

## Financial Institutions Enforcement Update

January 13, 2020

To assist legal and compliance officers of financial institutions, this memorandum summarizes key recent developments in criminal prosecutions and regulatory enforcement actions involving financial institutions during November and December 2019.

Among the significant matters and trends:

- The last two months saw substantial activity on the insider trading front, and of note the U.S. Court of Appeals for the Second Circuit held in *United States v. Blaszczyk* that the government need not satisfy the “personal-benefit” test for insider trading when proceeding under a Title 18 theory.
- There was additional enforcement activity relating to “spoofing,” including a record-setting fine by the CFTC and DOJ.
- DOJ also had success using a deferred prosecution agreement to recover a considerable penalty from a major financial institution in the “Swiss tax” related matter.
- DOJ suffered a setback in its loss at trial in a heavily-watched loan fraud case.

Individual matters are summarized below, organized by topic. This information is based solely on publicly available sources, and we have included links to underlying documents.

We reviewed notable cases from the following government authorities: Department of Justice (DOJ), with a focus on the U.S. Attorney’s Offices for the Southern District of New York, the Eastern District of New York, and the District of New Jersey and the DOJ Criminal, Tax and Antitrust Divisions; the Securities and Exchange Commission (SEC); the Financial Industry Regulatory Authority (FINRA); the Commodity Futures Trading Commission (CFTC); the Board of Governors of the Federal Reserve System (Federal Reserve Board or FRB); the Office of the Comptroller of the Currency (OCC); the Consumer Financial Protection Bureau (CFPB); the New York State Department of Financial Services (NYDFS); the United Kingdom’s Serious Fraud Office (SFO) and Financial Conduct Authority (FCA); and the Hong Kong Monetary Authority (HK MA).

### Insider Trading and Securities Fraud

#### Second Circuit Lowers the Bar for Charging Criminal Insider Trading

On December 30, the U.S. Court of Appeals for the Second Circuit affirmed the convictions of four individuals charged with disclosing and trading on nonpublic government information. See *United States v. Blaszczyk*, No. 18-2811, 2019 WL 7289753 (2d Cir. Dec. 30, 2019). A jury convicted the defendants of wire fraud, conversion, and, with one exception, Title 18 securities fraud and conspiracy, but acquitted them of counts alleging Title 15 securities fraud. Notably, the district court had instructed the jury that to convict on Title 15 securities fraud, it had to find that the tipping defendant disclosed the information for a personal benefit that was also known to the recipients of the tip, but the court refused to give these instructions on the Title 18 wire fraud and securities fraud counts. The Court of Appeals affirmed, holding that the “personal-benefit” test established in *Dirks v. SEC*, 463 U.S. 646 (1983), does not apply to wire and securities fraud under Title 18. Additionally, the court held that confidential government information – in that case, CMS’s prospective changes to Medicare reimbursement rates – constitutes “property” for the purposes of federal fraud statutes. The ruling will make it easier for the government to prosecute insider

trading even when there is no clear benefit to the source who provided the information. Read our [January 7 client memo](#) on this decision.

## Fund Manager Charged With Misappropriating Clients' Money

On December 17, the U.S. Attorney's Office for the Southern District of New York **announced** charges against Donald Laguardia in connection with his operation of a now-bankrupt New York-based investment firm, L-R Managers, LLC. The **indictment** alleges that, between 2013 and 2017, Laguardia misappropriated client investments and used the money to finance his personal and business expenses. Laguardia is charged with securities fraud, wire fraud, and investment adviser fraud. *United States v. Donald Laguardia*, 19-CR-00893 (S.D.N.Y.).

## Former Investment Banker Sentenced to Two Years for Insider Trading

On December 4, the U.S. Attorney's Office for the Southern District of New York **announced** that Sean Stewart, a former senior investment banker at two different New York-based investment banks, was sentenced to 24 months in prison and three years of supervised release. Following a retrial, Stewart was convicted of tipping his father with material nonpublic information about five separate corporate acquisitions before they were announced. *United States v. Sean Stewart et al.*, 15-cr-00287 (S.D.N.Y.).

## Prinvest Group Executive Acquitted in Loan Fraud Case

On December 2, a federal jury in the Eastern District of New York acquitted Jean Boustani, an executive of Prinvest Group, of his involvement in an alleged fraud and kickback scheme involving \$2 billion in Mozambican government-backed loans. Prosecutors **had charged** Boustani and seven others – including former government officials and London-based investment bankers – with a scheme to defraud investors in two investment banks' loans to state-backed special-purpose vehicles, purportedly to fund certain maritime projects for which Prinvest would provide equipment and services. Prosecutors alleged that Boustani and others facilitated Prinvest's diversion of over \$200 million in loan proceeds, including \$150 million in bribes to Mozambican government officials and \$50 million in kickbacks to the investment bankers to ensure the projects went forward. Boustani was acquitted on all counts – conspiracy to commit wire fraud, conspiracy to commit securities fraud, and conspiracy to commit money laundering. *United States v. Boustani et al.*, 18-cr-681 (E.D.N.Y.).

## Former PPI Trader and CEO Sentenced to 40 and 50 Months Each for Securities Mismarking Scheme

On November 19, the U.S. Attorney's Office for the Southern District of New York **announced** that Jeremy Shor, a former trader at Premium Point Investments L.P. (PPI), was sentenced to 40 months imprisonment and three years supervised release for his role in a securities mismarking scheme between 2014 and 2016. A jury previously **convicted** Shor and Anilesh Ahuja, PPI's founder and CEO/CIO, on securities fraud-related offenses relating to the scheme, which sought to inflate the reported net asset value for hedge funds managed by PPI by more than \$100 million. According to the **indictment**, evidence presented at trial, and court filings, Ahuja and another partner set an inflated monthly "target" return for the funds, which PPI traders were tasked with "reverse engineering" marks to meet. *United States v. Ahuja et al.*, 18-cr-328 (S.D.N.Y.). On November 26, the U.S. Attorney's Office for the Southern District of New York announced that Ahuja was **sentenced** to 50 months imprisonment and three years supervised release for his role in the scheme. Three other individuals – Ashish Dole, Frank Dinucci, Jr., and Amin Majidi – previously pled guilty on related charges, and the government announced that Dole and Dinucci were **cooperating** with the government. See, e.g., *United States v. Dinucci, Jr.*, 18-cr-332 (S.D.N.Y.).

## Former Deutsche Bank Executive Settles RMBS Claims

On November 14, the U.S. Attorney's Office for the Eastern District of New York **announced** that it had settled a civil action against Paul Mangione for his role in Deutsche Bank's marketing and sale of two residential mortgage-backed securities (RMBS) in 2007. Mangione **agreed** to pay \$500,000 in civil penalties in exchange for dismissal of the complaint, which claimed Mangione violated FIRREA by misrepresenting the characteristics of the loans backing the RMBS and misleading potential investors about the loan origination practices of the Deutsche Bank subsidiary that originated a number of the backing loans. *United States v. Paul Mangione*, 17-cv-5305 (E.D.N.Y.).

## FX, Reference Rate, and Bid-Rigging Litigation

### Former Bank Executive Sued for Pricing Manipulation Scheme

On December 20, the CFTC **announced** that it filed a civil enforcement action in the Southern District of New York against Christophe Rivoire, charging him with engaging in a deceptive scheme to manipulate pricing of an interest rate swap between a bond issuer and global investment bank. The **complaint** alleges that Rivoire directed a trader under his supervision and others to sell a large quantity of swaps to manipulate the prices shown on an interdealer broker firm's screen. The bank had agreed with the bond issuer, an Asian public financial institution, to use the interdealer's screen to price the bond issuance and related swap. The manipulation thus resulted in a more profitable transaction for the bank and a less profitable transaction for the issuer. The CFTC alleges three counts under the CEA against Rivoire and seeks civil monetary penalties, disgorgement, restitution, and trading bans. *CFTC v. Rivoire*, 19-cv-11701 (S.D.N.Y.).

### Former Trader Convicted for Price Fixing and Bid Rigging in FX Market

On November 20, the Antitrust Division of the DOJ **announced** that Akshay Aiyer was convicted by a jury of conspiring to fix prices and rig bids in Central and Eastern European, Middle Eastern and African currencies from 2010 through 2013. According to evidence presented at trial, Aiyer and his co-conspirators at other banks manipulated exchange rates by agreeing to withhold bids or offers to avoid moving the exchange rate in adverse directions and by coordinating their trading in an effort to increase their profits. Aiyer and his co-conspirators also took steps to conceal their actions by, among other things, using code names, communicating on personal cell phones, or meeting in person to discuss particular customers and trading strategies. *United States v. Akshay Aiyer*, 18-cr-333 (S.D.N.Y.).

### Former Financial Services Executive Pleads Guilty to Rigging Bids

On November 14, the Antitrust Division of the DOJ **announced** that Peter Volino, a former vice president at Industrial and Commercial Bank of China Financial Services LLC (ICBCFS), pled guilty to a criminal antitrust charge for his involvement in a bid-rigging conspiracy for certain financial instruments. Volino admitted to conspiring with other broker-dealers to submit rigged bids to borrow pre-release American Depositary Receipts (ADRs) at artificially suppressed rates. On numerous occasions, Volino agreed through text messages and private chat rooms with other brokers as to the bids they would submit to U.S. depository banks. Volino is the fourth defendant to plead guilty in this pre-release ADR investigation, following those of **Banca IMI Securities Corp.**, **ICBCFS**, and former Banca IMI executive **Larry Meyers**. Banca IMI and ICBCFS were also sentenced to pay criminal fines in excess of \$2 million and \$3 million, respectively. *United States v. Peter Volino*, 19-cr-00814 (S.D.N.Y.); *United States v. Banca IMI Securities Corp.*, 19-cr-00349 (S.D.N.Y.); *United States v. Larry Meyers*, 19-cr-00429 (S.D.N.Y.); *United States v. Industrial and Commercial Bank of China Financial Services LLC*, 19-cr-00446 (S.D.N.Y.).

## Bribery and Corruption

### Former Goldman Sachs Executive Permanently Barred for Bribery

On December 16, the SEC **announced** that it had charged former Goldman Sachs executive Tim Leissner with violating the Foreign Corrupt Practices Act. According to the **SEC's order**, Leissner used a third-party intermediary to bribe high-ranking government officials in Malaysia and the Emirate of Abu Dhabi for Goldman Sachs to obtain lucrative business from 1Malaysia Development Berhad (1MDB), a state-owned investment fund. Leissner, who previously pled guilty to criminal charges brought by the Criminal Division of the Justice Department and the U.S. Attorney's Office for the Eastern District of New York, and settled with the Federal Reserve Board based on related conduct, consented to the order's finding that he violated the anti-bribery, internal accounting controls, and books and records provisions of the federal securities laws. Among other things, the order permanently bars Leissner from the securities industry. *In the Matter of Tim Leissner*, Exchange Act Release No. 87750. See also the DOJ's **2018 announcement** on Leissner pleading guilty and the March 11, 2019 **FRB consent order**. *United States v. Tim Leissner*, 18-cr-00439 (E.D.N.Y.); *In the Matter of Tim Leissner*, Docket Nos. 19-008-E-I, 19-008-CMP-I (March 11, 2019).

## Counterparty Risk: AML, Economic Sanctions and Tax Evasion

### HSBC Switzerland Agrees to Pay \$192.35 Million as Part of DPA

On December 10, the U.S. Attorney's Office for the Southern District of Florida and the Tax Division of the DOJ **announced** that the DOJ had entered into a **deferred prosecution agreement** (DPA) with HSBC Private Bank (Suisse) SA (HSBC Switzerland) for helping U.S. taxpayers conceal income and assets from the United States. According to court documents, HSBC Switzerland admitted that between 2000 and 2010 it conspired with employees, third-party and wholly owned fiduciaries, and U.S. clients to defraud the United States, commit tax evasion, and file false federal tax returns. In addition to failing to declare U.S. clients, HSBC Switzerland employed a variety of methods to conceal their assets and income, including relying on Swiss bank secrecy, using code-name and numbered accounts and hold-mail agreements, and maintaining accounts in the names of entities established in tax haven jurisdictions. HSBC Switzerland bankers also took trips to the United States to recruit new clients and maintain existing relationships with U.S. clients. The DPA defers the single conspiracy charge for three years in exchange for HSBC's cooperation and imposes a \$192.35 million penalty. The penalty consists of \$60.6 million in restitution to the IRS for unpaid taxes, \$71.85 million in forfeiture to the United States for gross fees the bank earned on its undeclared accounts, and a \$59.9 million penalty. *United States v. HSBC Private Bank (Suisse) SA*, 19-cr-60359 (S.D. Fla.).

## Spoofing

### FINRA Fines Credit Suisse \$6.5 Million for Inadequate Spoofing Controls

On December 23, FINRA issued a **Letter of Acceptance, Waiver, and Consent** (AWC) imposing a \$6.5 million fine against Credit Suisse Securities (USA) LLC (Credit Suisse), to be apportioned among FINRA and multiple exchanges. FINRA and the exchanges **announced** that they found that Credit Suisse failed to maintain an adequate supervisory system to detect and prevent spoofing and other manipulative market activity by clients that were offered direct market access to the exchanges. They also found that

Credit Suisse violated various provisions of the Market Access Rule relating to preventing erroneous orders, setting credit limits, and annual reviews of the firm's market access controls and procedures.

### **Additional Bank Precious Metals Salesperson Charged for Spoofing**

On November 15, the DOJ Criminal Division **announced** charges by **superseding indictment** against Jeffrey Ruffo, a former executive director and salesperson on the previous metals desk in the New York office of a U.S. bank. Ruffo was indicted for his involvement in an alleged conspiracy to manipulate the precious metals market through spoofing and the use of barrier options. He was charged in the Northern District of Illinois with one count of RICO conspiracy and one count of conspiracy to commit wire fraud affecting a financial institution, bank fraud, commodities fraud, price manipulation and spoofing. The superseding indictment incorporates the **original indictment's** charges against co-defendants Gregg Smith, Michael Nowak, and Christopher Jordan for: RICO conspiracy; conspiracy to commit wire fraud affecting a financial institution, bank fraud, commodities fraud, price manipulation and spoofing; bank fraud; and wire fraud affecting a financial institution. It also incorporates the separate counts against Smith and Nowak for attempted price manipulation, commodities fraud, and spoofing. *United States v. Smith et al.*, 19-cr-669 (N.D. Ill.).

### **SEC Wins Layering, Manipulative Trading Jury Trial Against Avalon and Owners**

On November 12, the SEC **announced** that it won a jury trial in the Southern District of New York against Ukrainian trading firm Avalon FA Ltd. and two of its owners, Nathan Fayer and Sergey Pustelnik. The SEC's evidence at trial showed that the two individuals engaged in layering and cross-market manipulation schemes using Avalon, generating over \$25 million in profits for the firm. The jury found the three defendants liable on all counts, including for violating the relevant antifraud provisions and market manipulation provisions of the Securities Act and the Securities Exchange Act. *Securities and Exchange Commission v. Lek Securities et al.*, 17-cv-1789 (S.D.N.Y.)

### **Tower Research Capital Enters Into Record \$67.4 Million Resolution with DOJ and CFTC for Spoofing**

On November 7, the Criminal Division of the DOJ, the U.S. Attorney's Office for the Southern District of Texas, and the CFTC announced two related resolutions with Tower Research Capital LLC, a New York-based financial services firm, in connection with a commodities fraud scheme. The resolutions derive from similar conduct, according to the **DOJ** and **CFTC** announcements. From approximately March 2012 until December 2013, three traders, who were members of a single trading team at Tower, spoofed thousands of orders to buy and sell E-mini futures contracts so as to trick the market into reacting. The DOJ's **DPA** with Tower defers prosecution of a single count of commodities fraud, and imposes a combined \$67.4 million in criminal penalties, disgorgement and victim compensation, credited for any payments made to the CFTC. Tower also agreed to, among other things, conduct reviews of its internal controls/compliance program to detect and deter commodities law violations. The CFTC's **parallel order** also imposed a total of \$67.4 million, comprised of \$32.5 million in restitution, \$10.5 million in disgorgement, and a \$24.4 million civil monetary penalty. The CFTC described this as the largest total monetary relief ever ordered in a spoofing case. *United States v. Tower Research Capital LLC*, 19-cr-00819 (S.D. Tex.); *In re Tower Research Capital LLC*, Dkt. No. 20-06 (C.F.T.C.).

## Compliance/Control Failures and Other Regulatory Actions

### **FRB Terminates Enforcement Actions Against JPMorgan Chase, Spirit BankCorp, U.S. Bancorp and USB Americas Holdings Company**

On December 12, the Federal Reserve Board **announced** the termination of enforcement actions against JPMorgan Chase & Co., U.S. Bancorp, and USB Americas Holdings Company for deficiencies in their anti-money laundering (AML) programs designed to identify and manage compliance risks related to the Bank Secrecy Act (BSA). In consent orders from 2013 and 2018, respectively, JPMorgan and U.S. Bancorp were required, among other things, to strengthen their BSA/AML compliance programs and customer due diligence, respectively. The FRB had also imposed a \$15 million fine on U.S. Bancorp. The FRB also announced its termination of its 2012 written agreement with Spirit BankCorp, Inc. to maintain its financial soundness by restricting its ability to pay dividends and requiring it to submit a capital plan and take other specified actions. See also the **2013 consent order** with JPMorgan Chase, the **2012 agreement** with Spirit Bankcorp, and the **2018 consent order** with U.S. Bancorp and USB Americas Holdings Company. *In the Matter of JPMorgan Chase & Co.*, Dkt. No. 13-002-B-HC (Jan. 14, 2013); *Written Agreement by and between Spirit Bankcorp, Inc. and Federal Reserve Bank of Kansas City*, Dkt. No. 12-057-WA/RB-HC (Aug. 2, 2012); *In the Matter of U.S. Bancorp and USB Americas Holding Company*, Dkt. Nos. 18-005-B-HC, 18-005-B-AC, 18-005-CMP-B-HC (Feb. 14, 2018).

### **FRB Terminates Consent Order Against Bank of America for FX Practices**

On December 3, the Federal Reserve Board **announced** the termination of its **consent order** dated May 20, 2015, against Bank of America Corporation (BAC) for unsafe and unsound practices in the FX markets. BAC's review of its FX activities from 2008 to 2013 revealed that BAC failed to detect or address improper actions by its traders, including their disclosure of confidential information to other banks and possible agreements to manipulate benchmark currency prices. The consent order had imposed a \$205 million fine on BAC and required it to **improve** its senior management oversight, internal controls, risk management, and internal audit programs for its FX activities and for similar kinds of trading activities. BAC had also agreed to cooperate with the FRB in its investigation of the individuals involved. *In the Matter of Bank of America Corporation*, Dkt. Nos. 15-010-B-HC, 15-010-CMP-HC (May 20, 2015).

### **BGC Financial to Pay \$3 Million for Supervision, Reporting and Recordkeeping Violations**

On November 22, the CFTC **announced** that it issued an **order** filing and settling charges against BGC Financial, L.P., a futures industry voice broker and registered futures commission merchant, for numerous supervision, reporting, and recordkeeping violations. In particular, the order found that between 2014 and March 2019, BGC failed to establish an adequate supervisory system and to diligently perform its supervisory duties with respect to its traditional and block trading futures brokerage business. This failure contributed to other violations such as the failure to create, maintain, and promptly produce audit trail and other business-related documents, the failure to timely notify the CFTC of other formal investigations, and the failure to comply with Chief Compliance Officer reporting obligations. Under the order, BGC is required to pay a \$3 million civil monetary penalty and to comply with specified undertakings, including remediation and retention of an outside consultant. *In the Matter of BGC Financial, LP*, Dkt. No. 20-09 (C.F.T.C.).

## Wells Fargo to Pay \$14 Million for Violating Swap Dealer Business Conduct Standards

On November 8, the CFTC **announced** that it issued an **order** filing and settling charges against Wells Fargo Bank, N.A. for failing to deal with a counterparty in a fair and balanced manner based on principles of fair dealing and good faith. Specifically, the CFTC found that, in 2014, Wells Fargo failed to communicate to its counterparty that its pricing of a \$4 billion foreign exchange forward contract did not reflect actual trades as required. The order further found that Wells Fargo subsequently failed to implement and monitor policies and procedures designed to ensure that it communicated with counterparties in a fair and balanced manner. Among other things, the order requires Wells Fargo to pay a civil monetary penalty of \$10 million and restitution of \$4.475 million. *In the Matter of Wells Fargo Bank, N.A.*, Dkt. No. 20-08 (C.F.T.C.).

## Merrill Lynch and Raymond James to Pay \$12 Million in Restitution for Supervisory Failures in 529 Plan Share Classes

On November 6, FINRA **announced** that it issued AWC letters against Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch), Raymond James & Associates, Inc. (RJA), and Raymond James Financial Services, Inc. (RJFS) for the firms' failure to reasonably supervise 529 plan share-class recommendations. FINRA found that both Merrill Lynch and the Raymond James firms failed to ensure that registered representatives considered the various fee structures when making 529 plan recommendations to customers, particularly for accounts that had young beneficiaries and long-term investment horizons. Merrill Lynch **agreed** to pay restitution of at least \$4 million. In **their AWC**, RJA agreed to pay more than \$3.8 million and RJFS agreed to pay \$4.2 million. In resolving the matter without a monetary fine, FINRA recognized Merrill Lynch, RJA, and RJFS's extraordinary cooperation.

## Notable Foreign Cases

### Henderson Fined £1.9 Million for Unfair Treatment of Retail Investors

On November 20, the U.K.'s Financial Conduct Authority **announced** that it had fined Henderson Investment Funds Limited (HIFL) £1,867,900 for unfair treatment of more than 4,500 retail investors in two of its funds. Specifically, HIFL's appointed investment manager reduced its level of active management of its Japan and North American funds. The manager failed to communicate this change to its retail investors, but did inform affected institutional investors and offered to manage the funds for those investors without charge. The disparity revealed serious control and system weaknesses in violation of the FCA's Principles for Business.

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