Monday, September 21, 2020

Top 10 risk and compliance related news stories and world events that (for better or for worse) shaped the week's agenda, and what is next

Dear members and friends,

According to the *USA, Plaintiff, v. 280 Virtual Currency Accounts Defendants,* Bitcoin ("BTC") and Ether ("ETH") are pseudonymous virtual currencies.

We read: "Although BTC and ETH transactions are visible on a public ledger, each transaction is referenced by a complex series of numbers and letters (as opposed to identifiable individuals) involved in the transaction.

The public ledger containing this series of numbers and letters is called a blockchain.

This feature makes BTC and ETH pseudonymous; however, it is often possible to determine the identity of an individual involved in BTC and ETH transactions through several different tools.

For this reason, many criminal actors who use BTC and ETH to facilitate illicit transactions online (e.g., to buy and sell unlawful drugs or other illegal items or services) look for ways to make their transactions even more anonymous.

BTC/ETH addresses are unique tokens; however, BTC/ETH are designed such that one person may easily operate many such accounts.

A user can send and receive BTC/ETH with others by sending BTC/ETH to a BTC/ETH address.

People commonly have many different addresses, and an individual could theoretically use a unique address for every transaction in which they engage.

To spend BTC/ETH held within a BTC/ETH address, the user must have a private key, which is generated when the BTC/ETH address is created. Similar to a password, a private key is shared only with the BTC/ETH -address key's initiator and ensures secure access to the virtual currency.

Consequently, only the holder of a private key for a BTC/ETH address can spend BTC/ETH from the address.

A BTC user can also spend from multiple BTC addresses in one transaction; for example, five addresses each holding five BTC can collectively send 25 BTC in a single transaction.

Although generally the owners of BTC/ETH addresses are not known unless the information is made public by the owner (for example, by posting the address in an online forum or providing the BTC/ETH address to another user for a transaction), analyzing the public transaction ledger can sometimes lead to identifying both the owner of an address and any other accounts that the person or entity owns and controls.

There are other virtual currencies similar to ETH that are stored and sent using ETH addresses and transactions. Some of these currencies are discussed in this affidavit below.

BTC/ETH are often transacted using a virtual currency exchange, which is a virtual currency trading and storage platform.

An exchange typically allows trading between the U.S. dollar, foreign currencies, BTC, ETH, and other virtual currencies."

Interesting. We also read:

"While the identity of a BTC/ETH address owner is generally anonymous (unless the owner opts to make the information publicly available), law enforcement can identify the owner of a particular BTC/ETH address by analyzing the blockchain.

The analysis can also reveal additional addresses controlled by the same individua l or entity.

For example, a user or busines s may create many BTC addresses to receive payments from different customers.

When the user wants to transact the BTC that it has received (for example, to exchange BTC for other currency or to purchase goods or services), it may group those addresses together to send a single transaction.

Law enforcement uses commercial services offered by several different blockchain-analysis companies to investigate virtual currency transactions.

These companies analyze the blockchain and attempt to identify the individua ls or groups involved in the virtual currency transactions.

Specifically, these companies create large databases that group transactions into "clusters" through analysis of data underlying the virtual currency transactions."

You must read this Civil Action at number 4 below. Welcome to the Top 10 list.

Best regards,

George Lekatis

George Lekatis
President of the IARCP
1200 G Street NW Suite 800,
Washington DC 20005, USA
Tel: (202) 449-9750
Email: lekatis@risk-compliance-association.com
Web: www.risk-compliance-association.com
HQ: 1220 N. Market Street Suite 804,
Wilmington DE 19801, USA
Tel: (302) 342-8828

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The pandemic emergency - the three challenges for the ECB

Philip R Lane, Member of the Executive Board of the European Central Bank, at "Navigating the Decade Ahead: Implications for Monetary Policy", an economic policy symposium sponsored by the Federal Reserve Bank of Kansas City, Jackson Hole, Wyoming.

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COMPLAINT FOR VIOLATION OF: Title 18, United States Code, Section 371 – Conspiracy to Intentionally Cause Damage to a Protected Computer

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, v. EGOR IGOREVICH KRIUCHKOV, Defendant.	Case No: 3:20-mj-83-WGC COMPLAINT FOR VIOLATION OF: Title 18, United States Code, Section 371 – Conspiracy to Intentionally Cause Damage to a Protected Computer (conspiracy to violate 18 U.S.C. §§ 1030(a)(5)(A); 1030(c)(4)(B)(i) and (c)(4)(A)(i)(I)) (Count One)

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Regulating fintech financing: digital banks and fintech platforms

By Johannes Ehrentraud, Denise Garcia Ocampo, Camila Quevedo Vega

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. 280 VIRTUAL CURRENCY ACCOUNTS Defendants.	Civil Action No. 20-2396

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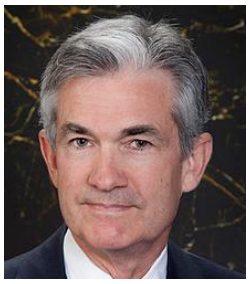
New economic challenges and the Fed's monetary policy review

Jerome H Powell, Chair of the Board of Governors of the Federal Reserve System, at "Navigating the Decade Ahead: Implications for Monetary Policy", an economic policy symposium sponsored by the Federal Reserve Bank of Kansas City, Jackson Hole, Wyoming.



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Number 1

The pandemic emergency - the three challenges for the ECB

Philip R Lane, Member of the Executive Board of the European Central Bank, at "Navigating the Decade Ahead: Implications for Monetary Policy", an economic policy symposium sponsored by the Federal Reserve Bank of Kansas City, Jackson Hole, Wyoming.

Today, I will discuss the monetary policy measures taken by the ECB in response to the pandemic shock, take stock of the progress to date and outline the main challenges that lie ahead.

The pandemic: the three challenges for the ECB

The nature of the pandemic shock called for an extraordinary policy response.

From the outset, there were three challenges for the ECB:

(i) to stabilise markets;

(ii) to protect credit supply; and

(iii) to neutralise the pandemic-related downside risks to the inflation path.

Tackling the first pair of challenges is needed in order to achieve the inflation aim, since it is problematic to run an effective monetary policy under conditions of market instability or a credit crunch.

The ECB adopted a comprehensive package of crisis measures over a number of months in order to address these three challenges.

Our flagship policy initiative has been the pandemic emergency purchase programme (PEPP) that was announced on 18 March.

The PEPP was designed to play a dual role, both contributing to market stabilisation and enabling a substantial easing in the monetary policy stance.

The market stabilisation role of the PEPP was facilitated by its design, which allowed flexibility in the composition of purchases over time, across asset classes and among jurisdictions.

The significant drop in yields upon the announcement of the PEPP vividly illustrated the importance of central banks in underpinning market stability in the event of a large adverse shock.

The additional asset purchases under the PEPP also serve to ease the monetary policy stance.

In response to the substantial pandemic-related downward revision to inflation outlook in the June staff projection round, we expanded the size of the PEPP envelope by €600 billion to a total of €1,350 billion and extended the minimum expected horizon for net purchases by half a year, to at least the end of June 2021.

In addition to stabilising markets and ensuring a sufficiently - accommodative monetary policy stance, it has also been imperative to limit the risk of a credit crunch.

The maintenance of credit supply could not be taken for granted, since the pandemic was likely to both reduce the credit quality of potential borrowers and increase the funding costs facing banks in the absence of central bank intervention.

To counter this threat, we substantially eased the conditions under which banks can obtain liquidity under our targeted long-term refinancing operations (TLTROs), which strengthened the incentives for banks to continue lending to the real economy.

We also eased collateral requirements to make sure that banks could make full use of these operations. The set of measures was designed to work as a package, in order to ensure that all three challenges posed by the pandemic shock were tackled simultaneously.

Chart 2 shows that the measures have resulted in a sizeable expansion of the ECB's balance sheet, illustrating the value of central banks being ready to commit their balance sheets to fight risks to their policy aims, especially in the event of a major shock to the real economy and the financial system.

To read more: https://www.bis.org/review/r200827e.pdf

Number 2

COMPLAINT FOR VIOLATION OF: Title 18, United States Code, Section 371 – Conspiracy to Intentionally Cause Damage to a Protected Computer

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, v. EGOR IGOREVICH KRIUCHKOV, Defendant.	Case No: 3:20-mj-83-WGC COMPLAINT FOR VIOLATION OF: Title 18, United States Code, Section 371 – Conspiracy to Intentionally Cause Damage to a Protected Computer (conspiracy to violate 18 U.S.C. §§ 1030(a)(5)(A); 1030(c)(4)(B)(i) and (c)(4)(A)(i)(I)) (Count One)

AFFIDAVIT IN SUPPORT OF ARREST WARRANT AND CRIMINAL COMPLAINT

1. I, Michael J. Hughes, being first duly sworn, hereby depose and state as follows: I make this affidavit in support of the issuance of an arrest warrant and a Criminal Complaint charging defendant EGOR IGOREVICH KRIUCHKOV with a violation of 18 U.S.C. § 371 – Conspiracy to Intentionally Cause Damage to a Protected Computer (conspiracy to violate 18 U.S.C. §§ 1030(a)(5)(A); 1030(c)(4)(B)(i) and (c)(4)(A)(i)(I)).

2. I am a Special Agent for the Federal Bureau of Investigation ("FBI"), where I have been employed for 14 years. As a Special Agent, in accordance with Title 18, United States Code, Section 2510(7), I am a Federal Law Enforcement Officer of the United States, who is empowered by law to conduct investigations of and make arrests for offenses enumerated in Title 18, as well as author warrants for search and seizure pursuant to Rule 41(a)(2)(C) of the Federal Rules of Criminal Procedure.

3. I am currently assigned to the Reno Resident Agency of the FBI Las Vegas Division, where I have been assigned for three years. Prior to this current assignment, I served as a Special Agent in Las Vegas, Nevada and as a Supervisory Special Agent at FBI Headquarters in Washington, D.C.

4. I have experience conducting national security and criminal investigations, including counterintelligence, counterterrorism, and cyber matters. I am currently responsible for conducting counterintelligence investigations.

5. During my tenure with the FBI, I have conducted surveillance, analyzed phone records, drafted search warrant applications, monitored Title III wiretaps, interviewed witnesses, recruited confidential sources, supervised

activities of sources, utilized and analyzed GPS tracking technology, executed search warrants, and executed arrest warrants. I have also received ongoing on-the-job training from other agents and law enforcement officials.

6. Based upon the above experience, I am familiar with the modus operandi of persons involved in fraud related to unauthorized computer access, the theft of trade secrets, intelligence collection against the United States Government and industry within the United States, and other criminal violations. I am aware persons involved in such criminal activities routinely attempt to conceal their identities and actions, including involving third party actors to aid in their criminality.

7. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the issuance of an arrest warrant and a criminal complaint and does not set forth all of my knowledge about this matter.

8. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that EGOR IGOREVICH KRIUCHKOV has committed a violation of 18 U.S.C. § 371 – Conspiracy to Intentionally Cause Damage to a Protected Computer.

To read more:
https://www.justice.gov/opa/press-release/file/1308766/download

Number 3

FSI Insights on policy implementation No 27
Regulating fintech financing: digital banks and fintech platforms

By Johannes Ehrentraud, Denise Garcia Ocampo, Camila Quevedo Vega

Executive summary.

This paper explores how fintech financing is regulated. New technology-enabled business models related to deposit-taking, credit intermediation and capital-raising have emerged.

These are digital banking, fintech balance sheet lending and crowdfunding platforms (the latter two are referred to as fintech platform financing).

In this paper, we provide a cross-country overview of the regulatory requirements for these fintech activities in 30 jurisdictions.

The paper is based on an extensive desktop review of regulations and related documents, complemented by responses to an FSI survey conducted in early 2019.

The proliferation of new technology-enabled business models has raised questions about the regulatory perimeter.

Authorities are assessing whether their existing regulatory framework needs to be adjusted.

Their response will likely depend on

(i) how they see potential risks to consumers and investors, financial stability and market integrity;

(ii) their assessment of how these new activities might benefit society in terms of strengthening financial development, inclusion and efficiency; and

(iii) how risks are dealt with under the existing framework and whether opportunities for regulatory arbitrage have emerged.

The overall challenge for authorities is to maximise the benefits of fintech innovations while mitigating potential risks for the financial system.

For digital banking, most jurisdictions apply existing banking laws and regulations to banks within their remit, regardless of the technology they apply. From these jurisdictions, a few have put in place initiatives that are intended to ensure that new banks find it easier to enter the market by allowing them time to complete their build-out or to meet the requirements of the prudential framework in full.

In the few jurisdictions that have set specific regulatory frameworks for digital banks, the main licencing and ongoing requirements are similar to those for traditional banks. Applicants for a digital bank licence face requirements on the place of incorporation and legal form, sustainability of business plan, minimum paid-up capital, fitness and propriety of management, risk governance frameworks and documentation of the exit strategy.

They also face requirements on ownership and control, although these may be different to those applicable to other banks.

After obtaining a digital bank licence, licence holders are subject to the same ongoing requirements as traditional banks on capital, leverage, liquidity, anti-money laundering/combating the financing of terrorism (AML/CFT), market conduct, data protection and cyber security.

The main difference between licensing requirements for traditional and digital banks is in technology-related elements and the aims of the business plan. Digital banks face restrictions on their physical presence and, in some cases, the market segments they are allowed to serve.

Their fit and proper requirements tend to be more prescriptive in relation to board members' expertise in technology; a satisfactory track record in operating a technology business; and assessments of technical infrastructure by independent third-party technical experts.

In addition, some jurisdictions require digital banks to demonstrate a commitment in driving financial inclusion, particularly for underserved and hard-to-reach market segments.

Most surveyed jurisdictions have no specific regulatory framework for fintech balance sheet (FBS) lending. In these jurisdictions, FBS lending is subject to regulations for non-bank lending.

Requirements on the extension of credit, however, vary considerably across countries and the responsibility for supervising this activity does not necessarily lie with the financial authority.

Brazil is the only surveyed jurisdiction that has introduced a specific licensing framework for FBS lending.

Many surveyed jurisdictions have introduced crowdfunding (CF) regulations. The regulatory setup, however, varies across jurisdictions and is influenced by a jurisdiction's overall supervisory architecture, as well as the differences in risks that loan and equity CF entail.

Separate frameworks were most often implemented for equity CF. In these cases, a third of surveyed jurisdictions have a specific framework exclusively for equity CF. This is twice the number of jurisdictions that have frameworks for loan CF.

For multi-type frameworks, about half of surveyed jurisdictions have an exclusive regulatory framework for loan and equity CF.

In jurisdictions without a dedicated regulatory framework for crowdfunding, it is subject to existing banking, securities and payments regulations.

Dedicated regulatory CF frameworks typically have two broad sets of requirements, where the first set is intended to regulate how platforms may operate, which activities they can perform and what they must do to mitigate the risks they incur. In most surveyed jurisdictions, equity or loan CF platforms must be authorised before they can offer services.

In terms of requirements, most surveyed jurisdictions require CF providers to operate under a specific legal form and have a minimum amount of paid-in capital.

Even though they are allowed to broker multiple financial instruments, in most jurisdictions restrictions limit the ability of crowdfunding providers to invest in the financial instruments they intermediate.

In most jurisdictions, crowdfunding platforms are subject to capital, business continuity and operational resilience and AML/CFT requirements.

The second set of requirements is intended to protect investors and make them aware of potential risks by disclosing relevant information. Most loan and equity CF frameworks have requirements as to how information should be provided; on conducting due diligence checks on borrowers and/or issuers; and on procedures for selecting potential borrowers or projects and publishing related information.

Apart from requirements related to disclosure and due diligence, there may be several other restrictions to protect investors.

Commonly used investor protection tools include restrictions on the holding of clients' funds, operating secondary markets or caps on investments or funds raised.

To read more: https://www.bis.org/fsi/publ/insights27.pdf

Number 4

UNITED STATES OF AMERICA, Plaintiff, v. 280 VIRTUAL CURRENCY ACCOUNTS Defendants.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **280 VIRTUAL CURRENCY ACCOUNTS** **Defendants.**	**Civil Action No. 20-2396**

Bitcoin ("BTC") and Ether ("ETH") are pseudonymous virtual currencies.

Although BTC and ETH transactions are visible on a public ledger, each transaction is referenced by a complex series of numbers and letters (as opposed to identifiable individuals) involved in the transaction.

The public ledger containing this series of numbers and letters is called a blockchain.

This feature makes BTC and ETH pseudonymous; however, it is often possible to determine the identity of an individual involved in BTC and ETH transactions through several different tools.

For this reason, many criminal actors who use BTC and ETH to facilitate illicit transactions online (e.g., to buy and sell unlawful drugs or other illegal items or services) look for ways to make their transactions even more anonymous.

BTC/ETH addresses are unique tokens; however, BTC/ETH are designed such that one person may easily operate many such accounts.

A user can send and receive BTC/ETH with others by sending BTC/ETH to a BTC/ETH address.

People commonly have many different addresses, and an individual could theoretically use a unique address for every transaction in which they engage.

To spend BTC/ETH held within a BTC/ETH address, the user must have a private key, which is generated when the BTC/ETH address is created.

Similar to a password, a private key is shared only with the BTC/ETH -address key's initiator and ensures secure access to the virtual currency.

Consequently, only the holder of a private key for a BTC/ETH address can spend BTC/ETH from the address.

A BTC user can also spend from multiple BTC addresses in one transaction; for example, five addresses each holding five BTC can collectively send 25 BTC in a single transaction.

Although generally the owners of BTC/ETH addresses are not known unless the information is made public by the owner (for example, by posting the address in an online forum or providing the BTC/ETH address to another user for a transaction), analyzing the public transaction ledger can sometimes lead to identifying both the owner of an address and any other accounts that the person or entity owns and controls.

There are other virtual currencies similar to ETH that are stored and sent using ETH addresses and transactions. Some of these currencies are discussed in this affidavit below.

BTC/ETH are often transacted using a virtual currency exchange, which is a virtual currency trading and storage platform.

An exchange typically allows trading between the U.S. dollar, foreign currencies, BTC, ETH, and other virtual currencies.

Many virtual currency exchanges also store their customers' virtual currencies. These exchanges act as money services businesses and are legally required to conduct due diligence on their customers and have antimoney laundering checks in place.

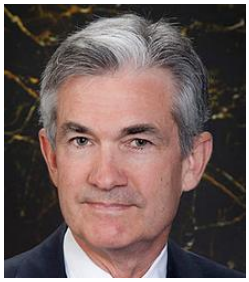
Virtual currency exchanges doing business in the United States are regulated under the Bank Secrecy Act, codified at 31 U.S.C. § 5311 et seq., and must collect identifying information of their customers and verify their clients' identities.

To read more:
https://www.justice.gov/opa/press-release/file/1310421/download

Number 5

New economic challenges and the Fed's monetary policy review

Jerome H Powell, Chair of the Board of Governors of the Federal Reserve System, at "Navigating the Decade Ahead: Implications for Monetary Policy", an economic policy symposium sponsored by the Federal Reserve Bank of Kansas City, Jackson Hole, Wyoming.



Thank you, Esther, for that introduction, and good morning. The Kansas City Fed's Economic Policy Symposiums have consistently served as a vital platform for discussing the most challenging economic issues of the day. Judging by the agenda and the papers, this year will be no exception.

For the past year and a half, my colleagues and I on the Federal Open Market Committee (FOMC) have been conducting the first-ever public review of our monetary policy framework.

Earlier today we released a revised Statement on Longer-Run Goals and Monetary Policy Strategy, a document that lays out our goals, articulates our framework for monetary policy, and serves as the foundation for our policy actions.

Today I will discuss our review, the changes in the economy that motivated us to undertake it, and our revised statement, which encapsulates the main conclusions of the review.

Evolution of the Fed's Monetary Policy Framework

We began this public review in early 2019 to assess the monetary policy strategy, tools, and communications that would best foster achievement of our congressionally assigned goals of maximum employment and price stability over the years ahead in service to the American people.

Because the economy is always evolving, the FOMC's strategy for achieving its goals—our policy framework—must adapt to meet the new challenges that arise.

Forty years ago, the biggest problem our economy faced was high and rising inflation.

The Great Inflation demanded a clear focus on restoring the credibility of the FOMC's commitment to price stability.

Chair Paul Volcker brought that focus to bear, and the "Volcker disinflation," with the continuing stewardship of Alan Greenspan, led to the stabilization of inflation and inflation expectations in the 1990s at around 2 percent.

The monetary policies of the Volcker era laid the foundation for the long period of economic stability known as the Great Moderation.

This new era brought new challenges to the conduct of monetary policy.

Before the Great Moderation, expansions typically ended in overheating and rising inflation.

Since then, prior to the current pandemic-induced downturn, a series of historically long expansions had been more likely to end with episodes of financial instability, prompting essential efforts to substantially increase the strength and resilience of the financial system.

By the early 2000s, many central banks around the world had adopted a monetary policy framework known as inflation targeting.

Although the precise features of inflation targeting differed from country to country, the core framework always articulated an inflation goal as a primary objective of monetary policy.

Inflation targeting was also associated with increased communication and transparency designed to clarify the central bank's policy intentions.

This emphasis on transparency reflected what was then a new appreciation that policy is most effective when it is clearly understood by the public.

Inflation-targeting central banks generally do not focus solely on inflation: Those with "flexible" inflation targets take into account economic stabilization in addition to their inflation objective.

Under Ben Bernanke's leadership, the Federal Reserve adopted many of the features associated with flexible inflation targeting.

We made great advances in transparency and communications, with the initiation of quarterly press conferences and the Summary of Economic Projections (SEP), which comprises the individual economic forecasts of FOMC participants.

During that time, then–Board Vice Chair Janet Yellen led an effort on behalf of the FOMC to codify the Committee's approach to monetary policy.

In January 2012, the Committee issued its first Statement on Longer-Run Goals and Monetary Policy Strategy, which we often refer to as the consensus statement. A central part of this statement was the articulation of a longer-run inflation goal of 2 percent.

Because the structure of the labor market is strongly influenced by nonmonetary factors that can change over time, the Committee did not set a numerical objective for maximum employment.

However, the statement affirmed the Committee's commitment to fulfilling both of its congressionally mandated goals.

The 2012 statement was a significant milestone, reflecting lessons learned from fighting high inflation as well as from experience around the world with flexible inflation targeting. The statement largely articulated the policy framework the Committee had been following for some time.

To read more:
https://www.bis.org/review/r200827d.pdf

Number 6

FSB publishes Key Attributes Assessment Methodology for the Insurance Sector

The Financial Stability Board (FSB) has published a Key Attributes Assessment Methodology for the Insurance Sector ("insurance KAAM").

The methodology sets out essential criteria to guide the assessment of the compliance of a jurisdiction's insurance resolution framework with the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions ('Key Attributes').

It was developed in collaboration with experts from FSB jurisdictions, relevant standard-setting bodies, the International Monetary Fund and the World Bank.

It is designed to promote consistent assessments across jurisdictions and to provide guidance to jurisdictions when adopting or amending their resolution regimes to implement the Key Attributes.

The Key Attributes constitute an 'umbrella' standard for resolution regimes for all types of financial institutions.

Implementation of the Key Attributes allows authorities to resolve financial institutions in an orderly manner without taxpayer exposure to loss from solvency support, while maintaining continuity of their vital economic functions. However, not all attributes are equally relevant for all sectors.

The Key Attributes Assessment Methodology provides an insurance sector-specific interpretation of individual KAs.

It stresses that a jurisdiction's insurance resolution regime should be proportionate to the size, structure and complexity of the jurisdiction's insurance system.

The FSB also today issued a note explaining the application of the insurance KAAM and the Key Attributes during the period of suspension of the designation of Global Systemically Important Insurers (G-SIIs).

It states that the Key Attributes continue to apply during the suspension period to any insurer that could be systemically significant

or critical in failure. (National authorities may apply to certain insurers the requirements specific to G-SIIs, which are the requirements for a crisis management group, institution-specific cross-border cooperation agreements and resolvability assessments).

In the event of a 2022 decision by the FSB to discontinue the G-SII list, the FSB will review the scope of application of G-SII specific requirements in consultation with the International Association of Insurance Supervisors.

To read more: https://www.fsb.org/wp-content/uploads/P250820-1.pdf

Number 7

ESMA publishes its first Review Reports on the MiFIR transparency regime

The European Securities and Markets Authority (ESMA),the EU's securities markets regulator, has published today two final Reports reviewing key provisions of the MiFIDII/MiFIR transparency regime.

The *first report* reviews the MiFIR transparency regime for equity instruments and contains proposals for targeted amendments regarding the transparency obligations for trading venues and specifically the double volume cap mechanism. You may visit:
https://www.esma.europa.eu/sites/default/files/library/esma70-156-2682_mifidii_mifir_report_on_transparency_equity_dvc_tos.pdf

MiFID II/MiFIR Review Report

on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares

It also includes recommendations on other key transparency provisions, in particular the trading obligation for shares and the transparency provisions applicable to systematic internalisers in equity instruments.

The *second report* reviews the pre-trade transparency obligations applicable to systematic internalisers in non-equity instruments.

The proposals put forward in both reports aim to simplify the current complex transparency regime while trying to improve the transparency available and are taking into account the feedback received from market

participants through consultations. You may visit:
https://www.esma.europa.eu/sites/default/files/library/esma70-156-2756_mifidii_mifir_report_on_systematic_internalisers.pdf

esma European Securities and Markets Authority

MiFIR report on systematic internalisers in non-equity instruments

Steven Maijoor, Chair, said: "The reports published today shed light on existing limitations to transparency and, at the same time, clearly demonstrate ESMA's ability to deliver concrete recommendations based on the data following the implementation of MiFID II. The proposals aim to simplify the transparency regime and increase transparency available to market participants. These important reports provide a solid foundation for any review of the MiFIR transparency regime in the future".

To read more:
https://www.esma.europa.eu/sites/default/files/library/esma71-99-1366_press_release_mifidii_mifir_review_transparency_reports.pdf

Number 8

EBA launches consultation to revise its Guidelines on internal governance (EBA/CP/2020/20)

The European Banking Authority (EBA) launched today a public consultation to revise its Guidelines on internal governance.

This review takes into account the amendments introduced by the fifth Capital Requirements Directive (CRD V) and the Investment Firms Directive (IFD) in relation to credit institutions' sound and effective governance arrangements.

The consultation runs until 31 October 2020.

Combating money laundering and terrorist financing is crucial for maintaining stability and integrity in the financial system. Therefore, uncovering any involvement of credit institutions and investment firms in money laundering and terrorist financing can have an impact on the viability and trust in the financial system.

In this context, these Guidelines clarify that identifying, managing and mitigating money laundering and financing of terrorism risk is part of sound internal governance arrangements and credit institutions' risk management framework.

These draft Guidelines further specify and reinforce the framework regarding loans to members of the management body and their related parties.

Those loans may constitute a specific source of actual or potential conflict of interest and, therefore, specific requirements have been explicitly included in the Directive 2013/36/EU (CRD).

In the same way, other transactions with members of the management body and their related parties have the potential to create conflicts of interest and, therefore, the EBA is providing guidance on how to properly manage them.

Finally, in line with the requirement to have a gender-neutral remuneration policy, the consultation paper contains new guidance on the code of conduct to ensure that credit institutions take all necessary measures to

avoid discrimination and guarantee equal opportunities to staff of all genders.

Consultation process

The EBA invites comments solely on the amendments to the EBA Guidelines on Internal Governance as shown in the tracked changes version.

Comments to this consultation can be sent to the EBA by clicking on the "send your comments" button on the consultation page. Please note that the deadline for the submission of comments is 31 October 2020.

A public hearing will take place via conference call on 1 October 2020 from 14: 00 to 16:00. All contributions received will be published following the end of the consultation, unless requested otherwise.

Legal basis and next steps

These draft Guidelines have been developed on the basis of Article 74 of Directive 2013/36/EU, which mandates the EBA to further harmonise credit institutions' governance arrangements, processes and mechanisms across the EU.

The EBA Guidelines will apply to Competent Authorities across the EU, as well as to credit institutions on a solo and consolidated basis. Once the revised Guidelines will enter into force, the 2017 Guidelines will be repealed. You may visit:
https://eba.europa.eu/sites/default/documents/files/documents/10180/1972987/eb859955-614a-4afb-bdcd-aaa664994889/Final%20Guidelines%20on%20Internal%20Governance%20(EBA-GL-2017-11).pdf

FINAL REPORT ON GUIDELINES ON INTERNAL GOVERNANCE

EBA EUROPEAN BANKING AUTHORITY

EBA/GL/2017/11

26 September 2017

Final Report

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CONSULTATION PAPER ON DRAFT GUIDELINES ON INTERNAL GOVERNANCE

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Consultation Paper

Number 9

Markets, Morality, and Mobsters: Remarks at the 18th Annual Corporate Governance Conference

SEC Commissioner Hester M. Peirce, University of Texas at Dallas Institute for Excellence in Corporate Governance

Thank you Jessica [Magee]. It is a particular honor to be introduced by an SEC alumna. Although I had hoped this could be an in-person event, I am grateful that we nevertheless can spend some time together virtually. Before I begin, I have to remind you that the views I represent are my own and not necessarily those of the Securities and Exchange Commission or my fellow Commissioners.

We are here today to talk about excellence in corporate governance. As with other pursuits in life, governing a corporation well requires a solid set of core values. These values are often rooted in childhood lessons, so I will offer a cautionary tale. A friend of mine—over his wife's objection—taught his toddler son to answer "Money!" when asked "What is the most important thing in the world?"

Their son was an eager pupil and, two years later—over both of his parents' objections—he will still emphatically tell you that money is the most important thing in the world. He does not just talk the talk; he collects bills from all over the world, places them with precision in his toy cash register, releases them only to demand their immediate return, and accurately matches the names of historical figures with the bills on which they appear.

I hope that one of the bills that eventually finds its way into his collection is Japan's new 10,000 yen note—roughly equivalent to $100 at current exchange rates—scheduled for release in 2024.

That is a higher-value bill than is appropriate for a child's collection, but I want my friend's son to have it not for its value, but for the value lesson it conveys. The bill will feature a gentleman named Shibusawa Eiichi, who is known as "the father of Japanese capitalism."

Some people might wonder why I think that it would be good for a boy already obsessed with money to be introduced to one of capitalism's

fathers. After all, much of the developed world seems to be turning against capitalism, which they view as a system designed for the benefit of the few, at the expense of the many.

Shibusawa, however, understood that capitalism—in which private individuals come together voluntarily to build profit-making enterprises—can elevate hardworking, talented people of good character; spread prosperity; and benefit society. Shibusawa's role in creating the modern Japanese economy is hard to overstate, but he has much to offer our nation as well.

For some context, let me tell you a little bit about Shibusawa and the challenges Japan faced when he embarked on his career in the second half of the 19th century. When Shibusawa was born in 1840, Japan was still a feudal society.

Although a vibrant commercial culture had developed under the Tokugawa shogunate, the dominant neo-Confucian ethics had little to say about commerce, and what it did have to say was certainly not positive.

A man's highest calling was service to the state; commerce was seen as the realm of those who sought profit without adherence to any code of honor or morality.

Perhaps partly for this reason, commercial success in Tokugawa Japan was denigrated and, as Shibusawa himself put it when he left government service for the private sector, it was generally accepted that it was a shameful thing to become a merchant.

The arrival of Commodore Perry off Japan's Pacific coast in 1853 forced Japan to open its doors to the outside world for the first time in two centuries and plunged the feudal hierarchy into chaos. Japan's political leadership struggled to maintain domestic stability and to avoid colonization. Shibusawa, the son of a prosperous farmer, initially joined up with bands of samurai seeking to expel the foreigners.

He eventually found himself in the service of the last shogun.

During an extended trip to Europe in 1867-68 as part of an official study delegation, Shibusawa learned that much of the European powers' strength derived from the value that they placed on commerce and the market technologies on which commerce relied.

It was also during this trip that Shibusawa learned, to his astonishment, that, in much of Europe, men engaged in commerce were seen as equals to

military men, and he was stunned when, during an audience with the king of Belgium, the king himself touted the high quality of Belgian steel to the Japanese mission.

If the monarch thought promoting commerce was not beneath him, it was no surprise that his subjects also treated commerce as a worthwhile pursuit.

Shibusawa concluded that Japan's economic development would require a transformation of values: disdain for commerce would need to give way to a respect for commercial enterprise. This transformation would be impossible without convincing his fellow countrymen that commerce was itself a moral endeavor.

The prevailing "revere officials and despise the people" attitude emphasized the role of government in society and encouraged people to look to government as the guarantor of national prosperity.

This unhealthy attitude also had to give way to a respect for the role that ordinary people from all classes could play in building the economy and the broader society, economically of course, but also ethically.

Shibusawa's insight is one that is often overlooked, but it is important. Voluntary commercial activity both requires and cultivates a heightened moral sensitivity in those who engage in commerce, and according value to those who engage in this activity helps build healthy societies. Others have made the same point.

The most famous, of course, is Adam Smith, but consider economist Deirdre McCloskey, who argues that "[t]he growth of the market . . . promotes virtue, not vice." She repeatedly directs our attention to the ways that commercial activity forces us to attend to each other, to understand what each other wants or needs, and to find ways to satisfy those wants and needs.

She notes that "[a] person in business depends on an imaginative engagement with the customers and suppliers, to see the witness in them. . . . An alert businesswoman 'subjects herself to every neighbor.' She listens and learns from other people and from the world."

By pushing us to listen, to engage with each other, commercial activity encourages us to be better neighbors, to treat others with civility and tolerance.

The French philosopher Voltaire observed this same thing when he visited the London Exchange in the early 18th century and beheld people of all

different religions dealing with each other as equals as they traded with one another.

As an important companion to his efforts at reshaping perspectives on commerce, Shibusawa played a central role in introducing to Japan the central financial technologies of modern capitalism, including the joint-stock company, double-entry accounting, and modern banking.

His embrace of the joint-stock company was rooted in part in a belief that this corporate form was an ideal way to draw on the capital and efforts of people all across society.

As one Shibusawa biographer notes, once he concluded that the key to national prosperity was not in the state but in the people, the question was how to marshal these resources and talents to empower the people to achieve a broad-based prosperity.

In his view, the joint-stock company was a tool uniquely suited to this task. This form of business organization could offer opportunity to anybody, regardless of social class. Anyone with investable funds could own shares in a joint-stock company, and one's influence as an investor was determined by how many shares he owned, not by his social class.

It made it possible to pool the financial resources of the wealthy with the talents of the poor.

Importantly, the organizing force of these companies was voluntary cooperation in the pursuit of a common purpose, not government coercion. In a pamphlet he wrote when he was an official in the Ministry of Finance, he explained that "[t]he formation of a company begins with private rights, in a meeting of the minds and a decision to join forces."

Shibusawa helped establish, and mentored the leaders of, dozens of national banks throughout Japan, but he had a vision for the transformative power of capitalism—and the joint-stock corporation—across the entire economy.

Shibusawa himself guided the establishment of the First National Bank of Japan, which was the first modern bank and one of the first joint-stock companies in the country.

He was involved in establishing between 400 and 500 corporate entities that were part of the financial, physical, and logistical infrastructure that Japan needed to participate as an equal in the modern global economy.

The firms he helped launch or lead over his career read like a Who's Who of corporate Japan: They include Mizuho Bank (which traces its lineage back to the First National Bank), Tokyo Marine, Tokyo Electric Power Company, Tokyo Gas, The Imperial Hotel, Sapporo Beer, Japan Rail, and the Tokyo Stock Exchange.

He served many of these firms, often as an executive officer or as a member of the board.

He was a gifted mentor, and his reputation for integrity made him a valuable catch for entrepreneurs seeking to raise funds.

Integrity was key to the capitalist society Shibusawa championed. Profit-seeking was not a selfish pursuit.

Indeed, Shibusawa became a very wealthy man, but he wanted to see others become wealthy as well. Being a part of a profit-making business, however, did not free one from the need to be guided by moral commitments. He commended hard work for the purpose of building an enterprise, but recognized the danger of self-interested managers.

One of his most pointed warnings to managers appears in his best-known work, The Analects and the Abacus, which was his attempt to articulate ethical principles (which he drew largely from the Analects of Confucius) for the commercial world (represented by the abacus).

In this passage, which really needs to be quoted in full, he describes well the temptation of corporate managers to confuse their own interests for those of the company they manage and of its shareholders.

He writes:

It is a laudable thing for a businessman to work ceaselessly to make his company or bank successful. And it is a good thing to work faithfully for the profit of shareholders.

However, if your desire to devote yourself to your company or your bank is motivated by a selfish scheming for personal benefit, or your decision to increase a dividend payment is driven by the fact that you yourself are a shareholder and want to enrich yourself, that's a problem.

If [you have that mindset and] the bank or the company encounters difficulty and you realize that you can benefit yourself by forcing the company into bankruptcy and inflicting harm on the company's shareholders, I doubt whether you will be able to resist that temptation.

Shibusawa wraps up this discussion by noting that it was precisely this kind of temptation that the Confucian philosopher Mencius was warning about when he said, "If you do not think of others and instead think only of your own gain, you will come to a point where you will not be satisfied until you steal what you want from others."

Much of his mentorship activity appears to have been devoted to instilling in younger corporate managers the importance of looking beyond one's own personal interests in managing a corporate enterprise.

Shibusawa spent much of his life selling capitalism to his country. He also was tireless in his efforts to foster better US-Japan relations.

Now, more than a century later, he can help his American friends to remember why capitalism is worth keeping.

First, he can remind us that the goal of a corporation is to join people together in a cooperative enterprise that draws on their capital and talent to make products and services that people want, and the very reason that a corporate enterprise generates profits is because—as another Shibusawa biographer explains—it "removes financial worries from people's lives and makes them prosperous."

Second, a corporation is a private endeavor, not something that requires government direction; indeed government involvement will almost certainly always lead to either compulsion or rent-seeking.

Third, working in private enterprise to meet the needs of other people is honorable work and doing this work well is morally exemplary; members of the private sector ought not think themselves inferior to "public servants."

Fourth, the people running the company have to remember that they work for the shareholders, not for themselves.

Many people from within and without corporate America are undermining the corporation rather than harnessing its power to address society's problems.

Intricately thick regulatory barriers to the formation and financing of companies make it harder to start a corporation and take it public.

For example, entrepreneurs must navigate a complex web of exempt offering rules under our federal securities laws in order to raise capital.

Compliance does not come cheaply: legal fees associated with raising very early stage capital can cost between $5,000 to $20,000, while a venture capital raise for more mature companies can cost between $20,000 to $40,000 in compliance costs.

The existing exempt offering framework not only imposes burdensome compliance costs on startups, but also ties their hands when it comes to tapping into their networks in order to raise capital.

Specifically, the most commonly used exemptions from registration generally limit participation to accredited investors—individuals with a net worth exceeding $1 million, income in excess of $200,000, or as of yesterday, individuals holding a Series 7, 65, or 82 license.

For startups not located near or connected to angel investor and venture capital networks in major coastal cities, the accredited investor definition severely limits their pool of potential investors.

Regulatory barriers are surmountable by the wealthy, well-connected, and entrenched, but the people who could benefit the most by joining forces with friends and neighbors to build a profit-making enterprise that serves their communities have a much more difficult time.

Shibusawa championed shareholder capitalism not for its ability to make the rich richer, but for its ability to spread wealth and prosperity: "A single wealthy individual does not make the country more prosperous.

To elevate the low status of people engaged in commerce and industry, we must make improvements to the whole by helping the joint-stock company organizations take root."

Large, incumbent firms often use regulatory barriers to entry to their advantage. Shibusawa objected when firms threw around their weight at the expense of competitors and consumers.

For example, although the most successful business magnates of pre-war Japan typically sought to establish zaibatsu—conglomerates of related firms—which could dominate significant segments of the Japanese economy—Shibusawa never sought to do so.

A famous anecdote highlights his distinct vision for the Japanese economy. In 1878, he received a dinner invitation from Iwasaki Yatarō, the president of Mitsubishi, one of the great zaibatsu of the pre-war era.

Over dinner, Iwasaki turned the conversation to the Japanese economy, pointing out that if Shibusawa and he joined forces, they could dominate Japan's still undeveloped economy.

The conversation turned heated when Shibusawa immediately objected to the suggestion that the two of them monopolize the economy for their own benefit.

Shibusawa argued that his own approach—leveraging the joint-stock company model to gather resources and people from across the country—was better suited to bringing wealth to the Japanese people and thus to the nation as a whole. Iwasaki retorted that Shibusawa's approach would lead to disaster.

When he saw that he was getting nowhere with Iwasaki, Shibusawa left the dinner in disgust. The two men went on to become fierce competitors in the marine transport industry.

Iwasaki's suggestion that the market is something for the powerful to carve up for their own benefit suggests a view of capitalism similar to that of Al Capone, who is alleged to have said: "Capitalists believe they can take everything at the table as belonging to them. Capitalism is the legitimate racket of the ruling class."

The idea that markets can be divvied up arbitrarily by a tiny elite is the mentality of a mobster, not the mentality of a principled capitalist like Shibusawa.

Shibusawa recognized that corporations should be formed and directed by private citizens interacting with one another voluntarily to serve the needs of their fellow citizens.

Ironically, a highly regulated environment, which minutely prescribes what companies can and cannot do, undermines the integrity that Shibusawa understood to be key to capitalism.

Rather than pleasing customers and generating wealth for shareholders, a company that gets overly entangled with government becomes more focused on pleasing regulators and using its relationship with those regulators to extract rents that do not contribute to anybody's prosperity except that of the rent-seeker.

As Niall Ferguson explained, "The question that gets asked in highly regulated markets is not: 'Are we doing the right thing?' but 'Can we get away with this?'"

Is it any wonder that, in a corporate world increasingly characterized by rent-seeking, a world of compliance checklists and of self-interested moral posturing, Shibusawa's vision of commercial enterprise as a fundamentally moral enterprise that ennobles the men and women who engage in commerce is increasingly thought laughable?

Shibusawa himself would not have been surprised by this unfortunate development, born as he was in an era where the most successful businesses achieved that success through government-sanctioned concessions obtained through connections and corruption. These bad habits too easily replace the qualities that make a business enterprise truly successful.

The pressure to develop these habits is particularly strong in public corporations, which are under increasing regulatory and societal pressure to focus on objectives other than profit-making. Managers and boards, rather than standing against this pressure, are too often embracing it.

As a consequence, companies are losing their singular focus on maximizing the value of the company—the focus that forces companies to innovate and improve, and thus to generate the products and services that not only create profits for shareholders but also make each of us—and our society as a whole—more prosperous.

The irony of current corporate responsibility movements, which encourage corporations to do things other than focus on profit-making, is that the diverted focus will undermine corporations' ability to improve people's lives.

Objectives like clean air and water, good education and healthcare, and poverty reduction are better achieved by profit-focused corporations than corporations encouraged to pursue these objectives directly. Shibusawa recognized that the ability of corporations to play a leading role in improving people's lives depended on them being permitted to be profit-seeking entities.

Managers themselves have reason to favor multiple objectives because the resulting confusion allows them to pursue their own objectives. As Shibusawa predicted, the manager who places her own interests ahead of shareholder interests, loses her way.

Self-dealing may come in the form of an excessive executive compensation package, but it also may come less directly; many executives today seek to signal their own virtue by committing company resources to causes that will earn them societal brownie points, which gives the executives' social circle a

greater say in corporate policies and priorities than shareholders. This shift of focus away from shareholders entirely upends the proper focus of corporate governance. It is no different for a corporate executive to claim to be virtuous by spending shareholder money than it is for a politician to signal her generosity by spending taxpayer money.

Managers' misappropriation of corporate assets for their own benefit—whether pecuniary or reputational—might not get punished, particularly if the thieving managers cloak themselves in rhetoric that accords with that being used by outside groups trying to refocus corporations.

These are not merely theoretical concerns. We can observe some of the negative consequences of this shift in corporate focus away from the maximization of shareholder value in current events. Last year, 181 CEOs signed on to the Business Roundtable's new Statement on the Purpose of a Corporation to great fanfare.

Explicitly rejecting shareholder primacy, the statement committed the CEOs to lead their companies for the benefit of all stakeholders, specifically identifying customers, employees, suppliers, communities, and notably last: shareholders, who merely "provide the capital."

Some have argued that this statement is nothing but a public-relations move and does not reflect a fundamental shift in the way these businesses will operate. For example, a forthcoming study reaches this conclusion by finding that the corporate guidelines for the signatory companies continue to demonstrate a commitment to shareholder primacy and that only one company whose CEO signed the statement received board approval to do so.

If this is the accurate interpretation, then the deceitfulness displayed by C-suites across the nation reveals a deep moral failure that will only further damage the reputation of capitalism and corporate America.

Let's take a more generous view and assume that the CEOs actually believe in a stakeholder model of capitalism and are actively working to implement such a vision. There is evidence that suggests such a model does not benefit investors or stakeholders.

Despite the commitment to deliver value to all of these stakeholders, research demonstrates that the signatory companies have not historically delivered on those promises for any of the identified constituencies.

As Matt Levine caustically summarized the findings: "[c]ompanies that signed on to the Business Roundtable's statement do worse for shareholders, sure, but they also do worse for employees and the environment. They pay their CEOs more, though, which is perhaps the real point."

Moreover, the statement's dilution of the role of shareholders in corporate governance reduces management's accountability for their actions. Success is no longer measured solely by shareholder value, but instead is defined, at least in part, by the good intentions of management with respect to favored stakeholders. Indeed, Business Roundtable President and CEO Joshua Bolten recently defended his thesis that this has been "a good year for stakeholder capitalism," by noting that CEOs advocated for policy makers to increase the federal minimum wage, paid family medical leave, and pandemic relief.

Measuring the value of companies by the loudness with which they call for government mandates portends a bleak future for American capitalism. Companies add value to society by seeking to be profitable for their shareholders. To do so, they make things people need. In the process, they enrich their workers, business partners, and communities.

By shifting their focus to stakeholders rather than investors, CEOs may be attempting to distance themselves from their fiduciary duties to shareholders—fiduciary duties that are underpinned by moral principles. Former Chief Justice of the Delaware Supreme Court Myron Steele argues that the morality imbued in Delaware corporate law's fiduciary duties "holds corporate actors to a higher standard, discourages distasteful or unsavory conduct in blind pursuit of individual interests, and reflects the manner in which those same actors might interact in other, similar, but non-business contexts."

No such higher standard of conduct applies to the relationships between stakeholders and corporate officers and directors, so it is not surprising that those relationships are being used to justify certain business decisions.

Shibusawa again serves as an example of a better way. He devoted his own time and resources to philanthropy. He was an early supporter of one of Japan's first institutions dedicated to the care of orphans, the elderly, and the disabled.

He helped found the Japanese Red Cross, several of Japan's leading educational institutions (including at least two institutions of higher education for women), and hospitals.

He was known for never turning down a request for a meeting from an entrepreneur or a younger corporate manager and mentored hundreds of younger businessmen.

It is wonderful when people earn money and spend it for good causes, but shareholders and corporate executives should earn the money first and only then give it away.

True, this is the harder road, as it requires each of us as individuals to give of our own time and resources and to give sacrificially, rather than letting shareholders foot the bill, but none of our great moral teachers ever said the path to virtue was an easy one.

As a federal securities regulator, my reach into state corporate law is, and should be, limited. Relations among corporate boards of directors, managers, and shareholders are appropriately governed by state law. Nevertheless, discussions about corporate purpose and governance affect discussions about disclosure requirements for public companies.

If the objective of a company is no longer to maximize value, then the company's disclosures become as unfocused as the company's management team. That is not a good result for investors.

I hope that my friends' son's youthful obsession with money will mature into an appreciation of the values that the father of Japanese capitalism championed. And I hope that he and the rest of his generation will reap the benefit of corporate enterprises singularly, but ethically, focused on making profits by serving society's needs.

Number 10

Dharma ransomware used in recent attacks

A cyber security firm has reported that a number of recent cyber attacks in Asia are the result of hackers using the Dharma ransomware.

The attackers, who were described as "newbie hackers" by the report's researchers, have been using simple tools and tactics to carry the attacks out on companies in Russia, Japan, India and China.

The tools used are publicly available and included the likes of NLBrute, Defender Control and Advanced Port Scanner amongst others. The Dharma ransomware itself was leaked online earlier this year which means it could be used by anyone who had obtained it without too much development.

Group-IB, the authors of the report, also noted that the group were requesting ransom payments of between $10,000 and $50,000 which, compared to other ransomware incidents, is relatively a small amount.

Ransomware is a growing cyber threat. The NCSC's mitigating malware and ransomware guidance (https://www.ncsc.gov.uk/guidance/mitigating-malware-and-ransomware-attacks) can help reduce:

- the likelihood of becoming infected
- the spread of the malware throughout an organisation
- the impact of the infection

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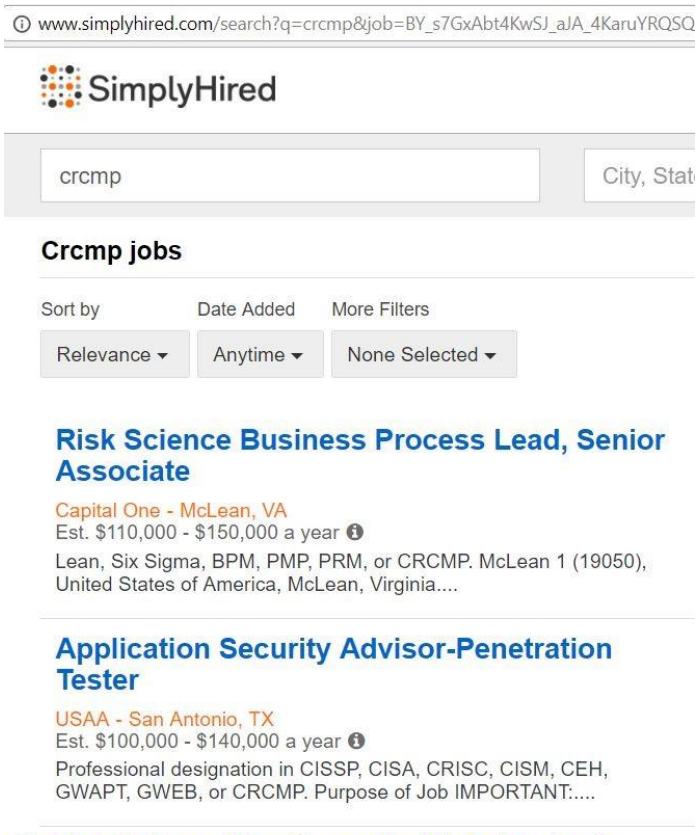

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