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MONDAY 20 JANUARY 2020 | ISSUE 3,537

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# CITY BACKS SAJ ON NEW RULEBOOK

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CITY leaders have responded with cautious optimism to chancellor Sajid Javid's statement that post-Brexit financial services trade with the EU should be on the basis of "outcome-based" equivalence of rules, rather than full regulatory alignment.

However Javid faced a backlash from car manufacturers and business bodies, after he told the Financial Times that the UK will diverge from EU regulations after Brexit and said firms will have to "adjust".

The UK and EU have until the end of the year to thrash out a free-trade agreement. The "political declaration" agreed in October said Britain should be able to access the EU's

financial markets using a "third-party equivalence" system, which would deem Britain's regulations to be in alignment with the bloc's.

Fleshing out his post-Brexit plans, Javid said over the weekend that the UK should simply ensure its rules produce the same outcomes as the EU's.

This approach would

**Sajid Javid irked car makers for wanting to diverge from EU rules**

give Britain more leeway in making its own financial rules, rather than simply incorporating EU rules wholesale. There is no guarantee the EU will agree, however.

Catherine McGuiness, policy chair at the City of London Corporation said: "Securing an 'outcome-based' equivalence of rules as suggested by

the chancellor would be a step in the right direction."

She said the current third-party equivalence system the EU offers to countries such as Japan is "patchy and prone to politicisation".

A spokesperson from banking body UK Finance said Britain and the bloc should maintain integrated financial markets without "the UK becoming an EU rule-taker by building a clear institutional mechanism for regulatory dialogue".

Javid made clear that "there will not be alignment" with EU rules on trade in goods, causing the Society of Motor Manufacturers and Traders (SMMT) to warn that any disruption to the car industry's complex cross-border relationships could cost "billions".

SMMT chief executive Mike Hawes told the chancellor that the car industry's "priority" is to remain closely integrated in order to safeguard "UK manufacturing".



**TO ICAP IT ALL OFF** City grandee may finally head to House of Lords



STEFAN BOSCIA

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CITY grandee Michael Spencer is set to be given a life peerage by the government.

The billionaire founder of Icap, and a former Conservative party treasurer, was included in Boris Johnson's dissolution honours list after last month's election, according to Sky News.

He was reportedly also in line for the nod in 2016, however Icap's involvement in the Libor rigging

scandal was said to have kept him out of the House of Lords, though Spencer was never personally implicated.

He sold the majority of his stake in Icap for more than £200m in 2017, having founded the firm with just £50,000. It comes as the Sunday Times reported that Boris Johnson has begun a review into potentially moving the House of Lords to York, with disputed land already identified as a potential location.

CONTINUES ON P3

## EY plans private equity expansion as audit reform looms over Big Four

EXCLUSIVE JAMES BOOTH

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BIG FOUR firm EY is planning a major private equity push as it grapples with potential regulatory changes that could dramatically alter the face of the firm.

Its transaction advisory division

is understood to be seeking to boost its capabilities in the private equity sector, with the goal of winning more lucrative private equity sell-side mandates.

Options being examined include redirecting current partners to focus on sell-side appointments and bringing in new partners to increase the team's firepower.

The potential expansion is being looked at as a long-term play, with some of the major deals the firm is hoping to win expected to come to fruition in two to three years' time.

EY is also seeking to strengthen its deal origination function, with sectors such as energy, technology, media and telecoms and life sciences earmarked for investment

to help the firm win more deals.

One of the reasons for the expansion is understood to be impending government reforms that could lead to the advisory businesses of the Big Four firms being split from their audit arms.

However, a source close to EY denied audit reform had affected the firm's expansion plans.

A spokesperson said: "Like any well-run business, we are always looking to attract and retain the best talent to support our growth."

Last week, EY said its UK and Ireland chair and managing partner Steve Varley was stepping down from the latter role, moving to a new position as global vice chair for sustainability.

# SPECIAL FEATURE

# DEEP IN THE WEEDS

The legalisation of cannabis around the world is creating a problem for investors, but **Mikhail Reider-Gordon** and **Philip Rubens** have a solution



**A** GROWING controversy exists which is being discussed with increased frequency by commentators concerning the restrictions on UK firms that wish to invest in the overseas cannabis industry.

The controversy arises from the uncertainty regarding the legality of investing in a foreign company, based somewhere that cannabis is legal.

In the UK, cannabis and synthetic cannabinoids are categorised as Class B drugs under Part II, Schedule 2 of the Misuse of Drugs Act 1971 and the Proceeds of Crime Act 2002 (POCA). So while cannabis is becoming legal in a growing number of countries, funds generated due to investment in the recreational cannabis sector may be classified as proceeds of crime in this country.

Such investments could potentially mean that an investor risks committing a substantive money laundering or other criminal offence, or could face other regulatory consequences.

Meanwhile, fund managers and investors run the serious risk of violating POCA, not just from their initial investments, but from any revenues – including the increased share price or profit from the sale of such assets – that are derived from cannabis enterprises.

Even the US is struggling to legiti-

mately bank the proceeds of lawful cannabis enterprises.

## GREEN DANGER

The modern cannabis industry's funding and investment mirrors the greater convulsion of the financial trading world in which it occurs. Cannabis entities are now found on public indices or incorporated into diverse investment portfolios.

For a UK-domiciled investor, this can result in profits from cannabis investments – no matter if they occur at arm's length – being regarded as "criminal property" under POCA. Profits derived from investments in entities involved in the production, sale, and use of cannabis products, including ancillary services that cannabis monies pass through, may therefore result in a UK investor breaching this country's anti-money laundering laws.

And for British-based banks that hold the accounts through which the proceeds pass, or which receive money from investors who profit from legitimate overseas cannabis holdings, the same risks arise.

Furthermore, UK entities which do not transact with foreign cannabis businesses, but (for example) receive funds by way of a dividend or cash pooling from a company which does, could also be caught by POCA, because they may receive or deal with monies

which are arguably tainted (even the slightest amount of criminal property can taint a wider asset, such as money in a bank account).

## PREPARE YOUR DEFENCES

So what can British investors and entities do to protect themselves?

A form of affirmative defence against money laundering does exist under POCA. An entity concerned about the origin of funds it anticipates handling may make an "authorised disclosure" via a Suspicious Activity Report (or SAR) to the National Crime Agency (NCA) regarding the relevant anticipated act, and seek consent from the NCA as to how to proceed.

But taken to its logical extreme and lacking any other option, investors, bankers, and other professionals who in some way are the recipients of gains or revenues generated from investments in cannabis-related entities would be compelled to repeatedly submit SARs to remain compliant.

This would likely result in the burden of creating an entire department within their organisation dedicated entirely to drafting and filing proactive SARs, and then tracking the NCA's response to each individual filing. It is an easy exercise to extrapolate the volume of filings that could be anticipated from any one active trading company or fund manager with daily

shifts buying and selling within multiple portfolios.

As the NCA has up to seven working days to respond to any single proactive SAR filing, and trading can occur hundreds if not thousands of times in a given day or week, it can be foreseen that by the time a response has been received from the NCA, the monies in question may likely have been traded multiple times – magnifying the number of resultant laundering violations.

## ENTER THE IDEA OF AN INDEPENDENT MONITOR

One alternative answer may lie in the appointment of an independent third-party monitor.

An appointed monitor could take on the role of being responsible for identifying all cannabis-related investments, the tracking and isolation of any profits or proceeds emanating from those investments, and the ring-fencing of the resulting monies or value, in order to remove the possibility of the inadvertent co-mingling with other investment proceeds or funds.

Further investments in cannabis-related vehicles would not be precluded by the entity being monitored, but profits from cannabis investments could not be re-invested; they would need to be held in the monitored account.

This notion anticipates that, sometime over the next few years, legislation that legalises such investments would occur, thus allowing the independent monitor to release the cannabis-derived gains back to the investor or fund manager.

The monitor would also be able to identify investments that are connected to cannabis revenue, and could then segregate those investments and confirm that the proceeds are not commingled with other investment revenue.

Any revenues derived or interest earned would need to be placed in a special fund. For example, if a stock or holding went up in value, it would need to be placed in the fund. This could become complicated for large investment firms that regularly conduct trading in large volumes, because the connection to the cannabis industry is very broad.

But, like having a neutral trustee in a bankruptcy or asset forfeiture proceeding, a third-party monitor would assume responsibility for making sure that the cannabis investment assets do not violate POCA. This is a concept that might be worth considering.

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 ● Mikhail Reider-Gordon is managing director of global affairs at Affiliated Monitors and Philip Rubens is a partner at law firm Teacher Stern.