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Persatuan Perbankan Pelaburan Malaysia

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COMPLIANCE TODAY

CONTRIBUTORS

Full-Fledged Members

- Albert Tai Lee Chuan (Advisor)
  ~ *Hong Leong Investment Bank*
- J Visvanathan Jaganatha (Editor)
  ~ *AmInvestment Bank*
- Ismail Awang (Editor)
  ~ *RHB Investment Bank*
- Zainal Adnan Zakaria
  ~ *Affin Hwang Investment Bank*
- Tan Gua Hui
  ~ *Alliance Investment Bank*
- Kok Yien Fui
  ~ *CIMB Investment Bank*
- Choo Siew Fun
  ~ *Kenanga Investment Bank*
- Dennis Jee Chin Chee
  ~ *Maybank Investment Bank*
- Devarajoo Sinniah
  ~ *Public Investment Bank*

Associate Member

- Adlin Shazana Saiful Azhar
  ~ *UOB Kay Hian Securities (M) Sdn Bhd*

1 January 2023

22 January 2023

1 February 2023

5 February 2023

Message from the Chairman

"Compliance officers need to continuously monitor and review compliance risk as well as to ascertain the best course of action needed to respond to these changes."

Dear Readers,

Season's Greetings and a very Happy New Year!

The past year has been weighed down by local and global uncertainties amidst a slowdown in major markets and rising interest rates worldwide. These challenges and concerns over the economic outlook are expected to continue as we move into 2023 with the possibility of the US and Europe falling into recession.

Ahead of these challenges, the regulators are expecting the capital market participants, including all financial institutions, to step up our standards of governance and accountability in the way we conduct our business. It is crucial for capital market intermediaries to observe the laws and regulations at all times and hold itself to the highest standards in carrying out its business as we forge ahead in these uncertain times. The failure to comply with regulations will have severe adverse consequences on a capital market intermediary's customers, staff and shareholders.

In an industry where regulations are ever changing, compliance officers need to continuously monitor and review compliance risk as well as to ascertain the best course of action needed to respond to these changes. They are also tasked to ensure that capital market intermediaries remain compliant by formulating effective compliance programmes and policies that instil a culture of high ethical standards to preserve its integrity and reputation.

I would like to congratulate the Compliance Officers Committee on the success of its seminar on Foreign Account Tax Compliance Act (FATCA) & Common Reporting Standard (CRS) Requirements held on 10 November 2022, which was positively received by member institutions and other organizations within the industry.

I would also like to commend the Compliance Officers Committee for their continuous effort, commitment and dedication in ensuring that Members are kept abreast on the latest compliance developments through this quarterly Compliance Today Newsletter.

With this, I wish all of you a promising and successful year ahead.

Yours sincerely,

Lee Jim Leng
Chairman

Local & Global News


Malaysia

MALAYSIA: Public Listed Companies Corporate Governance Improves in 2021

The Minority Shareholders Watch Group's (MSWG) corporate governance (CG) 2021 assessment has found local public-listed companies (PLCs) CG levels improved despite the challenges presented by the Covid-19 pandemic.

The CG scorecard, which is based on the Asean CG Scorecard (ACGS), rose 5.4% to 83.58 points in 2021 from 79.28 points in 2020 out of a maximum attainable score of 130 points, the watchdog said.

The assessment is done on a sample of 864 companies and based on disclosures in the latest annual report, CG report and sustainability report for the financial year ended April 30, 2020 to March 31, 2021.

Source:*https://www.thestar.com.my*


Malaysia

MALAYSIA: Securities Commission Malaysia Comments on Budget 2023

The Securities Commission Malaysia (SC) welcomes Budget 2023 measures, which aim to sustain Malaysia's recovery momentum, drive inclusive growth and enhance economic competitiveness. Furthermore, Budget 2023 enhances economic resilience by facilitating reforms and fiscal discipline, both of which are necessary for sustainable growth.

The capital market initiatives announced, re-affirm the significant role of the capital market in supporting the post-pandemic recovery. These initiatives will complement and assist efforts to boost market confidence, encourage growth and catalyse private sector investment in the economy.

Key measures for the Capital Market include:

1. The SC will launch a multi-year programme to build a sustainable pipeline of graduate talent for the capital market. Funded by Capital Market Development Fund (CMDF), the Capital Market Graduate Programme will be a private-public sector collaboration to improve the marketability of graduates in the capital market industry. This will amount to RM30 million over a 3-year period and benefit up to 9,000 participants.

2. The additional RM30 million allocated to the Malaysia Co-Investment Fund (MyCIF) will further support the funding needs and catalyse growth of Micro, Small and Medium Enterprises.

3. A public-private partnership will be established by the Ministry of Finance with the cooperation of the SC and other stakeholders to provide a structured training programme for women talent and expand the talent pool with qualified and experienced women for leadership positions, including as directors on boards.

4. For home-grown technology-based companies and SMEs seeking listing on Bursa Malaysia's LEAP and ACE markets, the Government will also continue to provide income tax deduction of up to RM1.5 million for selected listing fees from YA2023 to YA2025. The incentive would now include tech-based companies listed on the Main Board.

Source: *https://www.sc.com.my/*

Local & Global News


Malaysia

MALAYSIA: Bursa Malaysia Ramps up Effort in Investor Education and Scam Awareness

Bursa Malaysia Berhad ("Bursa Malaysia" or "the Exchange") urges the public to be wary and alert of online investment scams.

The Exchange has recently seen an increase in reports of investment scams, with scammers now using various social media channels, including Telegram, to lure unsuspecting members of the public to participate in dubious online investment schemes. Many of these scammers have been found to misuse the Bursa Malaysia name and logo, as well as misrepresenting themselves as employees of the Exchange.

Similarly, Malaysia has seen a drastic increase of online scams over the last two years during the Covid-19 pandemic. According to the Royal Malaysia Police's commercial crimes investigation department, a total of 71,833 scams, amounting to more than RM5.2 billion losses, was reported from 2020 until May 2022. Among the cases reported, 11,875, or about 17%, were related to loan and investment scams.

Given the increasing number of scam cases, it is important for investors to have the right investment knowledge and tools in order to make informed decisions and easily identify fraudulent activities.

In an effort to ensure public is continuously alerted to scams, the Exchange will commence a series of online posts #stayalert about different types of investment scams misrepresenting Bursa Malaysia which have been reported, covering social media scams, Telegram groups, and the use of forged letterheads and logos. These weekly postings will serve as a regular reminder to the public to be wary of scammers and protect their investments.

Bursa Malaysia advises the public to be more vigilant when approached by parties misrepresenting themselves as having the Exchange's endorsement or as its employees, and to only follow Bursa Malaysia's official social media channels.

The #stayalert initiative is part of Bursa Malaysia's public service initiatives to educate members of the public against investment scams, which includes its on-going Sens-Ability, a financial and investment literacy programme.

Source: *https://www.bursamalaysia.com/*


Malaysia

MALAYSIA: Former Directors of Silver Bird Group Convicted for Furnishing False Statements

The Kuala Lumpur Sessions Court convicted former directors of Silver Bird Group Berhad (Silver Bird) for knowingly permitting the furnishing of false statements to Bursa Malaysia Securities Berhad, an offence under section 369(b)(B) of the Capital Markets and Services Act 2007 (CMSA).

Silver Bird's founder and former Group Managing Director Dato' Jackson Tan Han Kook and former Group Executive Director Derec Ching Siew Cheong pleaded guilty to one charge each. Both were sentenced to a one-day imprisonment and fine of RM500,000 each [in default of the fine, to be imposed 50 months imprisonment].

Both Tan and Ching were first charged on 11 September 2013 with seven and eight charges respectively for the furnishing of false statements contained in Silver Bird's unaudited quarterly financial results for the financial periods ended 31 October 2010 and 31 October 2011 to the stock exchange.

Sessions Court judge Siti Aminah Ghazali imposed the sentence, which included consideration of the other charges, following Tan's and Ching's application for plea bargaining under section 172C of the Criminal Procedure Code.

Source: *https://www.sc.com.my/*

Local & Global News

MALAYSIA: Bank Negara Launches Greening Value Chain Programme

Bank Negara Malaysia (BNM) has collaborated with financial institutions and strategic partners to launch the greening value chain (GVC) programme in conjunction with Finance Day at COP-27.

COP-27 is the 27th United Nations climate change conference held from 6 to 18 November 2022 in Sharm El Sheikh, Egypt.

This GVC programme aims to assist Malaysian small and medium enterprises (SMEs) in implementing impactful, long-term change to green their operations achieved through the offering of technical advice by participating organisations and transition financing from the Low Carbon Transition Fund (LCTF). This programme would also provide technical training and on-site diagnosis.

BNM governor Tan Sri Nor Shamsiah Mohd Yunus said, Malaysia as an exporting nation, with many Malaysian SMEs forming part of global supply chains needs to adapt to the changing policies of the country's trade partners to remain resilient and globally competitive.

Source: *https://www.thestar.com.my*

MALAYSIA: Nearly Half of Malaysian Companies Yet to Allocate Budget for Sustainability Initiatives - UN report

About 45 per cent of Malaysian companies have still not allocated a budget for sustainability initiatives, despite the growing trend of sustainability demands by the country's stakeholders, according to the Malaysia Businesses Sustainability Pulse Report 2022.

The report was launched by the UN Global Compact Network Malaysia & Brunei (UNGCMYB).

UNGCMYB surveyed 261 respondents (125 corporates, of which 88 are private limited companies, 21 multinational companies, 14 government-linked companies, and 121 micro, small and medium enterprises).

It was a six-month multi-collaborative effort to address the private sector's sustainability data gap and shed light on current sustainability trends within the Malaysian business ecosystem.

Source: *https://www.thestar.com.my*

MALAYSIA: SC Reminds Public to be Wary of Self-Proclaimed Investment Gurus

The Securities Commission Malaysia (SC) is reminding the public to be wary of self-proclaimed investment gurus who offer questionable advice or use social media to spread false or misleading information.

Its chairman Datuk Seri Dr Awang Adek Hussin said there has been increasing use of "celebrities or influencers" to promote retail investment offerings on social media, including the use of unlicensed celebrity endorsements to provide investment advice or using celebrities to talk about or promote successful investments.

"To address this growing problem, the SC has increased collaborative efforts with various stakeholders to do more in fighting scams. Our multi-pronged approach includes alerting the public via our investor alert list, blocking websites, and geo-blocking offending social media pages," he said in his opening remarks at the InvestSmart Fest 2022.

Source: *https://www.thestar.com.my*

Local & Global News

MALAYSIA: Cybersecurity Risk a Growing ESG Issue

The ubiquity of technology today, alongside rapid development, has led to an unprecedented rise in the adoption of devices and digital technology among businesses worldwide.

That said, the heightened reliance on technology comes at a cost that is often unseen.

The number of Internet of Things (IoT) devices an organisation employs – as well as the adoption of cloud, data analytics, artificial intelligence and machine learning – also translates into a corresponding expansion in the potential attack surface.

Growing in tandem is the concern that the usage of such devices generates an enormous amount of data, personal or otherwise, which is increasingly being hosted online these days – much to the delight of cybercriminals.

Simply put, cybersecurity is paramount as going digital has trade-offs in terms of new cyber threats and risks. These include hacking, phishing, malware, ransomware and distributed denial of service (DDoS) attacks, among others.

Source: *https://www.thestar.com.my*

MALAYSIA: Sustainable, Ethical Banking to Enhance Malaysia's Banking Industry Competitiveness

The Malaysian banking industry will become increasingly competitive going forward following its foray into sustainable and ethical banking initiatives as well as digital banking with the issuance of five digital banking licenses by Bank Negara Malaysia (BNM).

Speaking at the inaugural Malaysian Banking Conference 2022, Asian Institute of Chartered Bankers (AICB) chairman Tan Sri Azman Hashim said social finance is also poised to play a greater role in the industry, effectively complementing the environmental, social and governance (ESG) agenda through its potential to integrate inclusiveness into the country's financial ecosystem of the future.

"As the financial sector continues to evolve, skills and employment will transform in tandem, making it essential for the country to have an agile and adaptable workforce that is highly skilled with an understanding of the broader areas of responsible finance and the ethical and social purpose of banking, which goes beyond financial returns.

Source: *https://www.thestar.com.my*

Local & Global News

Malaysia

MALAYSIA: Bursa Malaysia Signs Sustainability MoU with London Stock Exchange Group

Bursa Malaysia Berhad or ("Bursa Malaysia" or the "Exchange") and the London Stock Exchange Group ("LSEG"), signed a Memorandum of Understanding ("MoU"), to expand the ESG collaboration between the two exchanges as well as explore new areas of opportunity.

Under the MoU terms, Bursa Malaysia and FTSE Russell, LSEG's global multi asset index and benchmark provider, will expand its coverage of ESG scores to include all PLCs listed on the Main and ACE Markets. Currently, ESG scores are only available for PLCs that are part of the FTSE Bursa Malaysia EMAS ("FBM EMAS") index, which account for approximately 30% of total Malaysian PLCs. This expanded coverage will enable more PLCs to better measure their ESG performance.

The MoU will also see the Exchange and LSEG collaborate on ESG educational initiatives, support the implementation of sustainable supply chain finance and transition financing workflows among Financial Institutions ("FI"), as well as explore corporate ESG reporting solutions that are aligned with internationally recognised standards such as the Task Force on Climate-Related Financial Disclosures ("TCFD"). All of these would aid in enhancing PLCs' ESG practises and disclosures, address the Malaysian FIs' climate-related requirements, while also supporting the Exchange's goal of being a sustainability catalyst in the Malaysian capital market.

Source: *https://www.bursamalaysia.com/*

Asia

ASIA: Bank Representatives Assigned to Police Complex to Combat Scams

Banks in Singapore are taking a more active approach in combating scams, working closely with the police at the Police Cantonment Complex. The Singapore Police Force (SPF)'s anti-scam command office (ASCom), said 6 banks have assigned representatives to work at the complex to combat scams since Jul 25 2022.

Representatives from DBS, OCBC, UOB, Standard Chartered, HSBC and CIMB have been involved in efforts to trace funds and freeze bank accounts suspected to be involved in scammers' operations.

SPF said more than SGD1.5 Million has been recovered from bank accounts and e-wallets suspected to be involved with scams since the representatives were assigned to the police. This accounts for 60 per cent of the amount lost to the 40 scam cases that have been investigated so far.

DBS Group Head of Investigations is glad that other banks have come aboard to support this endeavor by seconding full-time staffs to the police since the SPF launched the Anti-Scam Centre in 2019 to freeze bank accounts and mitigate scam victims' losses.

Source: *https://www.businesstimes.com.sg*

Local & Global News

Asia

ASIA: Monetary Authority of Singapore and SGX Group Launch ESGenome Disclosure Portal to Streamline Sustainability Reporting and Enhance Investor Access to ESG Data

The Monetary Authority of Singapore (MAS) and Singapore Exchange (SGX Group) today jointly launched ESGenome, a digital disclosure portal for companies to report Environmental, Social and Governance (ESG) data in a structured and efficient manner, and for investors to access such data in a consistent and comparable format.

ESGenome is a joint initiative by the MAS and SGX Group under Project Greenprint, to develop a common disclosure utility that will facilitate sustainability reporting for SGX-listed companies.

With corporate sustainability disclosures representing one of the largest sources of ESG data globally, there is great scope to harness technology to enhance such disclosures and comparability of data to support the financing decisions needed for a credible transition.

Currently the proliferation of multiple sustainability reporting frameworks and guidelines across jurisdictions, and the inconsistent manner in which data is being collected, verified and reported have created significant disclosure challenges and resulted in poor ESG data comparability

Source: *https://mondovisione.com*

World

WORLD: UK Confirms USD1.3 Billion of Suspected Fraud on COVID Loan Scheme

The British government confirmed that around £1.1 billion (USD1.27 billion) of small business loans made under a COVID-19 emergency lending scheme has already been classified as suspected fraud.

Reuters first reported the figure, which gives the first firm indication of the potential level of scams perpetrated on Britain's so-called 'bounce back loan' scheme.

Banks handed out £47 billion in total in government-guaranteed loans under the scheme from May 2020 to struggling small businesses hit by COVID-19 lockdowns.

Source: *https://www.reuters.com*

Anti-Money Laundering News

Malaysia

MALAYSIA: SC Charges Four Individuals with Money Laundering of Over RM7.2 Million

The Securities Commission Malaysia (SC) charged four individuals, who are also married couples, with money laundering of more than RM7.2 million involving unlawful proceeds from unlicensed investment advice activities.

Mohamad Afiq, 34, and his wife, Natasha, 34, were charged with money laundering offences involving more than RM1.2 million which were committed between May 2020 and October 2021.Mohamad Afiq the sole proprietor of Pelham Blue Enterprise (PBE) and a director and shareholder of PBF Resources Sdn Bhd (PBF).

PBE and its social media platform, Pelham Blue Fund were included in the SC's Investor Alert List in 2021. He was charged at the Kuala Lumpur Sessions Court with eight counts under Section 4(1)(b) of AMLATFPUAA for receiving and transferring proceeds from unlawful activity, namely unlicensed investment advice and Natasha, was charged with one count of receiving proceeds of unlawful activity

Tan Soon Hin, 43, and his wife, Teh An See, 43, had a total of ten counts of money laundering involving more than RM6 million between January 2020 and November 2021. Tan faced five charges under AMLATFPUAA and was included in SC's Investor Alert List in 2019. Teh, the sole proprietor of Miracle Fortune Trends Enterprise, also faced five charges under the same Act. Teh is also the sole director as well as shareholder of Fickle Sdn Bhd

If convicted, these individuals can be jailed for up to 15 years and fined for not less than five times the sum obtained from money laundering, or RM5 million, whichever is higher.

Providing investment advice is a regulated activity that requires a licence under the Capital Markets and Services Act 2007 (CMSA). The SC advises investors to exercise vigilance and skepticism in evaluating and deciding on investment opportunities and actions. One should only deal with individuals and entities licensed by the SC to provide investment advice. Investors should also check the SC's Investor Alert List, which is constantly updated to warn investors of suspicious companies or individuals that carry out unlicensed investment activities or scams.

Source: *https://www.sc.com.my*

Malaysia

MALAYSIA: Grant Thornton Managing Partner Charged with Money Laundering Involving RM115 Million

Grant Thornton Malaysia's managing partner Datuk C R Narendrakumar was charged with money laundering involving RM115 million, allegedly committed four years ago.

Narendrakumar has been charged with transferring RM115 million, believed to be proceeds from unlawful activities, through 12 online transactions from a CIMB Bank Berhad current account belonging to Sabah Forest Industries into a CIMB Islamic Bank Berhad fixed deposit account of the same company.

The charge was framed under Section 4 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, provides imprisonment for up to 15 years and fine of not less than five times of proceeds from the unlawful activities, or RM5 million, whichever is higher, if found guilty.

Source: *https://www.theedgemarkets.com*

Anti-Money Laundering News

Malaysia

MALAYSIA: Company Director Pleads Guilty to Money Laundering Involving Nearly RM300,000

Mohd Nizam Noh, 49, who is a director at Massnizam Group Travel & Tours Sdn Bhd pleaded guilty in the Sessions Court here to four charges of money laundering amounting to RM295,550. Mohd Nizam was charged with committing the offences at the Maybank Islamic Berhad and Bank Islam Malaysia Berhad between 17 March 2019 and 13 November 2019.

The charges were framed under Section 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, which provides an imprisonment for up to 15 years and a fine of not less than five times the amount of proceeds from unlawful activities, or RM5mil, whichever is higher, upon conviction.

Source: *https://www.thestar.com.my*

Asia

ASIA: Two Arrested in Money Laundering Case

Hong Kong Customs are questioning two men involved in one of Hong Kong's largest money-laundering cases ever. The case involved dealing in eight tonnes of mainly gold and palladium, valued at about HKD3.5 billion (USD446 million or RM2.1 billion) over a two-year period, according to the agency. It was the largest amount among cases detected by Customs.

Authorities arrested two men, 30 and 48-years old, last week in connection with suspected money laundering and searched homes, two secretariat companies, a precious metal firm and a local foreign exchange shop. The men allegedly sold metals and transferred money to some mainland Chinese companies or offshore shell accounts. The Customs found no evidence that the two men were acquaintances, but they engaged with the same security company which could indicate a syndicate.

Source: *https://www.thestar.com.my*

World

WORLD: Credit Suisse to Pay USD234 Million to End French Tax Probe

Credit Suisse agreed to pay France, Euro238 million (USD234 million) to settle a tax fraud and money laundering case, putting another legal headache behind it as it prepares a strategic overhaul. The agreement resolves an investigation in France over whether the Swiss bank, which is trying to recover from losses and scandals, helped clients to avoid paying tax on their wealth. The bank said in a statement that the settlement does not comprise a recognition of criminal liability.

It agreed to pay USD495 million to settle allegations, it mis-sold mortgage-backed securities in the US, the latest pay-out related to past blunders that have battered the bank's reputation.

Source: *https://www.theedgemarkets.com/*

World

WORLD: Australian Casino Firm Star to be Fined USD62 Million Following Inquiry

Australian casino firm Star Entertainment Group was fined AUD100 million (USD62 million or RM293.85 million), following an independent inquiry which found it failed to prevent money laundering and criminal activity in its Sydney casino. The New South Wales Independent Casino Commission (NICC) also cancelled Star's licence to operate the Sydney casino. It will appoint a person to manage the casino pending the return of its licence.

NICC chief commissioner Philip Crawford said the appointment of the manager means that the Star Casino will remain open and all staff will remain employed.

Source: *https://www.theedgemarkets.com/*

Islamic Finance News

MALAYSIA: Innovation, Technology Crucial to Advance Islamic Finance

Accelerated technology and digital adoption are reshaping investor behaviour and access to information. As such, it is crucial to assimilate innovations into existing shariah knowledge and practices in order for Islamic finance to advance.

Chairman of the Securities Commission Malaysia (SC) Datuk Seri Awang Adek Hussin said this will enable the industry to provide breakthrough Islamic solutions for the benefit of the society, ummah, and the global community.

"The strength of Islamic finance lies in a simple underlying purpose, which is championing the social good. "This ensures its impact is felt far and wide, from the individual investor to innovative businesses and the wider community," he said in his speech during The Royal Award for Islamic Finance conferment ceremony.

The unrelenting efforts of industry pioneers had given rise to contemporary Islamic products and services that are widely accepted at present day.

Source: *https://www.theedgemarkets.com*

MALAYSIA: Sultan Nazrin: Malaysia's Islamic Finance Industry Well Placed to Continue to Innovate in ESG Space

Islamic finance can contribute in addressing the challenges faced by the conventional environmental, social and governance (ESG) investing space, said Sultan of Perak Sultan Nazrin Shah. Given Malaysia's track record of global leadership in Islamic capital markets, the country is well positioned to continue to innovate in this space, the Ruler said. "By doing so, we can further boost the profile of our Islamic finance industry," he said in his inauguration address at the launch of INCEIF University's new campus.

He added having taken the lead in the 1990s, when the Islamic finance industry was in its infancy, the country must once again take charge of the second wave of its expansion, with the rebooted 'Islamic Finance 2.0', so to speak, an even greater emphasis must be put on the ESG agenda.

Sultan Nazrin noted that the country has already made great headway in incorporating ESG considerations into the business practices of companies, and the investment considerations of financial service providers. He said the regulators, industry players, and research institutions — like the International Centre for Education in Islamic Finance (INCEIF) — have all helped to champion ESG in the Islamic finance industry.

"As new ESG requirements have been introduced, these stakeholders have provided regulatory and supervisory support, leading in product development and other strategic initiatives. "However, we need to elevate our efforts to compete at the global level — if the country were to demonstrate how Islamic finance could serve the needs of the wider financial markets and the global economy," he said.

To make Islamic Finance 2.0 a reality, therefore, Malaysia must also strive to be more authentic to the true spirit of Islamic law, the *maqasid,* said Sultan Nazrin. "While we work hard for prosperity, we must equally be focused on doing good by the people and the planet," he added.

Source: *https://www.theedgemarkets.com*

Ethics & Governance News

World

WORLD: SEC Charges Unregistered Brokers More Than USD1.2 Billion in Primarily Penny Stock Trades

The Securities and Exchange Commission (SEC) today charged Jeffrey K. Galvani, Stuart A. Jeffery, and two New York-based entities they controlled with operating as unregistered broker-dealers that facilitated more than USD1.2 billion of securities trading, primarily in penny stocks.

The SEC's complaint alleges that Galvani and Jeffery – both registered brokers at a registered broker-dealer unconnected with this case – created GEL Direct Trust, which they managed through its trustee, GEL Direct, LLC. The GEL entities were not registered with the SEC as broker-dealers.

Nonetheless, from 2019 through at least May 2022, Galvani and Jeffery, acting through the GEL entities, provided brokerage services to approximately 60 customers involving at least 19,000 securities trades, primarily in penny stocks. The brokerage services they allegedly provided included taking possession of customer securities, directing trades to executing brokers, facilitating trade settlements, and disbursing trading proceeds to customers. In return for these services, the defendants allegedly received at least USD12 million in transaction-based and other compensation.

The SEC's charges Galvani, Jeffery, GEL Direct Trust, and GEL Direct, LLC with violating the broker-dealer registration requirement of Section 15(a) of the Securities Exchange Act of 1934 which is to protects its investors and the markets and charges Galvani and Jeffery as "control persons" of the GEL entities under Section 20(a) of the Exchange Act.

Source: https://www.sec.gov

World

WORLD: SEC Charges S&P Global Ratings with Conflict of Interest Violations

The SEC's order finds that an issuer engaged S&P to rate a jumbo residential mortgage backed security transaction in July 2017. Over a five-day period in August 2017, S&P commercial employees (employees responsible for managing the relationship with the issuer) on several occasions attempted to pressure the S&P analytical employees (employees responsible for evaluating and assigning the rating) to rate the transaction consistent with preliminary feedback the analytical employees had given the customer that turned out to include a calculation error.

Some emails sent by the S&P commercial employees to the S&P analytical team contained statements reflecting sales and marketing considerations. As a result of the content, urgent nature, high volume, and compressed timing of the communications, the S&P commercial employees became participants in the rating process during a time when they were influenced by sales and marketing considerations.

After discovering the circumstances surrounding the rating of the transaction, S&P self-reported the conduct at issue to the SEC, cooperated with the SEC's investigation, and took remedial steps to enhance its conflicts of interest policies and procedures.

The order finds that, by issuing and maintaining these credit ratings, S&P violated certain rules promulgated under the Securities Exchange Act of 1934, which prohibit conflicts of interest at nationally recognized statistical rating organization, and also failed to establish, maintain, and enforce written policies and procedures designed to ensure compliance with those rules. Without admitting or denying the SEC's findings, S&P agreed to settle this matter by paying a USD2.5 million penalty and agreeing to the entry of a cease-and-desist order, a censure, and compliance with certain undertakings.

Source: *https://www.sec.gov*

Ethics & Governance News


World

WORLD: SEC Charges Pharmaceutical Company Chief Information Officer in USD8 Million Insider Trading Scheme

The SEC announced insider trading charges against Ramkumar Rayapureddy, Chief Information Officer of pharmaceutical company Viatris Inc., which was formerly known as Mylan N.V.

The SEC's complaint, filed in the United States District Court for the Western District of Pennsylvania, alleges that, from at least September 2017 through July 2019.

Rayapureddy, a resident of Pennsylvania, tipped his friend and former colleague, Dayakar Mallu, material non-public information about Mylan's unannounced drug approval by the U.S. Food & Drug Administration, financial results, and an impending merger with a division of Pfizer Inc.

The complaint further alleges that Mallu generated gains totaling nearly USD8 million and avoided losses by trading Mylan securities based upon Rayapureddy's tips and shared a portion of his profits with Rayapureddy through cash payments in India. The SEC previously charged Mallu in connection with this investigation.

The SEC's complaint charges Rayapureddy with violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and seeks a permanent injunction, disgorgement, a civil penalty, and an officer and director bar.

In a parallel action, the Department of Justice's Fraud Section today announced criminal charges against Rayapureddy.

The SEC's investigation was conducted by Christine R. O'Neil, Matthew B. Homberger, and Brian R. Higgins of the Philadelphia Regional Office and John S. Rymas of the Market Abuse Unit. It was supervised by Brendan P. McGlynn, Scott A. Thompson, and Mr. Grippo.

The litigation will be led by Christopher R. Kelly and Gregory Bockin. The SEC appreciates the assistance of the Financial Industry Regulatory Authority and the Options Regulatory Surveillance Authority. These failings meant that Citigroup Global Markets breached Article 16(2) of MAR and Principle 2 of the FCA's Principles for Businesses – that a firm must conduct its business with due skill, care and diligence. Code of Conduct for Persons Licensed by or Registered with the SFC.As a result of his conviction, Mr Kathiravelu is automatically disqualified from managing corporations until 8 February 2026.

Source: *https://www.sec.gov*

Reputation is Your Company's Most Precious Asset. How Can You Nurture and Preserve It?
4 Key Insights into What it Takes to Adequately Secure Your Reputation

A company can tarnish and even ruin its reputation with a single exercise of poor judgment. While some may define reputation differently, everyone agrees it's important. In addition, most of us can recognize a reputation that has been damaged beyond repair. As explained by one author, reputation risk is "the loss of the value of a brand or the ability of an organization to persuade". 10 keys for managing reputation risk arrayed among five categories: strategic alignment, cultural alignment, quality commitment, operational focus and organizational resiliency.

Below are some thoughts about reputation and how to nurture and preserve it.

Adopt an end-to-end process view: You can't pass the buck

Managing reputation risk is inextricably tied to risk management and crisis management processes. It begins with an effective risk assessment process that considers an end-to-end, extended view of the value chain, requiring consideration of looking upstream to supplier relationships (including the Tier 2 and 3 suppliers to critical Tier 1 suppliers), as well as downstream to channels, customer relationships and all the way to the ultimate end user. In effect, the enterprise's ecosystem of business relationships and partners is just as important as its internal processes, personnel and systems, because they are inextricably linked to what makes the business model work.

To illustrate the use of this big-picture approach, uncompensated risks (exposure to events that have significant downside with little or no upside potential) sourced across the value chain can be causes of reputation risk. These risks require attention because they include "stop the show" supply chain disruptions, mega warranty costs and/or product recalls and headline-grabbing environmental, health and safety exposures.

Lead content, toxic materials, impure ingredients and other inputs provided by suppliers that fail to meet specifications set by the laws and regulations to which a company is subject in the markets it serves can damage its brand and reputation. Unsafe working conditions, child and slave labor, conflict minerals and other issues that lurk upstream in the supply chain are waiting for discovery, at which time they not only will become an embarrassment to a company's brand and reputation but also could result in a loss of market share. In today's era, consumers care about transparency in the supply chains supporting the products they buy. An organization that permits ignoring prudent public and worker health and safety standards in favor of cost and schedule considerations faces the eventual day of reckoning when the spotlight finally shines on its dysfunctional culture.

The above discussion explores the risk management side of managing reputation risk. There is also the crisis management side. World-class reaction, resilience and agility can be very effective in preserving a reputation and brand. Quick response time and open, honest communication on using social media outlets enables a company under crisis to control the story, maintain good faith with its customers and protect its brand.

An effective response doesn't happen by accident. If a crisis management team doesn't exist or isn't prepared to address a potential crisis, rapid response to sudden, unexpected events will be virtually impossible. Fires cannot be fought with a committee. Therefore, the risk assessment process should be designed to identify areas where preparedness is critical, as discussed further below.

Bottom line, a company's customers and stakeholders could care less where the source of risk is. All they care about is the company they are dealing with keeping its brand promises, explicit and perceived. They expect the CEO and the board ultimately to be responsible for protecting the enterprise's reputation.

Occasionally, a contrarian voice is needed at a crucial moment; will you have one?

Washington Mutual (WaMu) was an unfortunate casualty of the 2008 financial crisis. Two former chief risk officers (CRO) asserted that they tried to curb risky lending practices at the bank; however, they claimed they met resistance from top management when they escalated their concerns.

One CRO claimed he was excluded from meetings among senior executives and financial advisers when the bank's response to the growing crisis was being discussed and, by January 2008, was fully isolated until he was fired by the CEO a few months later. The other CRO testified before a congressional committee that he had tried to both discourage loans to those who were unlikely to be able to repay and limit the number of loans made without verifying borrowers' income. However, he, too, was ignored by executive management as low- and no-doc lending continued.

WaMu filed for Chapter 11 bankruptcy in 2008. With respect to total assets under management, its closure and receivership is the largest bank failure in American financial history. It didn't have to happen. Simply stated, risk management was ignored as a discipline; if it is viewed by executive management as a check-the-box compliance exercise, it has little strategic relevance.

A strong contrarian voice is occasionally needed in an organization's history. More importantly, there are times when such a voice needs to be heard by the right people. This is a matter of proper positioning of independent risk management and compliance functions, which entails several important principles:

- Leaders of such functions should be viewed as peer-to-business line leaders.
- They should have a direct reporting line to the CEO.
- They should have a reporting line to the board or a committee of the board with no access constraints.
- The board or a board committee should conduct mandatory and regularly scheduled executive sessions with these functional leaders.
- A formalized escalation process should exist.

In summary, to ensure an effective contrarian voice, there should be clearly defined positioning for the risk management and compliance functions and how they interface with line-of-business and executive management as well as the board of directors. Most importantly, the board and the CEO must have a mutual understanding of the value contributed by these independent functions with the intent of preserving their independent role within the organization as part of a "speak up" culture in the corporate decision-making process.

Every organization can expect to be tested eventually. Are you ready?

Stuff happens. Even the proudest organizations and brands are not immune to being called out by the unexpected. As stated earlier, organizations are boundaryless. An "extended end-to-end enterprise" perspective requires a look at the full value chain that summarizes the entire life cycle of value creation, i.e., management should look upstream to key suppliers and downstream to key customers to identify dependencies that really matter. For example:

- Which suppliers do we depend on for essential raw materials, commodities and component parts? What would happen if we were to lose one of them for any reason? How long would we be able to operate? Are there other qualified sources of supply that can be readily available?
- Have our key suppliers performed their own risk assessment, looking at their suppliers? Do they have effective plans for taking corrective action in times of disaster? How do we know?
- What if there were temporary shortages in key commodities and raw materials? Or serious defects in supplier raw materials and component parts? Or material volatility in prices?
- Are there customers we can't afford to lose? What if major customer contracts were not renewed? What if major customers were to consolidate? What if we were to lose a major distribution channel?

- What if there were significant disruptions in transportation?
- What if our vulnerabilities to cyber threats were exploited and attacked?

The Covid-19 pandemic and Russian invasion of Ukraine have illustrated the importance of some of these questions. Throwing darts at the wall to guess at probabilities to determine that a particular risk is remotely likely to happen isn't going to eliminate the threat. That is why risk assessments should consider the following factors in addition to significance of impact and likelihood of occurrence when assessing risks:

1. Velocity to impact once an event occurs (e.g., does the scenario or event have an immediate impact upon occurrence, allowing little time for reaction, or does it smolder for years, mired deep into the company's processes, until the day of reckoning finally arrives?)
2. Persistence of the impact (e.g., does the scenario or event have a lasting headline effect, or will it quickly become yesterday's news?)
3. Resiliency of the company in responding to the scenario or event if and when it occurs.

These additional criteria help management evaluate high-impact, low-likelihood threats to determine areas where preparedness must be improved. When these additional factors are considered, risk management begins to intersect with crisis management.

Managing the tension between creating and protecting enterprise value is the toughest risk management task

Every CEO pursues opportunities with the objective of building enterprise value. It is what every board expects, whether it means entering into new markets, investing in new products, merging with or acquiring another entity, building new plants to expand or exploiting other market opportunities. Implicit in the bets the CEO makes is the organization's appetite for risk. A winning strategy exploits to a significant extent the areas in which the company excels relative to its competitors.

However, the execution of any strategy is governed by the willingness of the organization to accept risk in the pursuit of value creation, as well as by its capacity to bear that risk. From a strategy-setting standpoint, it is useful to have a notion of when the organization's capacity for bearing risk is encroached upon (i.e., when is the organization taking on too much risk?). Consider the following questions:

- Does it make sense to take all of the risks an organization is capable of undertaking without reserving capital, borrowing capacity and establishing other financial resources for unexpected extreme losses, investment opportunities and other contingencies?
- Is it appropriate to retain a significant risk when options for transferring that risk are available at reasonable cost?
- Are there certain aspects of the strategy that may be unrealistic and may result in unacceptable risks if managers are stretched to achieve established performance goals?

A disciplined approach around protecting enterprise value should consider these questions. One lesson from the financial crisis is that there are consequences when a CEO "bets the farm" and ignores the warning signs posted by the risk management function. WaMu is a prime example, as are Countrywide Financial, Lehman Brothers and Bear Stearns.

Tension between value creation and protection is inevitable in corporate decision making. For example, how does an organization balance its credit policy with its sales strategy? There have to be some limits somewhere. A CEO who wants to operate without any boundaries may be signaling to the board that they are unfocused strategically. Worse, such behavior may connote that they will lock in to the status quo and drive the existing business model relentlessly to "make the numbers" even if it drives the organization into a ditch as markets shift. This occurred during the financial crisis, when underwriting standards were thrown to the winds. Low-doc and no-doc loans, in which the lender doesn't require proof of income, became commonplace at troubled banks.

Boundaries provide a broad context for balancing the organization's objectives and performance goals for creating enterprise value with the policies, processes and control systems deemed appropriate to preserve enterprise value. In essence, they are a tool for managing the tension between the two. They force dialogue, escalation and even arbitration.

The objective is to balance the entrepreneurial activities and control activities of the organization so that neither one is too disproportionately strong relative to the other. This task is fundamental to managing risk culture. As one author explains, rather than tell the CEO what to do or how to run the business, the board provides direction as to what not to do through "a constructive ring fence around behavior."

Summary

Strategy setting and risk management share a common focus: They are both forward-looking activities. So is reputation management. Time devoted to monitoring retrospective performance indicators (so-called "lag indicators") is useful and appropriate when managing performance but is of limited value looking forward for purposes of formulating strategy and assessing risk in a dynamic market. There is an important difference with respect to reputation, however, in that it is often rooted in long-standing core values. That said, reputation management is also about navigating change over time.

Source*: https://www.corporatecomplianceinsights.com*