

CORPORATE & FINANCIAL

WEEKLY DIGEST

June 13, 2014

Volume IX, Issue 24

BROKER DEALER

Commissioner Kara M. Stein Calls for More Stringent Net Capital Requirements for Broker Dealers

On June 12, Commissioner Kara M. Stein called on the Securities and Exchange Commission to make its net capital requirements for broker dealers more stringent. Commissioner Stein warned that current net capital levels may not be sufficient to withstand a financial crisis. In her remarks, Commissioner Stein said that “the SEC needs to examine its capital, leverage, and liquidity requirements, and modernize them to reflect the current funding ecosystem and our post-crisis understanding of systemic risks.” Commissioner Stein noted that the SEC should “revise its reasoning for imposing capital requirements to reflect not only our historical objective to protect a firm’s customers, but also reduce the risk to the entire financial system of a large broker-dealer’s collapse.” Commissioner Stein added that the SEC should consider what constitutes capital, specifically noting whether subordinated debt from an affiliate should continue to count as capital. Commissioner Stein also said that the SEC should “require some meaningful minimum haircuts for all types of securities lending and repos in our net capital regime.”

Click [here](#) to read Commissioner Stein’s June 12 speech to the Peterson Institute of International Economics.

DIGITAL ASSETS AND VIRTUAL CURRENCIES

US Marshals Service Announces Auction of Silk Road Bitcoins

The US Marshals Service (USMS) announced that it will hold an online auction on June 27 to sell bitcoins contained in wallet files seized from the servers of Silk Road, the “deep web” black market shut down by the Federal Bureau of Investigation in October 2013. The auction excludes bitcoins seized from Ross William Ulbricht, the alleged operator of Silk Road. Only pre-registered bidders will be permitted to participate in the auction. Registration for the auction will start on June 16 and end on June 23. A bidder may register by emailing the bidder registration form and a copy of its (or its control person’s) government-issued photo ID to USMSBitcoins@usdoj.gov and sending a refundable \$200,000 deposit by wire transfer from a US bank to an account designated by the USMS. The USMS will notify bidders whether they are eligible to participate in the auction.

The auction, which will take place on June 27 from 6:00 a.m. to 6:00 p.m. EDT, will be comprised of nine blocks of 3,000 bitcoins and one block of approximately 2,656.5 bitcoins, for a total of approximately 29,656.5 bitcoins. Bidders can bid on more than one block, but may win any number of blocks up to the maximum number of blocks on which they bid. The highest bidder will win, but if there are multiple highest bids, the bid that is first in time will win. Remaining blocks will be sold successively to the next-highest bidders until all blocks are sold. A bidder must submit a signed PDF of the bid form that will be provided to eligible bidders. All bids must be all cash offers in US dollars and neither financings nor installment purchases will be permitted. Bidders are responsible for all transfer fees.

On June 30, the USMS will notify winning bidders, who must submit funds to cover the purchase price (less the initial \$200,000 deposit) by wire transfer no later than July 1. A bidder must ensure that a wire transmittal receipt is provided to the USMS by the deadline or risk forfeiture of the deposit and disqualification and the bid being awarded to another bidder.

Click [here](#) to read the auction announcement, and click [here](#) for a copy of the registration form.

LITIGATION

Investment Adviser Accused of \$8.8 Million Fraud by SEC

On June 3, the Securities and Exchange Commission filed an emergency enforcement action in the US District Court for the Southern District of New York against Scott Valente, an investment adviser, alleging that he used his advisory firm, ELIV Group, to fraudulently lure approximately 80 clients to invest more than \$8.8 million. Valente also allegedly misappropriated at least \$2.66 million of investor funds for personal use. The SEC charged Valente and ELIV with violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(b) as well as Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. Valente denied the allegations.

The SEC alleged that defendants carried out their fraud by claiming that ELIV had a consistent record of outsized positive returns and assuring prospective clients that their principal was “guaranteed,” backed by a large money market fund, fully liquid and independently audited. In reality, according to the SEC, ELIV had sustained investment losses for each of the three full years the firm existed, client funds were never “guaranteed” or backed by money market funds, and the majority of ELIV’s investments were in highly illiquid investments in privately held companies. Further, the SEC alleged that ELIV never had an auditor, and the firm sent clients monthly investment reports in which they actually inflated the monthly returns, assets under management and client account values.

On June 11, defendants consented to the entry of an Order Granting Preliminary Injunction, Asset Freeze and Other Relief against them. A preliminary hearing is set for June 18.

SEC v. Scott Valente and The ELIV Group, LLC, Civil Action No. 14-3974 (VLB) (S.D.N.Y.).

Trading Evidence Barred From Rengan Rajaratnam Trial

On June 10, a New York federal judge barred the government from introducing evidence of defendant Rajarengan “Rengan” Rajaratnam’s trading activities in Akamai Technologies, Inc. Prosecutors argued that the defendant had traded on inside information provided by his brother Raj Rajaratnam, revealing that Akamai was planning to lower its revenue guidance during an upcoming conference call. However, Judge Naomi Reice Buchwald found that while it was clear that Raj Rajaratnam possessed and traded on the Akamai inside information, the government’s theory that the defendant did so as well was based on circumstantial and speculative evidence.

The government relied upon the fact that the defendant amassed a short position of 270,000 Akamai shares in the days leading up to the conference call, suggesting that it reflected his knowledge of the inside information. The government also pointed to an instant message exchange and a recorded telephone call, both from the day of the conference, in which the defendant thanked his brother for something.

However, Judge Buchwald found that the defendant offered concrete facts, which cast doubt on the government’s assertions. For example, the defendant covered over one-third of his short position before the guidance was issued. “It is difficult to explain why someone who knew that Akamai would be issuing negative guidance would cover over one-third of his short position right before that guidance was issued,” Judge Buchwald stated in a written order. Judge Buchwald also noted that the cover stands in “stark contrast” to the inaction of his brother Raj Rajaratnam, who did not begin to cover his short position of 600,000 shares until after the negative guidance was issued. Further, in the days leading up to Akamai’s earnings announcement other sources of information from a Galleon analyst, as well as a research report from Goldman Sachs & Co., expressed negative views of Akamai and a recommendation to sell the stock.

Based on this evidence, Judge Buchwald concluded that “[c]ritically, the government has not identified a single communication which suggests that defendant knew that Akamai would issue negative guidance.”

The trial is scheduled to begin on June 17.

U.S. v. Rajaratnam, Case No. 1:13-cr-00211 (S.D.N.Y. June 10, 2014).

For more information, contact:

FINANCIAL SERVICES

Janet M. Angstadt	+1.312.902.5494	janet.angstadt@kattenlaw.com
Henry Bregstein	+1.212.940.6615	henry.bregstein@kattenlaw.com
Wendy E. Cohen	+1.212.940.3846	wendy.cohen@kattenlaw.com
Guy C. Dempsey Jr.	+1.212.940.8593	guy.dempsey@kattenlaw.com
Kevin M. Foley	+1.312.902.5372	kevin.foley@kattenlaw.com
Jack P. Governale	+1.212.940.8525	jack.governale@kattenlaw.com
Arthur W. Hahn	+1.312.902.5241	arthur.hahn@kattenlaw.com
Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
Ross Pazzol	+1.312.902.5554	ross.pazzol@kattenlaw.com
Kenneth M. Rosenzweig	+1.312.902.5381	kenneth.rosenzweig@kattenlaw.com
Fred M. Santo	+1.212.940.8720	fred.santo@kattenlaw.com
Christopher T. Shannon	+1.312.902.5322	chris.shannon@kattenlaw.com
Peter J. Shea	+1.212.940.6447	peter.shea@kattenlaw.com
James Van De Graaff	+1.312.902.5227	james.vandegraaff@kattenlaw.com
Robert Weiss	+1.212.940.8584	robert.weiss@kattenlaw.com
Gregory E. Xethalis	+1.212.940.8587	gregory.xethalis@kattenlaw.com
Lance A. Zinman	+1.312.902.5212	lance.zinman@kattenlaw.com
Krassimira Zourkova	+1.312.902.5334	krassimira.zourkova@kattenlaw.com

DIGITAL ASSETS AND VIRTUAL CURRENCIES

Evan L. Greebel	+1.212.940.6383	evan.greebel@kattenlaw.com
Kathleen H. Moriarty	+1.212.940.6304	kathleen.moriarty@kattenlaw.com
Diana S. Kim	+1.212.940.6427	diana.kim@kattenlaw.com
Gregory E. Xethalis	+1.212.940.8587	gregory.xethalis@kattenlaw.com

LITIGATION

Michael M. Rosensaft	+1.212.940.6631	michael.rosensaft@kattenlaw.com
-----------------------------	-----------------	---------------------------------



* [Click here](#) to access the *Corporate and Financial Weekly Digest* archive.

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

CIRCULAR 230 DISCLOSURE: Pursuant to regulations governing practice before the Internal Revenue Service, any tax advice contained herein is not intended or written to be used and cannot be used by a taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

©2014 Katten Muchin Rosenman LLP. All rights reserved.



KattenMuchinRosenman LLP www.kattenlaw.com

AUSTIN | CENTURY CITY | CHARLOTTE | CHICAGO | HOUSTON | IRVING | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SAN FRANCISCO BAY AREA | SHANGHAI | WASHINGTON, DC

Katten Muchin Rosenman LLP is an Illinois limited liability partnership including professional corporations that has elected to be governed by the Illinois Uniform Partnership Act (1997).

London: Katten Muchin Rosenman UK LLP.