International Enforcement Assistance

Enforcement cooperation is among the top priorities of the SEC's international program. Technological advances have facilitated the movement of capital across borders and increased investment opportunities for investors. However, these same advances also have enhanced the ability of those who prey on investors to transfer assets abroad or base their scams and fraudulent activities overseas in an effort to avoid detection and prosecution. As a consequence, securities regulators and other law enforcement and governmental agencies may find that reliance on domestic enforcement abilities is no longer sufficient to combat cross-border securities fraud. Strong international cooperation is vital to the quick, effective and appropriate resolution of international enforcement investigations.

Topics:

- **SEC Framework for International Cooperation and Assistance**
  - Use of Compulsory Powers
  - Access to Information in the SEC’s Files
  - Public Information
  - Confidentiality of Information

- **Mechanisms for Information Sharing in Securities Enforcement Matters**
  - IOSCO Multilateral Memorandum of Understanding
  - Bilateral Memoranda of Understanding
  - Ad Hoc & Other Arrangements for International Enforcement Cooperation

- **How a Foreign Securities Authority Can Request Assistance**

- **SEC International Enforcement Cases**
  - Insider Trading
  - Securities Fraud
  - Market Manipulation
  - Foreign Corrupt Practices Act
The SEC was among the first securities regulators to receive the legal authority to assist foreign counterparts in investigations of securities fraud. Today, the SEC can assist foreign securities authorities in their investigations using a variety of tools, including exercising the SEC’s compulsory powers to obtain documents and testimony, subject to the governing rules.

Use of Compulsory Powers

Section 21(a)(2) of the Securities Exchange Act of 1934, authorizes the SEC to conduct investigations on behalf of foreign securities authorities (as defined by the Exchange Act) and compel the production of documents and testimony from any person and entity, irrespective of whether that person or entity is regulated by the SEC. Section 21(a)(2) provides:

On request, the Commission may provide assistance in accordance with this paragraph if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws or rules relating to securities matters that the requesting authority administers or enforces. The Commission may, in its discretion, conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States. In deciding whether to provide such assistance, the Commission shall consider whether (A) the requesting authority has agreed to provide reciprocal assistance in securities matters to the Commission; and (B) compliance with the request would prejudice the public interest of the United States.

Subject to certain considerations including a foreign securities authority’s ability to provide reciprocal assistance, whether fulfillment of the request would prejudice the public interest, and appropriate assurances of confidentiality, the SEC may in its discretion:

- Assist a wide range of authorities that meet the broad statutory definition of "foreign securities authorities" as defined in Section 3 (a) (50) of the Securities Exchange Act of 1934.

- Provide assistance regardless of whether the conduct in question constitutes a violation of US law.

Access to Information in the SEC’s Files

The SEC has the ability to provide access to non-public information in its files with foreign persons. Section 24(c) of the Exchange Act and 17 C.F.R. § 240.24c-1 (Rule 24c-1) thereunder provide that the Commission may, in its discretion and upon a showing that such information is
needed, provide such non-public information in its possession to specified foreign persons. The authority requesting such non-public information must establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of files to which access is granted and information derived therefrom, and provide assurances of confidentiality to the Commission, including assurances that the authority will:

- make no public use of these files or information without prior approval of SEC staff;

- notify the SEC of any legally enforceable demand for the files or information prior to complying with the demand, and assert such legal exemptions or privileges on the SEC’s behalf as it may request; and

- not grant any other demand or request for the files or information without prior notice to and lack of objection by SEC staff.

Public Information

The SEC website provides direct access to certain public information regarding the registration status and disciplinary history of SEC-registered entities (subject to SEC supervision and examination authority) such as broker-dealers and investment advisers, as well as certain public information about public companies that register their stock and other securities with the SEC for public issuance, offer and sale to investors. Please refer to the attached resource list for information on where to access this information.

Confidentiality of Information

Section 24(d) of the Securities Exchange Act of 1934 statutorily exempts the SEC from disclosing to third parties confidential information it obtains from a foreign securities authority in response to a Freedom of Information Act request. Section 24(d) provides that, except in certain circumstances, the Commission shall not be compelled to disclose records obtained from a foreign securities authority if (1) the foreign securities authority has in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that foreign securities authority, and (2) the Commission obtains such records pursuant to (A) such procedure as the Commission may authorize for use in connection with the administration or enforcement of the securities laws, or (B) a memorandum of understanding.

In addition, Section 24(f) (2) of the Securities Exchange Act of 1934 provides the Commission with statutory authority to protect privileged information obtained from any foreign securities authority or foreign law enforcement authority from disclosure, if the authority has in good faith determined and represented to the Commission that the information is privileged. Section 3(a) (50) of the Securities Exchange Act of 1934 defines a “foreign securities authority” as “any foreign government, or governmental authority or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to security matters.” Section 24(f) (4) (B) of the Securities Exchange Act of 1934 defines a “foreign law enforcement authority” as “any foreign..."
authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law.”

**Mechanisms for Information Sharing in Securities Enforcement Matters**

The SEC has approached enforcement-related information sharing on a multilateral, bilateral, and *ad hoc* basis. Multilateral and bilateral information sharing arrangements operate on the basis of memoranda of understanding (MOU) between securities authorities. Such MOUs delineate the terms of information-sharing between and among MOU signatories and create a framework for regular and predictable cooperation in securities law enforcement. Multilateral and bilateral MOUs detail the scope and terms of information-sharing among securities regulators.

In addition to multilateral, bilateral, and *ad hoc* understandings, the SEC also uses other mechanisms to facilitate information sharing, such as requests to foreign criminal authorities through mutual legal assistance treaties (MLATs) administered by the US Department of Justice, formal letters rogatory between a US court and foreign judicial authorities.

In fiscal year 2011, the SEC made 772 requests to foreign authorities for enforcement assistance and responded to 492 requests from foreign authorities.

**IOSCO Multilateral Memorandum of Understanding**

In 2002, the International Organization of Securities Commissions (IOSCO) created a Multilateral Memorandum of Understanding (MMOU), the first global multilateral information-sharing arrangement among securities regulators. The SEC was among the first signatories to the MMOU. As of 2012, 80 securities and derivatives regulators had become signatories to the MMOU and 34 additional IOSCO members had expressed their commitment to become signatories. (IOSCO Members).

Pursuant to the MMOU, signatories agree, among other items, to provide certain critical information, to permit use of that information in civil or administrative proceedings, to onward share information with self-regulatory organizations and criminal authorities, and to keep such information confidential. In particular, the MMOU provides for the following:

- Sharing information and documents held in the regulators’ files;
- Obtaining information and documents regarding transactions in bank and brokerage accounts, and the beneficial owners of such accounts;
- Taking or compelling a person's statement or, where permissible, a person's testimony.

The MMOU has significantly enhanced the SEC’s enforcement program by increasing and expediting the SEC’s ability to obtain information from a growing number of jurisdictions worldwide. Moreover, the MMOU has created incentives for jurisdictions that lack the legal ability to engage in
effective information sharing to enact legislation that will enable them to do so.


Membership in the MMOU is conditioned upon an objective showing of a jurisdiction’s legal authority to comply with the key provisions. IOSCO has established verification teams to review applications, and the SEC participates in this review. Further information regarding IOSCO Membership and how to apply to be an MMOU Signatory is available on the IOSCO website.

Bilateral Memoranda of Understanding

Before the establishment of the IOSCO MMOU, the SEC signed bilateral information sharing MOUs with the securities authorities of 20 different countries. Bilateral MOUs have proven crucial to investigations undertaken by the Commission’s enforcement staff and, as such, the SEC considers these bilateral arrangements to be an excellent supplement to the information sharing mechanism of the IOSCO MMOU. In light of the IOSCO MMOU, the SEC staff now strongly recommends the negotiation of bilateral MOUs only if a foreign securities authority is empowered to provide assistance beyond that required by the IOSCO MMOU such as the ability to compel testimony or the gathering of Internet service provider, phone and other records other than bank, broker, and beneficial owner information on behalf of the requesting authority. See the Enhanced Enforcement Memorandum of Understanding between the SEC and the Australian Securities and Investments Commission dated August 25, 2008.

Generally, the bilateral MOUs contain detailed provisions on use and confidentiality of information. The assistance available under the current MOUs varies in scope depending on the underlying statutory authority of the regulators that are party to the MOU.

Ad Hoc & Other Arrangements for Enforcement Cooperation

Although MOUs and the MMOU facilitate enforcement cooperation, such arrangements are not a prerequisite for the SEC to cooperate with foreign authorities regarding enforcement matters. The SEC also has cooperated on an ad hoc basis with foreign regulators with whom it has no bilateral MOU or who are not yet signatories to IOSCO MMOU. In the past, such ad hoc arrangements have included communiqués and joint statements that express a desire to develop greater enforcement cooperation capabilities. The SEC also has entered into undertakings for the exchange of information where existing law in the foreign jurisdiction prevents information sharing to the extent set forth in the IOSCO MMOU.

How a Foreign Securities Authority Can Request Assistance

Each year, the SEC receives hundreds of requests from foreign securities authorities for assistance with cross-border investigations. Many of these
requests come from jurisdictions with whom the SEC interacts frequently and with whom the SEC has an MOU. Such MOUs, including the IOSCO MMOU, outline how requests for assistance should be made. We recognize that foreign securities authorities, with whom the SEC may not frequently interact, may have questions regarding the preferred format and content of requests for enforcement assistance. Such authorities may wish to refer to Appendix C to the IOSCO MMOU (APPENDIX C). Subject to certain considerations as set forth in Section 21 (a)(2) of the Securities Exchange Act of 1934 and subject to appropriate assurances of confidentiality, the SEC will review all incoming requests for assistance to determine if assistance may be granted. Questions may be directed to OIAEnforcement@sec.gov.

**SEC International Enforcement Cases**

Recent enforcement cases with significant international aspects are listed below. Some of the cases listed below only reflect actions at the time of the initial filing of the case. Certain of the litigation releases, which are linked below, describe allegations of violations of federal securities law. Such allegations do not constitute a determination that the defendants named in the SEC's case have committed such violations. Further information about the status of cases can be obtained by referring to our index of Litigation Releases.

**Insider Trading**

- **SEC v. One or More Unknown Traders in Securities of H.J. Heinz Acquisition**, Civil Action No. 13-CIV-1080 (S.D.N.Y)(filed 2013); LR-22620 (assistance provided by the Swiss Financial Market Supervisory Authority)

- **In the Matter of JP Morgan Chase & Co. and the London Whale**, Civil Action No. 13-CV-5677 (S.D.N.Y.) (filed 2013); Press Release; See also LR-22779 (assistance provided by the United Kingdom Financial Conduct Authority)

- **SEC v. Arnold McClellan and Annabel McClellan**, Case No. CV-105412 (JCS) (N.D. Cal.) (filed November 2010) (alleged international insider trading scheme) LR-21758


- **SEC v. Juan Jose Fernandez Garcia and Luis Martin Caro Sanchez**, Case No. 10 C 5268 (N.D. Ill.) (filed August 2010) (assets of two Madrid-based traders frozen in connection with alleged insider trading in call options) LR-21631

- **SEC v. Samuel E. Wyly, et al.**, Civil Action No.10-CV-5760 (SAS) (S.D.N.Y.) (filed July 2010) (alleged fraudulent scheme involving use of an elaborate sham system of trusts and subsidiary companies located in the Isle of Man and the Cayman Islands) LR-21607

• **SEC v. Stanko J. Grmovsek**, Case No. 09-9029 (Judge McMahon) (S.D.N.Y.) (filed October 2009) (alleged insider trading scheme by Canadian citizen) LR-21263


### Securities Fraud

• **SEC v. CKB168 Holdings Ltd., et al.**, (E.D.N.Y.) (filed 2013) Civil Action No. 13-5584; (assistance provided by the Hong Kong Securities and Futures Commission, the Ontario Securities Commission, the British Columbia Securities Commission, and the Malaysia Securities Commission) LR-22846


• **SEC v. Gibraltar Global Securities Inc. and Warren A. Davis**, (S.D.N.Y.) (filed 2013) Civil Action No. 13 Civ 2575; LR-22683 (assistance provided by the Alberta Securities Commission, the British Columbia Securities Commission, and the Bahamas Securities Commission)

• **SEC v. Juno Mother Earth Asset Management, LLC, Eugenio Verzili and Arturo Allan Rodriguez Lopez**, Civ. No. 11-CV 1778 (S.D.N.Y.) (filed March 2011) (alleged fraud in hedge fund involving entity in Cayman Islands) LR-21886

• **SEC v. Francisco Illarramendi, Highview Point Partners, LLC and Michael Kenwood Capital Management, LLC (Defendants) and Highview Point Master Fund, Ltd., Highview Point Offshore, Ltd., Highview Point LP, Michael Kenwood Asset Management, LLC, Michael Kenwood Energy and Infrastructure, LLC and MKEI Solar, LP (Relief defendants)**, filed Civil Action No. 3:11cv00078 (D. Conn., January 14, 2011) (alleged fraudulent misuse of investor assets involving a Venezuelan accountant) LR-22015, LR-21970, LR-21875, LR-21828

• SEC v. Imperia Invest IBC, Civil Action No. 2:10-cv-00986-B (D. Utah) (filed October 2010) (alleged internet-based offering defrauding more than 14,000 investors worldwide) LR-21686


• SEC v. Seisma Oil Research, LLC (a/k/a Seisma Energy Research, LLC), Seisma Energy Research, AVV (a/k/a Seisma Oil Research, AVV), Permian Asset Management, AVV and Justin Solomon, Civil Action No. 5:10-CV-95 (NDTX)(filed June 2010) (alleged fraud in international sale of oil and gas investments) LR-21562

• SEC v. Jose O. Vianna, Jr. and Creswell Equities, Inc., Case No. 10 Civ. 1842 (GBD) (S.D.N.Y.) (filed March 2010) (alleged scheme to divert profitable trades from a Spanish bank to a British Virgin Islands company) LR-21704, LR-21446


• SEC v. Thomas J. Petters, Gregory M. Bell and Lancelot Investment Management LLC, Defendants, and Inna Goldman, Inna Goldman Revocable Trust, Asia Trust Ltd., Blue Sky Trust, and Gregory Bell Revocable Trust, Relief Defendants, Civil Action No. 09 SC 1750 ADM/JSM (D. Minn.) (filed July 2009) (final judgment in Ponzi scheme involving millions of dollars transferred to an account in Switzerland) LR-21697, LR-21245, LR-21124


• SEC v. FTC Capital Markets, Inc., FTC Emerging Markets, Inc. also d/b/a FTC Group, Guillermo David Clamens and Lina Lopez a/k/a Nazly Cucunuba Lopez, 09 Civ. 4755(PGG) (S.D.N.Y.) (filed May
2009) (alleged fraudulent scheme to pay off fictitious bonds and to hide assets offshore) **LR-21646, LR-21052, LR-21093**

**Market Manipulation**


- **SEC v. Alexis Ampudia, a/k/a Alexis Geancarlos Ampudia Navalo, a/k/a Alexis Emias, a/k/a Alexis Rojas**, Civil Action No. 07-CV-2762 (HB) (S.D.N.Y) (filed June 2009) (final judgement in action involving manipulation of numerous securities by Panamanian citizen) **LR-21071, LR-20098, LR-20071**

**Foreign Corrupt Practices Act**

- **In the Matter of Total S.A., Press Release** (assistance provided by French regulatory authorities)


- **SEC v. Panalpina, Inc.,** Civil Action No. 4:10-cv-4334 (S.D. Texas) (filed November 2010) (alleged bribery of foreign officials in Nigeria, Angola, Brazil, Russia, and Kazakhstan) **LR-21727**


- **SEC v. Transocean Inc.,** Civil Action No. 1:10-CV-01891 (JDB) (D.D.C.) (filed November 2010) (settlement in action involving alleged bribery of Nigerian government officials) **LR-21725**

- **SEC v. ABB Ltd,** Civil Action No. 1:10-CV-01648 (DDC) (PLF) (filed September 2010) (settlement in action involving alleged bribery schemes in Mexico and Iraq to obtain contracts) **LR-21673**


Complaints Regarding Securities Law Violations in the US Marketplace

Investors that are located outside of the United States should contact the SEC’s Office of Investor Education and Advocacy with questions, complaints or enforcement tips related to US investments or concerning US brokers, advisers or public companies. In addition, the SEC Center for Complaints and Enforcement Tips provides online forms through which foreign investors may share information with the SEC regarding violations of US securities laws.

http://www.sec.gov/about/offices/oia/oia_crossborder.shtml