TRAINING THAT MAKES A DIFFERENCE

COMPLIANCE UPDATER

Regulatory and compliance news in brief Issue: July 2020

Deadline missed for Brexit parallel equivalence assessment.

Despite the EU and the UK agreeing to try to complete parallel assessments of the equivalence of each other's rules by 30th June 2020, they failed to meet the deadline. The future access for Britain's financial services firms to the EU at the end of the Brexit transition period on 31st December 2020 is due to be determined by Brussels deciding whether the UK's regulation is as tough as the EU's – known as "equivalence".

US Supreme Court ruling on disgorgement.

A Supreme Court judgement in the US concluded that the regulator (the Securities and Exchange Commission (SEC)) should return any disgorged funds to investors who have suffered harm. The ruling is likely to heavily impact the amount of money that the SEC hands over to the US Treasury - currently any disgorgement for crimes like insider trading, market manipulation and accounting fraud is passed to the US Treasury.

Big four accountants given UK audit split deadline.

The big four accountancy firms (EY, KPMG, PwC and Deloitte) have until October 2020 to set out how they will separate their audit units and must complete the task by 2024. Stopping short of requiring full separation, the UK's Financial Reporting Council is requiring ringfencing of the audit divisions with separate P&L accounts and independent audit boards. The requirements are designed to improve audit quality and remove the conflicts that arise from cross subsidy between audit and consultancy. This announcement came alongside the Financial Reporting Council publishing its latest annual review of audit quality and observing an "unacceptable" decline. It reviewed eighty-eight audits and found that twenty-nine were not up to standard. The audit firms involved included the big four – PwC, Deloitte, KPMG and EY – and smaller firms BDO and Grant Thornton.

Deloitte faces fine for audit failings at Autonomy.

An independent tribunal ruled that accounting firm Deloitte "failed to discharge its public interest duty" when auditing technology firm Autonomy between 2009 and 2011. Autonomy was purchased by Hewlett-Packard for $11bn in 2011, after which its value was written down by $8.8bn. A fine of £15m is expected to be levied on Deloitte.

Four Wirecard executives held on suspicion of fraud.

Oliver Bellenhaus became the second Wirecard executive to be arrested over suspicion of fraud that led to the collapse of the former German fintech champion with €1.9bn of missing cash. Mr Bellenhaus joined former Chief Executive Marcus Braun under arrest. Mr Bellenhaus ran the unit at the heart of the alleged fraud – CardSystems Middle East – the Wirecard subsidiary operated from Dubai's Burj Khalifa. Wirecard's former finance boss and the head of accounting have also been arrested. It is believed that a multiyear fraud started in 2015 with revenues being inflated that eventually resulted in the revelation of €1.9bn of cash on the books that did not exist in 2020.

Grant Thornton fined £3m over ethical and objectivity failures.

Accounting firm Grant Thornton was fined £3m by UK regulator the Financial Reporting Council (FRC). The fine related to failures in ethics and objectivity in its work done for drinks retailer Conviviality around its listing on AIM in 2014. The partner on the Conviviality audit instructed a manager to conceal the fact that she had worked on the audit as she had also taken a role advising and assisting the firm in preparing its financial statements. Grant Thornton agreed to improve its ethical controls including establishing an ethics board.

Deutsche agrees to $150m fine for compliance failings in dealing with Epstein.

Deutsche Bank agreed a $150m fine with the New York State Department of Financial Services. The German bank had processed millions of dollars of potentially suspicious transactions for convicted sex offender Jeffrey Epstein including payments to alleged co-conspirators and $800,000 of suspicious cash withdrawals. "Onboarding (Epstein) as a client was a critical mistake and should never have happened" said Deutsche's Chief Executive Christian Sewing.

FCA strengthens guidance for payment providers and e-money issuers.

The UK's Financial Conduct Authority (FCA) issued new guidance requiring payment providers and e-money issuers to keep up-to-date records of all funds received and to maintain a separate "safeguarding account" for customer money. The guidance was issued just following the collapse of Germany's Wirecard that saw the FCA order its UK subsidiary to suspend operations and keep customer money safely in the UK.

ESG concerns see Standard Life Aberdeen sell down its Boohoo holding.

Standard Life Aberdeen cited concerns about environmental, social and governance (ESG) issues to justify selling its shareholdings in fast fashion retailer Boohoo. Boohoo has been the subject of adverse publicity questioning its supply chain involving staff paid below minimum wage and suffering poor working conditions.

Apple wins latest battle over EU back taxes.

EU judges in the General Court concluded that Apple did not have to pay €14.3bn in back taxes that had been demanded by the EU competition commissioner. The commission made the demand based on a 'sweetheart' tax deal with Ireland for over ten years that it felt amounted to illegal state aid. The court decision said Brussels had not succeeded in showing "the requisite legal standard". The EU is expected to appeal to the higher-level European Court of Justice.

Emirates REIT being investigated and considering delisting.

Dubai-based Emirates REIT is considering delisting from Nasdaq Dubai as it faces an investigation by the Dubai Financial Services Authority (DFSA). The DFSA is investigating allegations of wrongdoing that appear to relate to valuation and corporate governance. The REIT's board is considering a delisting to close the gap between the share price and the net asset value of the property vehicle.

US regulator fines Citadel Securities for trading breaches.

Finra, the US regulator, fined Citadel Securities $700,000 for trading ahead of customer orders in the over the counter market. A review of trading found five-hundred and fifty-nine instances of the firm trading ahead of four-hundred and fifteen OTC orders in a sample month of February 2014.

US Teachers' pension fund sues fund manager over $800m loss.

The Arkansas Teacher Retirement System filed a lawsuit against Allianz Global Investors claiming that the fund manager 'recklessly' gambled with its money and lost, abandoning risk controls and losing $800m. The losses occurred in Allianz's 'Alpha' funds.

US SEC consults on lowering the disclosure requirements of activist stakes.

The US Securities and Exchange Commission (SEC) issued a sixty-day consultation on a proposed rule change that will increase the level at which investors need to disclose holdings each quarter from the current $100m or more of SEC-registered securities, to $3.5bn or more.

Morgan Stanley places restrictions on its Chinese interns.

US investment bank Morgan Stanley has blocked its interns in China from logging on remotely to its virtual network. The block reflects concerns over China's tough cyber security rules that could see the bank as a target for enforcement.

Goldman settles over 1MDB scandal.

Goldman Sachs agreed a $3.9bn settlement with Malaysia over the corruption scandal surrounding state investment fund 1MDB. Goldman will pay $2.5bn to the Malaysian government and guarantee that the state will receive at least $1.4bn from the sale of seized assets acquired from the funds misappropriated from 1MDB.

Steinhoff offers $1bn to settle with investors.

Steinhoff, the South African conglomerate listed in Johannesburg and Frankfurt, offered $1bn to investors to settle a legal battle. Former Steinhoff executives had inflated profits and assets by more than $6bn for several years and the offer is to settle lawsuits by investors seeking recompense.

Brussels planning research fees exemptions for small caps and fixed income.

European Commission regulators in Brussels have proposed a series of rule changes to its MiFID II regulations including the removal of the research unbundling requirement for small caps and fixed income. The Commission is proposing an exemption for companies with an equity market capitalisation of less than €1bn to encourage analyst coverage, and an exemption for fixed income research where payment is reflected in a wider bid/ask spread.

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