Cybersecurity, Digital Privacy & Technology

SEC Releases Observations From Cybersecurity Examinations

Kenneth J. Berman | Aug 14

Debevoise & Plimpton LLP - On August 7, 2017, the Office of Compliance Inspections and Examinations (OCIE) of the U.S. Securities and Exchange Commission (SEC) issued a Risk Alert announcing observations from its second round of cybersecurity examinations of registered broker-dealers, investment advisers, and investment companies. The observations were based on OCIE's examinations of 75 firms since September 2015. Read More

The FTC and Industry Propose Best Practices for IoT Security Updates

Brian Kennedy | Aug 16

Hogan Lovells LLP - As appreciation for Internet of Things (IoT) security threats has grown, stakeholders in government, industry, and the technologist community have issued various guidance materials addressing how manufacturers should communicate information about security updates for IoT devices. The National Telecommunications and Information Administration (NTIA) working group summarized and harmonized these recommendations into the best practices draft document for manufacturers. For its part, last month the Federal Trade Commission (FTC) encouraged the group to pay closer attention to how information is communicated to consumers. Read More

SEC Ruling on the DAO Signals Increased Acceptance of Blockchain-Based Securities

Andrew McCoomb | Aug 11

Norton Rose Fulbright LLP - On July 25, 2017, the Securities and Exchange Commission (SEC) issued a statement on the regulatory significance of offers and sales of digital assets carried out using distributed ledger or blockchain technology. That statement followed the SEC's Report of Investigation into The DAO, an unincorporated organization designed to issue tokens administered on a distributed ledger that would allow the holder to share in the anticipated earnings of the organization. Read More

NY Cybersecurity Regulations for Financial Services Companies: Enforcement Begins Aug. 28

McGuireWoods LLP Staff | Aug 17

McGuireWoods LLP - The 180-day transitional period under the New York Department of Financial Services (NYDFS) Cybersecurity Requirements for Financial Services Companies is set to expire Aug. 28, 2017. Financial services companies must achieve compliance with the cybersecurity regulations prior to this deadline or face substantial monetary penalties and reputational harm. The cybersecurity rule provides an additional transitional period for financial service companies to achieve compliance with its remaining requirements. Read More

Fraud, Corruption & Enforcement Actions

Settlement Highlights CFTC's New Premium on Cooperation; 7th Circuit Upholds Criminal Spoofing Conviction

David Meister | Aug 15

Skadden, Arps, Slate, Meagher & Flom LLP - On August 7, 2017, the CFTC announced a settlement for a civil penalty of $600,000 with the Bank of Tokyo Mitsubishi UFJ for alleged spoofing violations, with Director of Enforcement James McDonald heralding BTMU's cooperation as the basis for what the agency characterized

as a reduced sanction. On the same day, the 7th Circuit Court of Appeals upheld the conviction of commodity futures trader Michael Coscia for violating the Commodity Exchange Act's (CEA) anti-spoofing provision. Read More

Purported Whistleblower Barred From Pursuing Illinois Retaliatory Discharge Claim

Steven J Pearlman | Aug 16

Proskauer Rose LLP - The Northern District of Illinois recently dismissed an Indiana-based employee's claims for retaliatory discharge in violation of common law, focusing on the nature of the connection (or lack thereof) to Illinois and noting that the plaintiff already had adequate statutory remedies under federal whistleblower laws. O'Risky v. Mead Johnson Nutrition Co., No. 17-cv-1046 (N.D. Ill. Aug. 8, 2017). This decision underscores the basic rule that a common law retaliatory discharge claim based on whistleblowing activity is not actionable under Illinois law given the existence of available remedies under federal whistleblower statutes. Read More

Corporate Litigation

Court of Appeal Adds a "Modest Gloss" to Existing Principles Relating to the Inadvertent Disclosure of Privileged Documents

Susan Rosser | Aug 11

Mayer Brown LLP - In Atlantisrealm Limited v Intelligent Land Investments (Renewable Energy) Limited, the Court of Appeal has applied what it has called a "modest gloss" to the principles to be considered when the court decides whether or not to restrain a party that has inadvertently received a privileged document (by way of disclosure) from relying upon that document in the proceedings. The Court of Appeal held that if the inspecting solicitor did not spot that the privileged document must have been disclosed in error, but subsequently referred the document to a colleague who did spot the mistake before use was made of the document, the court could grant relief because that became a case of obvious mistake. Read More

Minnesota Supreme Court Articulates Test for Direct Versus Derivative Claims in in Re Medtronic, Inc. Shareholder Litigation

Wendy J. Wildung | Aug 17

Faegre Baker Daniels LLP - On August 16, 2017, the Minnesota Supreme Court decided In re Medtronic, Inc. Shareholder Litigation, holding that a shareholder's claim is properly characterized as a direct claim, not a derivative claim, if the shareholder suffered the injury alleged and would receive the benefit of any recovery. By contrast, the Court held that a shareholder's claim is properly characterized as a derivative claim if the corporation suffered the injury alleged and would receive the benefit of any recovery. Read More

Corporate Law, Transactions, & Governance

SEC Requirement for Hyperlinked Exhibits Becomes Effective on September 1, 2017

Sidley Austin LLP Staff | Aug 11

Sidley Austin LLP - The SEC's recently adopted rules requiring hyperlinked exhibits become effective on September 1, 2017. The hyperlink requirement applies to certain registration statements and reports under the Securities Act of 1933 and the Securities Exchange Act of 1934 that are required to include exhibits under Item 601 of Regulation S-K. The hyperlink requirement also applies to filings by foreign private issuers on Forms F-10 and 20-F, but not to filings on Form 6-K by foreign private issuers or by certain Canadian issuers under the multijurisdictional disclosure system. Read More

Cash Election Dividends Paid by Real Estate Investment Trusts and Regulated Investment Companies

Sullivan & Cromwell LLP Staff | Aug 14

Sullivan & Cromwell LLP - On August 11, 2017, the Internal Revenue Service (IRS) issued Revenue Procedure 2017-45, which provides that certain stock distributions made by real estate investment trusts (REITs) and regulated investment companies (RICs) will be treated as taxable distributions for the purpose of determining both (1) the dividends-paid deduction of the REIT or RIC and (2) the treatment of the REIT's or RIC's shareholders. Read More

Regulation and Compliance

Establishing an Effective Compliance Management System for Financial Services

Mark T. Dabertin | Aug 14

Pepper Hamilton LLP - The CFPB has generated acute awareness of the term "compliance management system" (CMS) through its highly publicized consent orders. Since it began issuing orders in 2011, the CFPB has invariably cited "significant weaknesses" in the subject party's CMS along with violations of specific federal consumer financial laws. In addition to spotlighting the critical importance of a CMS, the CPFB's citing of CMS-related deficiencies begs the question of whether anyone is capable of meeting the CFPB's expectations. Read More

Preparing for the End of LIBOR

Derek Dissinger | Aug 14

Barley Snyder LLP - The U.K. Financial Conduct Authority has stated it intends to phase out the London Interbank Offered Rate (LIBOR) by the end of 2021. Although there is currently an effort underway in the United States and United Kingdom to identify a successor to LIBOR, it likely will be uncertain for some time what will replace LIBOR as the benchmark for these types of lending transactions. With the end of LIBOR in sight and uncertainty regarding its replacement, lenders need to consider alternate language in their documents that might have seemed unlikely to ever apply. Read More

DOL Fiduciary Rule Status Update for Fraternal Benefit Societies

Todd W. Martin | Aug 16

Stinson Leonard Street LLP - In papers filed as part of a lawsuit in the U.S. District Court for the District of Minnesota, the Department of Labor (DOL) has stated that they are considering a further delay of the effective date for full implementation of the Fiduciary Rule from January 1, 2018 to July 1, 2019. The law firm has seen considerable confusion and challenge in the fraternal system as to what should be done to comply with the Fiduciary Rule and how to prepare for possible full implementation of the rule in the future. Read More

CFTC Staff Issues No-Action Relief From Certain Position Aggregation Requirements

William J. Breslin | Aug 14

Fried, Frank, Harris, Shriver & Jacobson LLP - On August 10, 2017, the Division of Market Oversight (DMO) of the Commodity Futures Trading Commission (CFTC) issued time limited no-action relief from several significant requirements set forth in the Commission's position aggregation rule for purposes of the speculative position limits in Part 150 of the Commission's regulations. For the duration of the relief, an entity eligible for an exemption from aggregation need not submit a prospective notice filing pursuant to the aggregation rule in order to rely on the exemption, but instead must only do so upon request by the CFTC, a Designated Contract Market, or their respective staffs within five business days. Read More

SEC Charges Chief Compliance Officer for Failure to Verify Information

Stephen M. Quinlivan Kennedy | Aug 17

Stinson Leonard Street LLP - David I. Osunkwo was a principal at Strategic Consulting Advisors. SC Consulting offered compliance consulting and CCO services to two SEC registered investment adviser firms under common control, Aegis Capital and Circle One Wealth Management. Circle One filed an annual amendment

to its Form ADV with the Commission in April 2011 that was intended to reflect a merger between the two investment advisers under common ownership and control of the same corporate parent holding company. The SEC alleged the filing materially overstated the assets under management and total number of client accounts for Aegis Capital and Circle One. Read More

SEC Adopts Rules to Enhance Adviser Reporting

Robert G. Sawyer | Aug 14

Foley Hoag LLP - Recently enacted SEC rules have imposed several amendments to Form ADV that advisers should be aware of, and which will apply to all Form ADVs filed after September 31, 2017. The revised Form ADV will require substantial additional disclosures with regard to separately managed accounts (SMAs), provide for a method of umbrella registration for private fund entities operating a single advisory business, and implement other technical amendments to current items and instructions. Read More

FCA Comments on the Extraterritorial Effect of MiFID II

Philip J. Morgan | Aug 11

K&L Gates LLP - In a letter to the Alternative Investment Management Association (AIMA) made available to AIMA members on Monday, August 7, 2017, the Financial Conduct Authority (FCA) responded to a request from AIMA seeking interpretation and guidance on MiFID II requirements related to the delegation of certain management functions to non-EU firms, including U.S. subadvisors. The provisions at issue are of particular importance because they represent one of the most likely avenues of MiFID's extraterritorial effect on firms that are not directly subject to MiFID. Read More

Volcker Rule Reform — Is There Any There, There?

Charles M. Horn | Aug 11

Morgan, Lewis & Bockius LLP - There has been substantial physical and virtual ink spilled over recent financial regulatory announcements about a review of the Volcker Rule — the controversial Dodd-Frank Act provision that generally prohibits proprietary trading and private investment fund sponsorship/investment by covered banking organizations. But will these agency activities lead to any change? In the law firm's view, they may lead to some minor changes, but no major ones. Read More