibility to adapt to new challenges is crucial.”

Director of Enforcement and Anti Money Laundering, Seána Cunningham, recently spoke to the Association of Compliance Officers about the Central Bank’s enforcement priorities and its approach to supervising Anti Money Laundering/Countering Financing of Terrorism (AML/CFT). She said that the Central Bank was “committed to setting and requiring adherence to a clear regulatory framework within which firms and individuals hold themselves to the highest standards of compliance.” She explained that the Central Bank has seen significant improvements in relation to firms’ understanding of AML/CFT risks and obligations.

Highlighting the improvement, she said they have “observed a move away from the more egregious deficiencies seen in the past, where controls may have been absent, to findings now that relate more to the depth, quality and sophistication of the actual controls in place.”
Irish Merger Control Thresholds to be increased

The Competition Act 2002 (Section 27) Order 2018 (S.I. No. 388 of 2018) was published on October 5, 2018. This Ministerial Order amends section 18(1) of the Ireland Competition Act, 2002, by altering the monetary amounts relating to the obligation to notify certain mergers and acquisitions. The financial thresholds at which the notification of a merger or acquisition to the Competition and Consumer Protection Commission is required will increase as follows:

- The aggregate turnover of undertakings involved in a proposed merger or acquisition will increase from €50 million to €60 million; and
- The turnover of two or more undertakings involved in the proposed merger or acquisition will increase from €3 million to €10 million.

On October 9, 2018, the Ministerial Order was approved by the Senate for referral to the Joint Committee on Business, Enterprise and Innovation. The Dáil made a similar order on October 4, 2018. The Committees are tasked with reporting back by October 18, 2018. Both Houses have to then pass a resolution confirming the Ministerial Order, otherwise it lapses.

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Italy

Implementation of Market Abuse Regulation in Italy

Italy recently completed the implementation of the Market Abuse Regulation no. 596/2014 (MAR). The Legislative Decree no. 107/2018, in force as of September 29, 2018, provides for amendments to the Italian Consolidated Law on Finance. The most significant innovations concern:

- Conditions for notifying delay of disclosure of inside information: Issuers will only be responsible for notifying the competent authority of the reasons for the delay of disclosure of inside information upon request of such authority, rather than in all situations. Issuers shall always notify the competent authority of any other information about the delay required by MAR and Regulation (EU) 2016/1055;
- Reporting obligations for persons discharging managerial responsibilities (PDMRs) transactions: According to the new provisions, the reporting obligations of transactions on listed shares and related financial derivatives carried out by controlling shareholders of an Italian listed company or shareholders owning shares representing at least 10% of a listed company’s share capital, which was provided for under the previous domestic regime;
- Disclosure obligations for issuers of widespread financial instruments: The decree confirms the disclosure obligations of non-public, price-sensitive information applicable to issuers of widespread financial instruments that were provided for under the previous domestic regime. Such obligations apply to: (1) Italian equity issuers with more than 500 shareholders owning at least 5% of the share capital, other than the controlling shareholders; (2) Italian equity issuers that are not entitled to prepare simplified financial statements; (3) Italian debt issuers with outstanding notes for an overall nominal amount of at least €5 million and with more than 500 note holders;
- Sanctions: (1) Benchmark manipulation was included in the criminal offence of market manipulation; (2) Administrative/monetary sanctions applicable to insider dealing were increased; (3) New and specific administrative/monetary sanctions for unlawful disclosure of inside information, managers' transactions, insider registers, and investment recommendations were introduced.

Arbiter for Financial Disputes, published the first “Activity Report”

As of January 2017, the Arbiter for Financial Disputes (ACF)—the Italian regulatory body established by CONSOB by way of Resolution no. 19602/2016 (the ACF Regulation) to resolve investor disputes outside of the court system—has gained a leading role for financial services alternative dispute resolution (ADR).

The ACF decides on disputes arisen between retail investors and financial intermediaries in relation to the violation of the obligations of diligence, correctness, disclosure and transparency concerning the provision of investment services and required of
intermediaries on engaging in activities provided by the Legislative Decree no. 58/1998 (i.e. the Italian consolidated Law on Finance). Unlike traditional ADR procedures, the aim of the ACF procedure is not that of settling the dispute: the Arbiter resolves the dispute, finding in favour of either the investor or the intermediary. In other words, the result achievable by means of the ACF procedure is that of s.c. adjudication of the dispute (analogous to ordinary legal proceedings).

As for the consequences of the acceptance of the claim, the financial intermediary is obliged to pay the investor a sum in compensation or restitution (according to the nature of the ascertained violation), within the specific deadline indicated by the ACF. The penalty system that presides over the correct implementation of ACF decisions operates (exclusively) within a reputational dimension. Failure to comply with the ACF’s decision by the financial intermediary is made public on: (1) on the Arbiter website; (2) two national daily newspapers; and (3) the intermediary website.

According to the official statistics—recently published by the ACF in occasion of its first “Activity Report”—the number of claims submitted to the Arbiter during its first year of activity was 84% higher than that originally expected. Another noteworthy aspect emerging from the Activity Report concerns the rate of success of the investor: in 61.6% of cases, the ACF found against the financial intermediaries, awarding an average of Euro 27,125 (roughly 50% of the average claim) to investors.

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