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Bridging the Weeks: December 18, 2017 – January 5 and January 8, 2018 (Self-Certification; NY BitLicenses; Texas C&D; Trading Adverse to Employer)

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Cryptocurrencies continued to be the focus of legal and regulatory developments in the financial services industry at the end of 2017 and the beginning of 2018. Last week, the Commodity Futures Trading Commission issued a "Backgrounder" again providing its perspective on the self-certification by three exchanges of cash-settled derivatives contracts based on Bitcoin on December 1, 2017. Moreover, in the last few weeks two lawsuits were dismissed—one challenging the authority of the New York Department of Financial Services to require a so-called “BitLicense” for a person engaged in a virtual currency business, and another that attacked the possible issuance by the Office of the Comptroller of the Currency of so-called “fintech charters.” Meanwhile, last week, the State of Texas issued a cease and desist order against a UK-based cryptocurrency-issuing company in connection with various digital currency-based investment programs and a proposed initial coin offering. As a result, the following matters are covered in this week’s edition of *Bridging the Weeks*:

- CFTC Issues Explanation of Its Oversight and Approach to Virtual Currency Markets; Texas Securities Board Enjoins Initial Coin Offering (includes **My View** and **Legal Weeds**);
- CME Sanctions Nonmember for Trading Adverse to Employer and Multiple Persons for Disruptive Trading (includes **Compliance Weeds**);
- FINRA Fines One Broker-Dealer US $2 Million for Flawed Email Review System, and Another Broker-Dealer US $2.8 Million for Inadequate Segregation of Customer Securities (includes **Compliance Weeds**); and more.

In respect of the Martin Luther King, Jr. Day holiday in the US on January 15, the next edition of *Bridging the Week* will be published on January 16.

Briefly:

- **CFTC Issues Explanation of Its Oversight and Approach to Virtual Currency Markets;**

Texas Securities Board Enjoins Initial Coin Offering: The Commodity Futures Trading Commission issued a “Backgrounder” last week, summarizing its oversight and approach to futures contracts based on virtual currencies.

The Commission specifically reviewed the process that led to the self-certification by the Chicago Mercantile Exchange and the CBOE Futures Exchange of cash-settled Bitcoin futures contracts, and by the Cantor Exchange of a Bitcoin binary options contract on December 1. (Click here for background on these self-certifications in the article “Three CFTC-Regulated Exchanges Self-Certify Bitcoin Derivatives Contracts” in the December 3, 2017 edition of *Bridging the Week*.) Both the CME and CBOE Bitcoin futures contracts commenced trading during December 2017.

Among other things, the CFTC noted that, in connection with the self-certification process, existing law does not authorize public input. Moreover, there are “limited grounds” for the CFTC to stop a self-certification. One such ground is that a DCM has filed a false statement; however, claimed the CFTC, “[i]n the case of the CME and CFE self-certifications, no such grounds were evident.” The Commission also suggested that, even had it held a public hearing or requested public input regarding the December 1 self-certified Bitcoin contracts, “it is unlikely that the outcome would have changed, as the CFTC staff found no basis to determine [the exchanges’] filings to be inconsistent with [applicable law] or CFTC regulations.”

However, the CFTC revealed that, “[w]ithin the limits and parameters of the current self-certification process” the Commission staff has conducted a “heightened review” of Bitcoin futures contracts. This review included checking for (1) derivative clearing organizations establishing “substantially high” initial and maintenance margin requirements for such instruments; (2) DCMs implementing large trader reporting obligations at five Bitcoins or less; (3) DCMs instituting information sharing arrangements with Bitcoin spot markets so they may access trade and trader data; and (4) DCMs monitoring Bitcoin spot market data regarding price settlements and other prices to identify “anomalies and disproportionate moves” between Bitcoin futures contracts and the spot markets, among other measures.

The CFTC previously issued a Backgrounder discussing its jurisdiction over derivatives based on virtual currencies and its self-certification of the three exchanges' cash-settled derivatives contracts on December 1, 2017 (click here to access). The current Backgrounder expands on elements of the Commission's prior writing.

A meeting of the Commission’s Market Risk Advisory Committee on January 31 will expressly consider the process of new product self-certification by DCMs, among other topics. A meeting of the CFTC’s Technology Advisory Committee will be held on January 23 that will address, among other matters, market developments, challenges and opportunities regarding virtual currencies.

Separately, during the prior few weeks:

- Challenges to NY BitLicense and Potential OCC Fintech Charter Quashed: A challenge to New York’s so-called “BitLicense” requirements was dismissed by a New York court on the grounds that petitioner Theo Chino lacked standing to assert such an objection. Mr. Chino sued the NY Department of Financial Services in October 2015 after he submitted an application for a virtual currency license in August 2015 that ultimately was returned by DFS in January 2016 “because it contained ‘extremely limited’ information” that the DFS said did not allow it to sufficiently evaluate Mr. Chino’s application. Mr. Chino claimed, among other things, that DFS only had authority to regulate financial products and services and that the oversight of virtual currency business activity fell outside this mandate. The court held that Mr. Chino abandoned his application process and failed to exhaust his administrative remedies prior to filing his litigation, and thus "there is nothing for this Court to review." (Click here for a copy of the court's decision.) Similarly, a US federal court in New York dismissed a challenge by the DFS to the authority of the Office of the Comptroller of the Currency to grant special-purpose national bank charters to financial technology companies. Since August 2015, OCC has been considering granting fintech charters to entities that engage in cryptocurrency and distributed ledger businesses. However, the court rejected DFS's lawsuit, claiming that OCC has not yet finalized its decision and thus the court did not have standing to consider OCC's's potential actions at this time, among other rationale. (Click here to access a copy of the court's decision.)

- Texas Enjoins ICO, NASAA Warns About Cryptocurrencies and More ICO Private Lawsuits Filed: The Texas State Securities Board issued an emergency cease and desist order against Bitconnect, a UK-based cryptocurrency-issuing company, in connection with various digital currency-related investment programs and a proposed initial coin offering (click here to access the order). The Securities Board claimed that the investment programs were securities that were not registered with it, as required, and that the firm engaged in fraud and made materially misleading statements in connection with the offer or sale of the securities. Separately, the North American Securities Administrators Association—comprising representatives of all US state securities regulators—issued an investor advisory regarding the risks of investing in ICOs and cryptocurrencies (click here to access the advisory). Additionally, more private lawsuits were filed against backers of ICOs. Among actions filed was a purported class action lawsuit by Stormsmedia, LLC against Giga Watt, Inc. and other defendants in a federal court in Washington state and a purported class action lawsuit by Andrew Hodges and other plaintiffs against Monkey Capital, LLC in a federal court in Florida. Both actions alleged the illegal sale of unregistered securities among other wrongdoings. (Click here to access a copy of the Stormsmedia complaint, and here for Andrew Hodges's complaint.) Previously, a number of purported class action lawsuits have been filed against backers of the Tezos ICO. (Click here for background in the article "Second Lawsuit Against Tezos ICO Backers Filed; CME Group Schedules Testing of US Dollar Futures Contract Based on Bitcoin" in the November 19, 2017 edition of *Bridging the Week*.)

- NFA Virtual Currency Reporting Obligations: The National Futures Association implemented new reporting requirements for futures commission merchants for which the NFA serves as the designated self-regulatory organization, and all commodity trading advisors, commodity pool operators and introducing brokers handling transactions involving certain virtual currency products.

Since December 6, 2017, relevant FCMs were required to immediately notify the NFA if they determined to offer their customers or non-customers the ability to transact any virtual currency futures product. This notice was required to be given to a relevant FCM's examination manager by email. Additionally, beginning December 12, 2017, all FCMs for which the NFA serves as their DSRO were required to provide certain information on a daily basis to the NFA on their daily segregation report regarding the number of their customers and non-customers who traded virtual currency futures contracts and their gross open virtual currency futures positions.

Similarly, since December 14, CTAs and CPOs were required to immediately notify the NFA after they executed their first transaction involving either a virtual currency or a virtual currency derivative for a pool or managed account by amending the firm-level section of their annual questionnaire. In addition, beginning for the first calendar quarter of 2018, and for each calendar quarter afterwards, CTAs and CPOs must identify the number of their pools or managed accounts that execute one or more virtual currency or virtual currency derivatives transactions during the quarter by no later than 15 days after the end of the quarter. This information should be submitted through the firm's annual questionnaire. Similar obligations have been instituted for IBs but they only pertain to virtual currency derivatives. (Click here to access NFA's requirements for FCMs; here, for CTAs and CPOs; and here, for IBs.)

- CBOE and NYSE Seek to List Bitcoin Futures ETFs: The Chicago Board Options Exchange requested the Securities and Exchange Commission grant it authority to list six Bitcoin futures exchange-traded funds. The SEC formally requested public comment to such requests on December 28, 2017, and January 2, 2018. (Click here and here to access the SEC announcements.) The New York Stock Exchange has also requested authority to list two Bitcoin futures ETFs. (Click here to access the NYSE filing.) Last year the SEC refused to approve a proposed rule change by the Bats BZX Exchange, Inc. to list and trade shares of the Winklevoss Bitcoin Trust, whose pricing was to be based on the prices of a spot Bitcoin exchange related to the Trust (click here for details).

- More Bitcoin Derivatives Coming: Seed CX Ltd, a CFTC-registered swap execution facility, announced that Bittrex Inc., a US-based spot cryptocurrency exchange, had acquired a controlling stake in it. Subject to CFTC approval, Seed CX indicated that it would offer forwards and options on established virtual currency and fiat pairs. (Click here for a copy of the Seed press release.)

- South Korean Cryptocurrency Exchange Files for Bankruptcy: Various media reported that Youbit, a South Korea-based cryptocurrency exchange, filed for bankruptcy on December 19 (click here for a sample article). The filing occurred after the exchange was hacked for a second time, causing it to lose almost 20 percent of its digital currencies.

My View and **Legal Weeds**: Without taking a view, the CFTC noted in its Backgrounder the "multifaceted, multi-regulatory approach" to the regulation of cryptocurrencies in the United States. I am more direct; I call the cryptocurrency regulatory landscape a hodgepodge, or more precisely, a mess. Ultimately, such an approach is not healthy and could impede the evolution of cryptocurrencies and blockchain technologies.

As I have written previously, under relevant law, the CFTC has exclusive jurisdiction over all options and transactions involving swaps or contracts of sale of a commodity for future delivery traded or executed on a regulated futures exchange (known as a designated contract market) or on a regulated swaps trading facility (known as a swap execution facility; click here to access 7 U.S.C. § 2(a)(1)A)). Moreover, the definition of commodity under applicable law is very broad. Generally, a commodity is defined as (1) any of certain enumerated traditional commodities (e.g., wheat, cotton, soybeans, livestock and livestock products); (2) all other goods and services (except onions and motion picture box office receipts); and (3) all services, rights and interests (except as related to motion picture box office receipts) in which contracts for future delivery are now or in the future dealt in. (Click here to access 7 U.S.C. § 1a(9).)

Persons handling financial instruments under the CFTC's exclusive jurisdiction typically have requirements and obligations under law (e.g., registration with the CFTC) and the same requirements cannot be imposed by other regulators.

Outside the CFTC's exclusive jurisdiction, nothing supersedes or limits the jurisdiction of the SEC or other federal or state regulatory authorities. What this means at the highest level is that if a financial instrument involves a derivative based on an asset that is a commodity but not also a security, the derivative likely will be subject to the CFTC's exclusive jurisdiction. If a financial instrument involves a security with no futurity, it is likely regulated solely by the SEC and/or the states. (The Financial Crimes Enforcement Network of the US Department of Treasury and states may also regulate non-bank entities that engage in certain exchange- or custody-type activities involving virtual currencies.)

A problem with this bifurcated jurisdictional oversight arises when a financial instrument has elements of both securities and futures or swaps—for example, a futures contract on a broad-based stock index futures, a futures contract on a narrow-based stock index futures contract, or a futures contract based on an individual stock.

These hybrid products gave rise to jurisdictional court battles involving the SEC and CFTC in the CFTC's early days (after it was created in 1974) that initially were resolved by a voluntary accord between the agencies in 1981 and shortly afterward by Congress. (Click here for background regarding the jurisdictional disputes and resolutions between the SEC and CFTC in "A Joint Report of the SEC and CFTC on Harmonization of Regulation" dated October 16, 2009, at pages 15-17.)

Now most potential jurisdictional issues related to futures and swaps based on securities have been resolved by law and there are relatively clear rules. For example, futures based on broad?based indices are within the exclusive jurisdiction of the CFTC while futures based on narrow-based indices and individual securities—termed "security futures"—are under the joint jurisdiction of the SEC and CFTC. (Click here for a general background on the regulation of security futures products.) An equivalent division of jurisdiction has been established for swaps and security-based swaps.

But application of the jurisdictional rules between the CFTC and SEC requires an initial assessment as to whether the derivative's underlying asset is a security or not. If it's not, the CFTC has exclusive jurisdiction over the derivative and a host of requirements potentially follow, and SEC (and state) oversight is excluded. Sometimes, however, the nature of an underlying asset to a derivative can change over time and the result can shift principal jurisdiction over the derivative from the CFTC to the SEC or from the SEC to the CFTC. (Click here for an example of this in the Report of Investigation by the SEC Pursuant to Section 21(a) of the Securities and Exchange of 1934: Eurex Deutschland.)

The characteristic of some cryptocurrencies is similar to those of chameleon-like securities-related futures products that change their characteristics over time. First, in some cases, it is not clear what a cryptocurrency was in the first instance. Digital tokens may, like Bitcoin, be a pure virtual currency, which are rewarded to miners for their services and principally serve as a store of value, unit of account or a medium of exchange. Or cryptocurrencies may have initially been offered and sold as, and designed with a purpose similar to, a security but morph over time into a medium of exchange. Ether, for example, the digital token associated with Ethereum, appears to be a digital token with these characteristics as it began as a crowd sale in 2014, where participants purchased what effectively were shares in the Ethereum development project; today, Ethereum is mostly regarded as a medium of exchange. Currently, almost no one would consider Ether a security despite its characteristics at birth.

As a result, because of the ambiguous nature of cryptocurrencies in the first instance and their sometime changing purpose over time, it is imperative that potential jurisdictional issues between the CFTC and SEC be sorted out sooner not later!

- **CME Sanctions Nonmember for Trading Adverse to Employer and Multiple Persons for Disruptive Trading**: Yumin Li settled a disciplinary action brought by the Chicago Mercantile Exchange for engaging in multiple round turn transactions between an account of her employer, Tanius Technology LLC, and an account of Kering Capital Ltd.—a company formed by Ms. Li's mother—causing the Kering account to profit and the Tanius account to sustain losses in an equivalent amount. The alleged trading occurred from March 17, 2015, through May 6, 2015, and was previously the subject of an enforcement action by the Commodity Futures Trading Commission against Ms. Li and Kering. (Click here for background in the article "Mom's Company Was Beneficiary of Illicit Money Pass Using Noncompetitive Trades Rules Court in CFTC Lawsuit" in the December 18, 2016 edition of *Bridging the Week*.)

To resolve the CME's disciplinary action, Ms. Li agreed to serve a six-year all CME Group exchanges access prohibition, as well as other penalties. In the CFTC enforcement action, the US federal court in Illinois hearing the matter ordered disgorgement of US $300,462 by Kering, and a civil penalty of $901,387 jointly and severally against Ms. Li and Kering. Ms. Li was also subjected to a five-year trading ban. Ms. Li was not a member of the CME at the relevant time.

Separately, Marc Michelotti agreed to pay an aggregate fine of US $80,000 and disgorge profits of US $11,900 to resolve three separate disciplinary actions by CME, the Chicago Board of Trade and the New York Mercantile Exchange. The exchanges alleged that, at various times from January 2015 through January 2016, Mr. Michelotti entered and cancelled orders in Lumber, Rough Rice, Oats and RBOB Gasoline futures contracts without the intent to trade. The exchanges claimed that Mr. Michelotti entered multiple one-lot orders on one side of the market to narrow the prevailing bid/ask spread and create the appearance of an imbalance in buy/sell pressure. As other traders joined the market on the side of the one-lot orders, Mr. Michelotti would enter an aggressive order on the other side of the market that would take out traders who had joined the side of his one-lot orders. Mr. Michelotti would then cancel his resting one-lot orders, claimed the exchanges. The exchanges alleged that Mr. Michelotti's conduct violated CME Group's prohibition against disruptive trading practices. (Click here to access CME Group Rule 575A.)

Andrey Skripko agreed to pay a fine of US $45,000 and serve a 10-business-day all CME Group exchanges trading suspension to settle disciplinary action brought by the Commodity Exchange, Inc. for entering large orders on one side of the silver and gold futures markets in order to obtain fills on smaller resting orders on the other side. Comex claimed that Mr. Skripko's alleged wrongful trading occurred on multiple occasions in September 2016. Relatedly, RWE Supply & Trading GMBH—Mr. Skripko's employer—agreed to settle a separate disciplinary action brought by COMEX related to Mr. Skripko's conduct by disgorging profits of US $18, 841. Comex charged that RWE was strictly liable for Mr. Skripko's conduct.

Finally, J&P Capital Management Co., Ltd, agreed to pay an aggregate fine of US $75,000 to resolve disciplinary actions brought by CME and Comex. The exchanges alleged that on various dates from December 2015 through February 2016, two J&P Capital employees engaged in matching buy and sell orders of various futures contracts in accounts over which the firm maintained ownership and control for the purpose of liquidating open positions to avoid delivery. The two employees—Jia Wang and Jiayi Lu—also each agreed to pay total fines of US $10,000 and to serve a 10-business-day all

CME Group exchanges trading suspension to resolve parallel disciplinary actions brought against them.

Compliance Weeds: The Yumin Li fact pattern resonates with similarity to two recent enforcement actions by the Commodity Futures Trading Commission charging persons with insider trading for misappropriating trading information. In the first action brought in 2015, the CFTC alleged that Arya Motazedi, a gasoline trader for a large publicly traded corporation, similarly misappropriated trading information of his employer for his own benefit. In the second action, the CFTC brought and settled charges against Jon Ruggles, a former trader for Delta Airlines, for trading accounts in his wife's name based on his knowledge of trades he anticipated placing for his employer. Both actions were grounded in a provision of law under the Dodd-Frank Wall Street Reform and Consumer Protection Act and a CFTC rule that prohibit use of a manipulative or deceptive device or contrivance in connection with futures or swaps trading. (Click here to access Commodity Exchange Act Section 6(c)(1), US Code § 9(1), and here to access CFTC Rule 180.1. Click here for background on these CFTC enforcement actions in the article "Ex-Airline Employee Sued by CFTC for Insider Trading of Futures Based on Misappropriated Information" in the October 2, 2016 edition of *Bridging the Week.*)

- **FINRA Fines One Broker-Dealer US $2 Million for Flawed Email Review System, and Another Broker-Dealer US $2.8 Million for Inadequate Segregation of Customer Securities**: Raymond James Financial Services, Inc., agreed to pay a fine of US $2 million to the Financial Industry Regulatory Authority for not maintaining an adequate system to review emails by its registered representatives. According to FINRA, the firm—which relied on a surveillance system that automatically identified emails containing certain preprogrammed words—did not choose words or phrases that would identify potentially problematic conduct in light of the nature of the firm's business and prior disciplinary action taken against firm employees. Although the firm added and subtracted words over time, FINRA claimed it did so principally to reduce the volume of false positives rather than to ensure it captured all relevant emails. FINRA also claimed that the firm did not maintain adequate personnel and resources to monitor emails and "unreasonably" excluded certain firm personnel from monitoring, including persons in its headquarters office who serviced customer accounts in addition to other activities. The firm also agreed to augment its relevant policies and procedures as part of its settlement, as well as to conduct a select retrospective review of emails to assess potential securities laws violations.

Unrelatedly, JP Morgan Securities LLC consented to pay US $2.8 million to FINRA to resolve allegations that, from March 2008 through June 2016, it failed on occasion to segregate customers' fully-paid-for foreign and domestic securities in good control locations as required by law. FINRA claimed this error occurred because of "design flaws and coding and data errors" in its computer systems that calculated its possession or control obligations. The systems were apparently legacy systems of Bear Stearns Securities Corporation which JPMS acquired in March 2008 and renamed JP Morgan Clearing Corporation (JPMCC merged with JPMS in October 2016). FINRA claimed that JPMCC did not have a "reasonable process" to ensure its possession and control systems worked properly or procedures to test its segregation process. In resolving this matter, FINRA noted JPMCC's "extraordinary cooperation" by, among other actions, unilaterally engaging an independent consultant to review its possession or control issues and implementing new tools and systems.

Compliance Weeds: In 2007, FINRA issued helpful guidance regarding the review and supervision of electronic communications (click here). Although intended for FINRA members, the guidance has useful information for all Securities and Exchange Commission- and Commodity Futures Trading Commission-registered entities. In assessing the effectiveness of any lexicon-based automated review system, FINRA recommended that a system include a "meaningful" list of phrases and/or words (including industry jargon) based on the size of the firm, its type of business, its customer base and its location. FINRA suggested that this might necessitate inclusion of foreign language components. Overall, said FINRA, "[t]he lexicon system should be comprehensive enough to yield a meaningful sample of 'flagged' communications." Any system should have the ability to add and delete words or phrases over time, and existing words or phrases should be periodically reviewed for effectiveness. Any system should have the ability to review attachments and identify attachments that might circumvent review, and have the ability to exclude any trailers or disclaimers that routinely include potentially problematic words that should not ordinarily be excluded (e.g., "firm does not guarantee"). Lists of employed words or phrases should be restricted.

More Briefly:

- **Federal Appeals Court Rules Securities Exchanges Not Subject to Absolute Immunity in Reversing Dismissal of Institutional Investors' Suit Alleging Manipulative or Deceptive Conduct**: A United States Appeals Court in New York reinstated a lawsuit brought by certain institutional investors against BATS Global Markets, Inc. and six other national securities exchanges, claiming the exchanges misled certain institutional investors regarding various products and services they sold to high-frequency trading firms that allegedly favored those firms to the institutional investors' detriment. Previously, a US District Court had dismissed the institutional investors' lawsuit against the exchanges claiming the exchanges had absolute immunity as self-regulatory organizations. The Appeals Court held that if the exchanges granted favorable business terms to HFTs, they would not have done so as regulators standing in the shoes of the Securities and Exchange Commission, but as SEC-regulated entities. As a result, no immunity existed for the exchanges.

- **Broker-Dealer Sanctioned by NYSE for Setting Order Management System Controls Too Large to Catch Disruptive Erroneous Orders**: Cantor Fitzgerald & Co. resolved a disciplinary action brought by NYSE Regulation for purportedly not having adequate controls and supervisory systems to prevent two large orders—one in August 2014 and one in February 2017—from unintentionally being entered into the marketplace and disrupting it. In one case a trader received a large customer order with instructions to work it as a "market not-held" order, but inadvertently entered the transaction into the firm's order management system as one market order—not breaking it into smaller orders. In the other circumstance, the trader received a large market not-held order from an affiliate, properly worked part of the order, tried to work another portion, but inadvertently entered the remainder of the large order into the firm's OMS with a wrong setting. As a result, the remainder of the larger order was handled as a single market order and not broken into smaller orders. NYSE claimed that Cantor failed "consistently [to] employ maximum share threshold controls" to create alerts or block trades in excess of a specified number of shares or used controls that were too large to be effective. NYSE claimed that Cantor violated the Securities and Exchange Commission's Market Access Rule through its conduct (click here to access a summary of SEC Rule 15c3-5). Cantor agreed to pay US $155,000 to resolve NYSE's complaint.

- **ICE Futures Europe Updates Block Trade Guidance**: ICE Futures Europe updated its Block Trades and Asset Allocations Guidance to comport with requirements of MiFID II. The guidance—which took effect on January 3—contains separate appendices for energy contracts, soft commodity contracts, fixed income contracts and equity contracts containing the respective block trade thresholds. Importantly on IFEU, members are not permitted to front-run or pre-position block trades. Specifically, "[m]embers are not permitted to enter into a transaction for their own benefit, which is transacted on the basis of and ahead of an order … which it, or an associate, is to carry out with or for another … which takes advantage of the anticipated impact of the order on the market." On ICE Futures U.S., pre- or anticipatory hedging of futures and related options block trades by principal counterparties prior to a transaction's execution is authorized under limited circumstance. (Click here for background in the article "Pre-Hedging by Principals Authorized in Block Trade Clarification Implemented by IFUS and Adopted by CME Group" in the October 30, 2016 edition of *Bridging the Week*.)

- **Lawyer Sanctioned by SEC for Erroneous Legal Advice**: Owen Naccarato, a lawyer, agreed to pay a fine of US $10,000 and not to provide to or receive compensation for legal advice on registration exemptions under applicable law or Securities and Exchange Commission rules for five years. Mr. Naccarato was sued by the SEC in a US federal court in Florida for issuing two opinion letters in September 2013 recommending removal of restrictive legends from stock certificates of Global Digital Solutions, Inc. that falsely represented that the company was not a shell company and that certain shareholders were not affiliates. As a result, these certificates—which were initially issued relying on an exemption from registration—were sold to third parties without restriction, raising $495,000 for the company. Previously, the SEC brought a lawsuit to enjoin GDS, its former chairman and chief executive officer, and its former chief financial officers from violating anti-fraud and reporting requirements of federal securities laws (click here to access the prior SEC legal action).

- **NFA Rolls Out Swap Dealer Filing Requirements for Swap Valuation Dispute Notices and Monthly Risk Data Reporting**: The National Futures Association reminded swap dealer members that all swap valuation dispute notices must be filed with it effective January 2, 2018. Moreover, swap dealers must now file with NFA for each calendar month by the end of the following calendar month a risk report that includes certain specified metrics. The first report is due January 31, 2018, for swap dealers' risk data report as of December 29, 2017.

- **UK and German Regulators Extend Until July 2020 Requirement That Certain Exchanges Provide Nondiscriminatory Access**: Coterminous with the implementation date of MiFID II on January 3, 2018, three European regulators extended the effective date of the requirement for ICE Futures Europe, the London Metal Exchange, LME Clear and Eurex Clearing to provide open access on a nondiscriminatory basis to July 2020. The three regulators are the UK Financial Conduct Authority, the Bank of England and BaFIN in Germany.

- **China and HK Regulators Sign Memorandum of Understanding Related to Oversight of Futures Exchanges**: The China Securities Regulatory Commission and the Hong Kong Futures and Securities Commission entered into a Memorandum of Understanding regarding supervisory and enforcement cooperation related to futures. Among other things, the MOU is intended to facilitate information sharing between the regulators, including pertaining to cross-border derivatives trading, futures exchanges and futures brokers. This action may foreshadow the launch of China-based futures contracts accessible from outside China.

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