



THE GUIDE TO INTERNATIONAL ENFORCEMENT OF THE SECURITIES LAWS

SECOND EDITION

Editors

John D Buretta, David M Stuart and Lindsay J Timlin

The Guide to International Enforcement of the Securities Laws

Second Edition

Editors

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Publisher's Note

Global Investigations Review (GIR) is delighted to publish the second edition of *The Guide to International Enforcement of the Securities Laws*. For newcomers, GIR is the online home for everyone who specialises in investigating and resolving suspected corporate wrongdoing. We tell them all they need to know about everything that matters in their chosen professional niche.

GIR is famous for its daily news, but we also create various types of in-depth content. This allows us to go deeper into important matters than the exigencies of journalism allow. On the GIR website you will also find a technical library (the guides); reports from our lively worldwide conference series, GIR Live (motto: 'less talk, more conversation'); regional reviews; and unique data sets and related workflow tools to make daily life easier.

Being at the heart of the corporate investigations world, we often become aware of gaps in the literature first – topics that are ripe for an in-depth, practical treatment. Recently, the enforcement of securities laws emerged as one such area. Capital these days knows no borders; on the other hand, securities law enforcement regimes very much do. And in that juxtaposition can lie various questions. The book you are holding aims to provide them with answers. It is a practical, know-how text for investigations whose consequences may ring in breach of national securities law. Part I addresses overarching themes and Part II tackles specifics.

If you find it helpful, you may also enjoy some of the other titles in our series. *The Practitioner's Guide to Global Investigations* is the best known. It walks the reader through what to do, and consider, at every stage in the life cycle of a corporate investigation, from discovery of a possible problem to its resolution. Its success has inspired a series of companion volumes that address monitorships, sanctions, cyber-related investigations, compliance and, now, securities laws.

Please visit the Insight section at www.globalinvestigationsreview.com to read them all in e-form. GIR subscribers receive a hard copy of all our guides, gratis, as part of their subscription.

I would like to thank the editors of *The Guide to International Enforcement of the Securities Laws* for helping us to shape the idea. It's always a privilege to work with Cravath, Swaine & Moore. I'd also like to thank our authors and my colleagues for the élan with which they've brought the vision to life.

We hope you find it an enjoyable and useful book. If you have comments or suggestions please write to us at insight@globalinvestigationsreview.com. We are always keen to hear how we could make the guides series better.

David Samuels

Publisher, GIR

November 2022

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Introduction

John D Buretta, David M Stuart and Lindsay J Timlin¹

Even as we emerge, slowly, from the restrictions of the worldwide pandemic, securities markets continue to expand beyond international borders, making international enforcement of securities laws, and cooperation among regulatory authorities, an increasingly important issue among securities market participants and the practitioners who advise them. Financial institutions and other regulated entities have operations on multiple continents; corporations commonly engage in cross-border transactions and operations; securities issuers are offering investments internationally; and distributed ledger and blockchain technology has brought together investors from around the world.

By necessity, therefore, we have seen increased reliance among international law enforcement authorities on mutual cooperation, whether for the purpose of obtaining evidence or information outside their jurisdictions or jointly investigating potential securities law violations that touch multiple countries. Collaboration with the International Organization of Securities Commissions (IOSCO) is one of the most apparent ways in which securities regulators around the world coordinate their regulatory agenda and enforcement efforts. Its members regulate more than 95 per cent of the world's securities markets and have resolved to cooperate in developing, implementing and promoting compliance with the securities laws and enforcement of those laws to protect investors, maintain fair, efficient and transparent markets, and address systemic risks.²

1 John D Buretta and David M Stuart are partners, and Lindsay J Timlin is a practice area attorney, at Cravath, Swaine & Moore LLP.

2 SEC Office of International Affairs, https://www.sec.gov/about/offices/oia/oia_intlorg.shtml.

As one of the leading securities regulators in the world, the US Securities and Exchange Commission (SEC) reports that its international reach and cooperation significantly increased after the global financial crisis of 2007–2008. The SEC’s Office of International Affairs states that:

*The crisis demonstrated how closely capital markets around the globe are interconnected as well as their fundamental importance to the world’s economies. The crisis also demonstrated that facilitating international cooperation and coordination is critical in helping to ensure the effectiveness of financial regulatory reform efforts, to develop high regulatory standards across jurisdictions, and to minimize regulatory gaps.*³

Accordingly, international securities regulators rely on the IOSCO Multilateral Memorandum of Understanding (MMOU) for global multilateral information sharing among securities regulators. The SEC was among the first signatories to the MMOU in 2002, and today more than 100 securities and derivatives regulators are signatories, including the recent addition of regulators in Costa Rica, Georgia, Ghana, India and Monaco. Pursuant to the MMOU, signatories agree to provide one another with certain critical information, to permit use of that information in civil or administrative proceedings and for onward sharing with self-regulatory organisations and criminal authorities, and to keep that information confidential.⁴

This book has brought together leading practitioners from the world’s major securities markets to present, in one cohesive volume, an overview of international securities regulatory regimes and enforcement programmes. Part I addresses the basic anatomy of securities enforcement investigations in the United States, while also covering issues that commonly arise in cross-border securities enforcement matters, including the differences between representing individuals and entities, issues of privilege and data privacy, how to conduct international forensic procedures and the resolution of multinational investigations. Part II drills down into the specific regulatory regimes and enforcement programmes in major securities markets around the world and provides the perspectives of the foremost experts in their markets.

This second edition reflects recent key updates in each jurisdiction, including new regulatory updates (including a new Spanish circular regarding advertising of cryptoassets and new regulations in India governing related-party transactions);

3 *ibid.*

4 *ibid.*

recent statements by the US Department of Justice to maximise reliance on domestic and international cooperation in cross-border investigations; recent action taken by regulators in the United States and Europe to strengthen whistle-blowing protections; and new case law.

We hope this international collaboration provides an insightful and useful survey for international securities issuers, underwriters, auditors and accountants, broker-dealers and other regulated entities, and those who advise and represent these and other market participants around the world.

APPENDIX 1

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Capital these days seems to know no borders, but securities laws very much do. In that juxtaposition lie all sorts of challenges for those charged with investigating whether any law has been broken.

GIR's *The Guide to International Enforcement of the Securities Laws* aims to make practitioners' lives easier. Written by contributors with a wealth of experience, and edited by lawyers from Cravath, Swaine & Moore, this handy desktop reference guide seeks to address the most pressing questions in securities law enforcement.

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